

Commerce Committee

Wednesday, February 23, 2022
9:00 AM - 12:00 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Blaise Ingoglia
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Wednesday, February 23, 2022
9:00 AM – 12:00 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 91 Digital License Plates by Tourism, Infrastructure & Energy Subcommittee, Duran
- CS/CS/HB 353 Mortgage Payoff Letters by Civil Justice & Property Rights Subcommittee, Insurance & Banking Subcommittee, Fabricio
- CS/HB 375 Structural Engineering Recognition Program for Professional Engineers by Regulatory Reform Subcommittee, Toledo, Silvers
- CS/CS/HB 389 Money Services Businesses by State Administration & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, Zika
- CS/HB 503 Insurance by Insurance & Banking Subcommittee, Gregory
- CS/HB 557 Fire Investigator Cancer Treatment Benefits by Government Operations Subcommittee, Salzman
- CS/CS/HB 749 Fraud Prevention by State Administration & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, Clemons

- CS/CS/HB 763 Tax Exemptions for Charges for Private Investigators by Ways & Means Committee, Regulatory Reform Subcommittee, Casello, Caruso

- CS/HB 785 Two-way Radio Communication Enhancement Systems by Insurance & Banking Subcommittee, Botana

- CS/CS/HB 837 Hurricane Loss Mitigation Program by Infrastructure & Tourism Appropriations Subcommittee, Insurance & Banking Subcommittee, Willhite

- CS/HB 871 Department of Highway Safety and Motor Vehicles by Infrastructure & Tourism Appropriations Subcommittee, Brannan

- CS/HB 915 Commercial Motor Vehicle Registration by Tourism, Infrastructure & Energy Subcommittee, Melo

- HB 951 Domestic Surplus Lines Insurers by Gregory

- CS/CS/HB 1095 Telephone Solicitation by Civil Justice & Property Rights Subcommittee, Regulatory Reform Subcommittee, Beltran

- CS/CS/HB 1121 Pub. Rec./Crash Reports and Traffic Citations by Government Operations Subcommittee, Tourism, Infrastructure & Energy Subcommittee, Brannan

- CS/HB 1307 Citizens Property Insurance Corporation by Insurance & Banking Subcommittee, Gregory, Giallombardo

- HB 7063 Identification Cards by Public Integrity & Elections Committee, Perez

Consideration of the following proposed committee substitute(s):

- PCS for CS/HB 67 -- Specialty License Plates

- PCS for CS/HB 157 – Transportation

- PCS for HB 315 -- Transportation Facility Designations

- PCS for CS/HB 423 -- Building Regulation

- PCS for CS/HB 741 -- Net Metering

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 91 Digital License Plates
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Duran and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1178

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 0 N, As CS	Walsh	Keating
2) Commerce Committee		Walsh	Hamon

SUMMARY ANALYSIS

Current law requires motor vehicle license plates to be made out of metal retroreflective material and meet certain statutory requirements regarding size and number of characters allowed on the plate. License plates must be securely fastened to a vehicle and be free of defacement, mutilation, grease, and other obscuring matter, so that the plate is always plainly visible and legible. The Department of Highway Safety and Motor Vehicles (DHSMV) may conduct a pilot program on government vehicles to evaluate alternative license plates.

Digital license plates are dynamic screens, which may be used to replace the current metal license plate. They are able to display information such as a license plate number and annual validation of the current license plate. A digital license plate may also be used for applications such as electronic tolling and broadcasting emergency alerts.

The bill eliminates DHSMV's authority to evaluate alternative license plates through a pilot program. The bill defines digital license plate as an electronic display that is designed to display the information required by law to be included on a physical license plate, designed to be placed on a motor vehicle in lieu of a physical license plate, and has been determined by the Department of Transportation to have a display that is readable by current automated license plate readers. The bill requires DHSMV to allow a registered motor vehicle to be equipped with a digital license plate in lieu of a physical license plate by October 1, 2023, pursuant to a contract between DHSMV and a digital license plate provider. DHSMV is authorized to adopt implementing rules.

The bill provides that except as otherwise specified in the bill or a DHSMV rule, a digital license plate is subject to Florida's laws applicable to a physical license plate; however, digital license plates are exempt from the statutory design requirements. The bill requires that, before purchasing a digital license plate, the vehicle owner must purchase a metal license plate from DHSMV and pay all applicable motor vehicle fees.

The bill authorizes DHSMV to contract with digital license plate providers. DHSMV may authorize the display of a plate number and validation sticker on a digital license plate. DHSMV may authorize the use of digital license plates for toll collection, if approved by the Department of Transportation or other appropriate tolling authority, and parking permits. DHSMV may establish procedures for displaying emergency alerts, static logo displays, and other displays on the license plate. The bill also provides requirements for the digital license plate and requires providers to maintain an inventory of digital license plates, make available digital versions of each specialty license plate, and update the vehicle's registration in real time.

The bill does not appear to impact state or local government revenues or local government expenditures. The bill appears to have an indeterminate impact on state government expenditures, depending on whether DHSMV is expected to program connectivity.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida law requires motor vehicle registration license plates to be made of metal specially treated with a retroreflection material. The license plate must be designed to increase nighttime visibility and legibility and must be at least 6 inches tall and not less than 12 inches wide, unless a plate with reduced dimensions is deemed necessary by the Department of Highway Safety and Motor Vehicles (DHSMV) to accommodate motorcycles, mopeds, or similar smaller vehicles. Annual validation stickers must also be treated with a retroreflection material and must adhere to the license plate. [1]

The license plate must be imprinted with a combination of bold letters and numerals, not to exceed seven digits, so as to identify the license plate number. The license plate must be imprinted with the word "Florida" at the top and the name of the county in which it is sold, the state motto, or the words "Sunshine State" at the bottom. Any county may, upon majority vote of the county commission, elect to have the county name removed from the license plates sold in that county. If the county votes as such, the state motto or the words "Sunshine State" must be printed in lieu of the county name.[2]

Current law requires that every vehicle display a license plate securely fastened to the vehicle's rear[3] in a manner to prevent the plate from swinging. All letters, numerals, printing, writing, the registration decal, and the alphanumeric designation of the registration license plate must be clear, distinct, and free from defacement, mutilation, grease, and other obscuring matter, so that the plate is always plainly visible and legible from 100 feet away.[4]

Florida law provides for the expiration of a motor vehicle registration and the required renewal. Law provides penalties for operating a motor vehicle without a registration license plate or validation sticker. The penalties are as follows:

- Any person whose motor vehicle or mobile home registration has been expired for a period of six months or less commits a noncriminal traffic infraction, punishable as a nonmoving violation.
- Any person whose motor vehicle or mobile home registration has been expired for more than six months, upon a first offense, is subject to the penalty provided in s. 318.14, F.S.[5]
- Any person whose motor vehicle or mobile home registration has been expired for more than six months, upon a second or subsequent offense, commits a misdemeanor of the second degree.[6]

Current law provides that DHSMV may conduct a pilot program to evaluate the designs, concepts, and technologies for alternative license plates. For purposes of the pilot program, DHSMV must investigate the feasibility and use of alternative license plate technologies and the long-term cost impact to the consumer. A pilot program is limited to license plates that are used on government-owned motor vehicles. Such license plates are exempt from statutory design and material requirements for license plates.[7] DHSMV has had this authority since 2012, and currently has six digital license plates installed on vehicles.[8]

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[1] S. 320.06(3)(a), F.S.
[2] *Id.*
[3] An additional front facing plate is required by law for some vehicles, and such plates must meet the same requirements as rear facing plates. *See* s. 316.605(1), F.S.
[4] S. 316.605(1), F.S.
[5] Section 318.14, F.S., provides certain exceptions to noncriminal traffic infractions and provides for court appearances, payment plans, and authorizes proof of compliance with motor vehicle registration requirements.
[6] S. 320.07(3), F.S.
[7] S. 320.06(5), F.S.
[8] Florida Department of Highway Safety and Motor Vehicles, Agency Analysis of 2022 House Bill 91, p. 3 (Dec. 1, 2021).

Under current law, PRIDE, Inc.,[9] may manufacture license plates and validation stickers for DHSMV. DHSMV is not required to obtain competitive bids in order to contract with the corporation.[10]

Digital License Plates

Digital license plates are dynamic screens that may replace current physical license plate. The digital license plates can display information such as a license plate number and validation of the current license plate. Digital license plates also have the capability to work with a vehicle's computer system and communicate with outside sources that may access it remotely.[11] The license plate may be used for applications such as electronic tolling and broadcasting emergency alerts.[12]

Digital license plates are currently available in California and Arizona.[13] One digital license plate provider, Reviver, prices their digital license plates starting at $899.[14]

Effect of the Bill

The bill repeals DHSMV's authority to conduct a pilot program to evaluate the designs, concepts, and technologies of alternative license plates.

Under the bill, "digital license plate" is defined as an electronic display that:

- Is designed to display the information required to be included on a physical license plate;
- Is designed to be placed on a motor vehicle registered under ch. 320, F.S. in lieu of a physical license plate; and
- Has been determined by the Department of Transportation to have a display that is readable by current automated license plate recognition systems.

The bill requires DHSMV to allow a registered motor vehicle to be equipped with a digital license plate in lieu of a physical license plate by October 1, 2023, pursuant to a contract entered into by the department and a digital license plate provider. Before obtaining a digital license plate, the purchaser must first obtain a physical license plate from DHSMV.

Under the bill, DHSMV is authorized to adopt rules for digital license plates as outlined in the bill.

The bill also provides that the owner of a digital license plate is not subject to the penalties in s. 320.07, F.S., for failure to display a validation sticker if the vehicle was operated in compliance with ch. 320, F.S., and any DHSMV rules governing the placement of digital license plates and registration renewal.

Under the bill, DHSMV may authorize the display of the motor vehicle's validation on each digital license plate in lieu of the validation sticker. The validation must display the owner's birth month, the license plate number, and the year of expiration or appropriate renewal period if the owner is not a natural person. The validation must be displayed in the upper right corner of the digital license plate.

The bill provides that except as otherwise specified in the bill or a DHSMV rule, a digital license plate is subject to Florida's laws applicable to a physical license plate; however, digital license plates are exempt from the statutory design requirements.

The bill also allows DHSMV to authorize the use of a digital license plate for electronic toll collection, if such use has been approved by the Department of Transportation or other appropriate tolling authority or to display a parking permit.

[9] PRIDE, Inc., is the corporation organized under ch. 947, F.S., relating to inmate work programs.
[10] S. 320.06(4), F.S.
[11] Florida Department of Highway Safety and Motor Vehicles, Agency Analysis of 2022 House Bill 91, p. 2 (Dec. 1, 2021).
[12] Reviver, https://reviver.com/shop/ (last visited Feb. 19, 2022).
[13] Jacob Ogles, *Digital License Plates Could Come to Florida Roads*, Florida Politics (Mar. 3, 2021), https://floridapolitics.com/archives/409080-digital-license-plates-could-come-to-florida-roads/ (last visited Feb. 19, 2022).
[14] Reviver, https://reviver.com/shop/ (last visited Feb. 3, 2022).

Further, DHSMV may establish procedures for displaying the following information on a digital license plate:

- An emergency alert, including an alert regarding a missing child or missing adult;
- Other displays that DHSMV, in consultation with law enforcement agencies, determines are in the interest of public safety; and
- Static logo displays, including:
  - Displays for fleet license plates,
  - Digital versions of specialty license plates, pursuant to procedures adopted by DHSMV,
  - Special license plates for military service, and
  - Special license plates for the Governor and federal and state legislators.

The bills states that a digital license plate must:

- Meet the requirements and specifications previously described;
- Include the same information required to be included on a physical license plate and legibly display that information at all times and in all light conditions; and
- Have wireless connectivity capability.

Under the bill, DHSMV may contract with digital license plate providers[15] for the issuance of digital license plates, including any services related to the issuance of digital license plates. The contract must include provisions governing the protection of personal and motor vehicle registration data, including geolocation data, obtained by a digital license plate provider in the performance of its services.

A digital license plate provider with whom DHSMV contracts must:

- Maintain an inventory of digital license plates in this state;
- Make available a digital version of each specialty license plate authorized by DHSMV; and
- If a digital license plate displays a validation to reflect the current registration period for the motor vehicle, and upon DHSMV request, suspend the display of the validation or indicate in the digital license plate that the motor vehicle's registration has expired.

The bill provides that a consumer who chooses to purchase a digital license plate must purchase it directly from the digital license plate provider. In addition to any fees associated with the purchase of the digital license plate, the consumer is also responsible for paying to DHSMV all applicable motor vehicle fees, including the annual use fee associated with any specialty license plate the consumer wishes to display on the digital license plate.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 320.06, F.S., relating to registration certificates, license plates, and validation stickers.

Section 2: Amends s. 320.07, F.S., relating to expiration of registration, renewal required.

Section 3: Creates s. 320.08069, F.S., relating to digital license plates.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[15] The bill defines "digital license plate provider" as a person or an entity engaged in the business of providing digital license plate hardware and services to motor vehicle owners.

None. Since purchasers of digital license plates are also required to pay the statutorily required motor vehicle fees, the bill does not appear to impact state government revenues.

2. Expenditures:

Indeterminate. Assuming that most of the connectivity programming is between the digital license plate provider and the consumer, the bill will have an insignificant impact on DHSMV expenditures. If DHSMV is expected to provide connectivity, DHSMV asserts that this will require a significant amount of programming to multiple major DHSMV computer systems.[16]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Digital license plate providers may see additional revenues associated with the program.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill eliminates DHSMV's current authority to conduct a license plate pilot program and authorizes DHSMV to adopt rules to implement digital license plates.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2022, the Tourism, Infrastructure & Energy Subcommittee adopted an amendment to the bill and reported the bill favorably as a committee substitute. The amendment clarifies that:

- A digital license plate must be determined by the Department of Transportation to have a display that is readable by current automated license plate readers,
- DHSMV must allow digital license plates issued pursuant to a contract between the digital license plate provider and the department,
- Geolocation data must be protected as personal data under any contract entered into by the department with a digital license plate provider, and

[16] Florida Department of Highway Safety and Motor Vehicles, Agency Analysis of 2022 House Bill 91, p. 7 (Dec. 1, 2021).

- Specialty license plates offered by digital license plate providers must comply with department procedures.

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 digital license plates; amending s. 320.06, F.S.; deleting provisions relating to the authority of the Department of Highway Safety and Motor Vehicles to conduct a pilot program to evaluate the designs, concepts, and technologies for alternative license plates; amending s. 320.07, F.S.; exempting owners of digital license plates from certain penalties; creating s. 320.08069, F.S.; providing definitions; providing applicability; authorizing motor vehicles to be equipped with digital license plates by a certain date; authorizing the department to contract with digital license plate providers; providing department authority relating to the display and use of digital license plates; specifying requirements for digital license plates, digital license plate providers, and digital license plate consumers; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Subsection (5) of section 320.06, Florida Statutes, is amended to read:

320.06 Registration certificates, license plates, and

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

validation stickers generally.—

~~(5) The department may conduct a pilot program to evaluate the designs, concepts, and technologies for alternative license plates. For purposes of the pilot program, the department shall investigate the feasibility and use of alternative license plate technologies and the long-term cost impact to the consumer. The pilot program shall be limited to license plates that are used on government-owned motor vehicles as described in s. 320.0655. Such license plates are exempt from the requirements in paragraph (3)(a).~~

Section 2. Subsection (7) is added to section 320.07, Florida Statutes, to read:

320.07 Expiration of registration; renewal required; penalties.—

(7) An owner of a digital license plate as described in s. 320.08069 is not subject to the penalties in this section for failure to display a validation sticker if the vehicle was operated in compliance with this chapter and any rules adopted by the department governing the placement of digital license plates and registration renewal.

Section 3. Section 320.08069, Florida Statutes, is created to read:

320.08069 Digital license plates.—

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

(a) "Digital license plate" means an electronic display

that:

1. Is designed to display the information required in this chapter to be included on a physical license plate;

2. Is designed to be placed on a motor vehicle registered under this chapter in lieu of a physical license plate; and

3. Has been determined by the Department of Transportation to have a display that is readable by current automated license plate recognition hardware and software.

(b) "Digital license plate provider" means a person or an entity engaged in the business of providing digital license plate hardware and services to motor vehicle owners.

(2) APPLICABILITY.—Except as otherwise provided in this section or a rule adopted under this section, a digital license plate issued under this section is subject to the laws of this state applicable to a physical license plate. However, digital license plates issued under this section are exempt from s. 320.06(3)(a).

(3) DIGITAL LICENSE PLATE ISSUANCE.—

(a) By October 1, 2023, the department shall allow a motor vehicle registered under this chapter to be equipped with a digital license plate in lieu of a physical license plate issued under s. 320.06 pursuant to a contract entered into by the department and a digital license plate provider under paragraph (b). However, the purchaser of a digital license plate must first obtain a physical license plate from the department before

obtaining a digital license plate from a digital license plate provider.

(b) The department may contract with digital license plate providers for the issuance of digital license plates, including any services related to the issuance of digital license plates. The contract must include provisions governing the protection of personal and motor vehicle registration data, including geolocation data, obtained by a digital license plate provider in the performance of its services.

(c) The department may authorize the display of the motor vehicle's validation on each digital license plate in lieu of the validation sticker. The validation must display the owner's birth month, the license plate number, and the year of expiration or appropriate renewal period if the owner is not a natural person. The validation must be displayed in the upper right corner of the digital license plate.

(d) The department may authorize the use of a digital license plate for electronic toll collection, if such use has been approved by the Department of Transportation or other appropriate tolling authority, or to display a parking permit.

(e) The department may establish procedures for displaying the following information on a digital license plate:

1. An emergency alert or other public safety alert issued by a governmental entity, including an alert pursuant to s. 937.021.

2. Static logo displays, including unique displays for fleet license plates as described in s. 320.0657 and digital versions of specialty license plates as described in s. 320.08058, special license plates for military service as authorized in s. 320.089, and special license plates for the Governor and federal and state legislators as authorized in s. 320.0807.

3. Other displays that the department, in consultation with law enforcement agencies, determines are in the interest of public safety.

(4) DIGITAL LICENSE PLATE REQUIREMENTS.—A digital license plate issued under this section must:

(a) Meet the specifications and requirements adopted under subsection (3).

(b) Include the same information required to be included on a physical license plate and legibly display that information at all times and in all light conditions.

(c) Have wireless connectivity capability.

(5) DIGITAL LICENSE PLATE PROVIDERS.—A digital license plate provider with whom the department contracts shall:

(a) Maintain an inventory of digital license plates issued in this state by the digital license plate provider.

(b) Make available a digital version of each specialty license plate authorized by the department, pursuant to procedures adopted by the department under paragraph (3)(e).

(c) If a digital license plate displays a validation, promptly update the display of the validation to reflect the current registration period for the motor vehicle and, upon request of the department, suspend the display of the validation or indicate on the digital license plate that the registration for the motor vehicle has expired.

(6) DIGITAL LICENSE PLATE CONSUMERS.—A consumer who chooses to purchase a digital license plate must purchase a digital license plate directly from a digital license plate provider. In addition to any fees associated with the purchase of a digital license plate, the consumer is also responsible for paying to the department all applicable motor vehicle fees required by this chapter, including any annual use fees pursuant to s. 320.08056 associated with any specialty license plate the consumer wishes to display on the digital license plate.

(7) RULEMAKING.—The department may adopt rules to implement this section.

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

COMMERCE COMMITTEE

CS/HB 91 by Rep. Duran
Digital License Plates

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Rep. Duran (strike-all):

- Clarifies the definition of a "digital license plate" to provide that a digital license plate must be designed to display any other information that the department, in consultation with law enforcement, determines may improve public safety.
- Removes the definition for "digital license plate provider."
- Permits the Department of Highway Safety and Motor Vehicles (DHSMV) to conduct a pilot program for the purpose of evaluating the designs, concepts, and technologies of digital license plates.
- Requires that in any pilot program conducted by DHSMV, the digital license plate designs, concepts, and technologies must be able to:
    - Display the information required for a metal or paper license plate;
    - Display safety alerts issued by a governmental entity;
    - Display static logos, including unique displays for fleet license plates and digital versions of specialty license plates and special license plates;
    - Display the registration status of the motor vehicle;
    - Display any other information that the department, in consultation with law enforcement agencies, determines may improve public safety;
    - Be readable by current toll collection systems and current law enforcement automated license plate recognition hardware and software, as determined by the Department of Transportation;
    - Connect to the Internet; and
    - Add and transfer data at the direction of DHSMV.
- Provides a civil penalty for a digital license plate provider that stores, sells, or shares geolocation data collected from the digital license plate.
- Requires DHSMV to allow a registered motor vehicle to display a digital license plate in lieu of a physical license plate and creates a framework for implementation.

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 Duran offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (46) is added to section 320.01, Florida Statutes, to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(46) "Digital license plate" means an electronic display meeting all specifications required by the department, which must, at a minimum:

(a) Be designed to display the information required in this chapter to be included on a physical license plate;

(b) Be designed to be placed on a motor vehicle registered under this chapter in lieu of a physical license plate;

(c) Be designed to display any other information that the department, in consultation with law enforcement agencies, determines may improve public safety; and

(d) Have been determined by the Department of Transportation to have a display readable by current toll collection systems and current law enforcement automated license plate recognition hardware and software.

Section 2. Present subsection (6) of section 320.06, Florida Statutes, is redesignated as subsection (7), a new subsection (6) is added to that section, and subsection (5) of that section is amended, to read:

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

(5) The department may conduct a pilot program to evaluate the designs, concepts, and technologies for digital ~~alternative~~ license plates as provided for in subsection (6). For purposes of the pilot program, the department may ~~shall~~ investigate the feasibility and use of digital ~~alternative~~ license plate technologies that modernize license plates used in this state and improve public safety, and the long-term cost impact to the consumer. The pilot program shall be limited to license plates that are used on government-owned motor vehicles as described in s. 320.0655. Such license plates are exempt from the requirements in paragraph (3)(a). For the purposes of this subsection, digital license plate designs, concepts, and

technologies that the department may investigate the feasibility and use of must include, but are not limited to, the ability to:

(a) Display information required to be included on a metal or paper license plate.

(b) Display safety alerts issued by a governmental entity, such as emergency alerts, Amber Alerts, and Silver Alerts.

(c) Display static logos, including unique displays for fleet license plates, digital versions of specialty license plates, and special license plates.

(d) Display the registration status of the motor vehicle to which the plate is affixed.

(e) Display any other information that the department, in consultation with law enforcement agencies, determines may improve public safety.

(f) Be readable by current toll collection systems and current law enforcement automated license plate recognition hardware and software, as determined by the Department of Transportation.

(g) Connect to the Internet.

(h) Add and transfer data at the direction and discretion of the department.

(6)(a) The department may conduct a pilot program for the purpose of evaluating the designs, concepts, and technologies of digital license plates for use in this state and allowing government-owned vehicles registered under this chapter to be

equipped with a digital license plate in addition to being issued a physical license plate.

(b) If the department conducts the pilot program, it must administer the program and allow government-owned motor vehicles registered under this chapter to be equipped with a digital license plate in addition to being issued a physical license plate under this section.

1. The department may contract with digital license plate providers to participate in the pilot program.

2. For each digital license plate provider contracted by the department to participate in the pilot program, the department shall select at least two geographic regions of this state and use at least 10 digital license plates in each region. The pilot program must be implemented in at least one urban region and one rural region of this state.

3. For each digital license plate provider contracted by the department to participate in the pilot program, the evaluation of the digital license plate designs, concepts, and technologies must conclude within 6 months after the execution of a contract for participation in the pilot program. Within 8 months after the execution of a contract to participate in the pilot program for the evaluation of the digital license plate designs, concepts, and technologies, the department shall make written recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives

regarding the implementation and use of the digital license plate designs, concepts, and technologies.

(c) The department may adopt rules to implement this subsection.

Section 3. Effective July 1, 2023, subsection (7) is added to section 320.07, Florida Statutes, to read:

320.07 Expiration of registration; renewal required; penalties.—

(7) An owner of a digital license plate as defined in s. 320.01(46) is not subject to the penalties in this section for failure to display a validation sticker if the vehicle was operated in compliance with this chapter and any rules adopted by the department governing the placement of digital license plates and registration renewal.

Section 4. Effective July 1, 2023, section 320.08069, Florida Statutes, is created to read:

320.08069 Digital license plates.—

(1) APPLICABILITY.—Except as otherwise provided in this section or rules adopted under this section, a digital license plate issued under this section is subject to the laws of this state applicable to a physical license plate. Physical license plates must be renewed in accordance with the requirements of s. 320.06 relating to all fees due on an annual or semiannual basis. However, digital license plates issued under this section are exempt from s. 320.06(3)(a).

(2) DIGITAL LICENSE PLATE ISSUANCE.—

(a) The department may allow a motor vehicle registered under this chapter to be equipped with a department-approved digital license plate in lieu of a physical license plate issued under s. 320.06. However, the purchaser of a digital license plate must first obtain a physical license plate from the department before obtaining a digital license plate. Physical license plates must be renewed in accordance with the requirements of s. 320.06 relating to all fees due on an annual or semiannual basis.

(b) The department may contract with digital license plate providers for the issuance of digital license plates, including any services related to the issuance of digital license plates. The contract must include provisions governing the protection of personal and motor vehicle registration data obtained by a digital license plate provider in the performance of its services. A digital license plate provider may not sell or share personal or motor vehicle registration data and may not store, sell, or share geolocation data from the use of a digital license plate. A digital license plate provider that violates this paragraph is subject to a civil penalty not to exceed $5,000 per occurrence.

(c) The department may authorize the display of the motor vehicle's validation on each digital license plate in lieu of the validation sticker. The validation must display the owner's

birth month, the license plate number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation must be displayed in the upper right corner of the digital license plate.

(d) The department may authorize the use of a digital license plate for electronic toll collection, if such use has been approved by the Department of Transportation or other appropriate tolling authority, or to display a parking permit.

(e) The department shall establish procedures for displaying information on a digital license plate, which may include, but not be limited to:

1. An emergency alert or other public safety alert issued by a governmental entity, including an alert pursuant to s. 937.021.

2. A company name or logo and unit number for fleet license plates as described in s. 320.0657 and digital versions of specialty license plates as described in s. 320.08058, special license plates for military service as authorized in s. 320.089, and special license plates for the Governor and federal and state legislators as authorized in s. 320.0807.

3. Other displays that the department, in consultation with law enforcement agencies, determines are in the interest of public safety.

(3) DIGITAL LICENSE PLATE REQUIREMENTS.—A digital license plate issued under this section must:

(a) Meet the specifications and requirements adopted under subsection (2).

(b) Include the same information required to be included on a physical license plate and legibly display that information at all times and in all light conditions.

(c) Have wireless connectivity capability.

(4) DIGITAL LICENSE PLATE PROVIDERS.—A digital license plate provider with whom the department contracts shall:

(a) Maintain an inventory of digital license plates issued in this state by the digital license plate provider.

(b) Make available a digital version of each specialty license plate authorized by the department.

(c) If a digital license plate displays a validation, promptly update the display of the validation to reflect the current registration period for the motor vehicle and, upon request of the department, suspend the display of the validation or indicate on the digital license plate that the registration for the motor vehicle has expired.

(5) DIGITAL LICENSE PLATE CONSUMERS.—In addition to any fees associated with the purchase of a digital license plate, the consumer is also responsible for paying to the department all applicable motor vehicle fees required by this chapter, including any annual use fees pursuant to s. 320.08056 associated with any specialty license plate the consumer wishes to display on the digital license plate.

(6) RULEMAKING.—The department may adopt rules to implement this section.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2022.

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

Remove everything before the enacting clause and insert: An act relating to digital license plates; amending s. 320.01, F.S.; defining the term "digital license plate"; amending s. 320.06, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to conduct a pilot program to evaluate designs, concepts, and technologies for a digital, rather than an alternative, license plate pilot program; authorizing the department to investigate the feasibility of digital license plate designs, concepts, and technologies that, at a minimum, meet certain prerequisites; requiring the department to administer any such pilot program and to contract with digital license plate providers in implementing such a program; providing timeframes for any such program; requiring the department to make written recommendations to the Governor and the Legislature; authorizing the department to adopt rules; amending s. 320.07, F.S.; providing that an owner of a digital license plate is not subject to penalties for failure to display a validation sticker if certain conditions are met; creating s.

320.08069, F.S.; providing applicability; authorizing the department to allow a registered motor vehicle to be equipped with an approved digital license plate in lieu of a physical license plate by a certain date; providing requirements for purchasers of digital license plates; authorizing the department to contract with digital license plate providers for certain purposes; providing a requirement for such contract; specifying prohibited acts of digital license plate providers; providing a civil penalty for violations; authorizing the department to authorize digital license plates to display a motor vehicle's validation and to be used for electronic toll collection and to display parking permits, subject to certain requirements; requiring the department to establish procedures for displaying information on digital license plates; specifying requirements for digital license plates, digital license plate providers, and consumers; authorizing the department to adopt rules; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 353 Mortgage Payoff Letters
SPONSOR(S): Civil Justice & Property Rights Subcommittee, Insurance & Banking Subcommittee, Fabricio
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Civil Justice & Property Rights Subcommittee	17 Y, 0 N, As CS	Mathews	Jones
3) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

A mortgage payoff letter may be requested by a mortgagor who is selling the property that is collateral for the mortgage loan, refinancing the mortgage loan, or paying off the mortgage loan. Florida law requires that a mortgage lender or servicer deliver to the requestor, within 14 days after receipt of a written request, a mortgage payoff letter with the unpaid balance of the loan. When a mortgage loan has been fully paid, the mortgage lender or servicer must execute in writing an instrument acknowledging satisfaction of the mortgage and have the instrument acknowledged and duly entered in the official records of the proper county. Within 60 days after receiving full payment of the mortgage loan, the mortgage lender or servicer must send the borrower the recorded satisfaction.

A mortgage payoff letter may sometimes include language reserving the mortgage servicer's or lender's right to change the amounts listed in the payoff letter and disclaiming the reliance of others on the payoff letter. In the event that the mortgage lender or servicer determines after sending the mortgage payoff letter that the borrower owes additional money, the mortgage lender or servicer may sometimes return the funds received from the closing which were sent in reliance on the amount stated in the mortgage payoff letter. In turn, this may cause continued accrual of interest and potential fees during the pendency of resolving the discrepancy in the amount owed. Further, as long as the discrepancy or dispute remains unresolved, there may not be clear title to the property.

The bill:

- Includes legislative findings that a mortgage payoff letter's accuracy and timeliness are critical, and that the addition of disclaimer language within such letters creates unnecessary delays within the real estate market.
- Reduces from 14 days to 10 days the timeframe within which a lender or servicer must send a requested mortgage payoff letter.
- Standardizes the contents of the mortgage payoff letter as to all of the authorized requestors.
- Except where the property is in foreclosure or the borrower is in bankruptcy, prohibits the lender or servicer, from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on the information provided in a mortgage payoff letter; and provides that any attempt to do so is void and unenforceable.
- Allows the lender or mortgage servicer to send a corrected mortgage payoff letter superseding a prior payoff letter so long as the corrected payoff letter is received by 3 p.m. at least one business day before payment is made in reliance on the payoff letter.
- Prohibits the lender or servicer from denying the accuracy of the mortgage payoff letter against any person who relied on it.
- Requires the lender or servicer to promptly apply a payment received in reliance on the payoff letter.
- Specifies the process by which a mortgage payoff letter may be requested and sent.
- Requires the lender or servicer, within 60 days after the mortgage loan has been paid pursuant to the mortgage payoff letter, to execute, have duly entered in the official records of the proper county, and send to the mortgagor or record title owner an instrument acknowledging satisfaction of the mortgage.

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

The bill provides an effective date of October 1, 2022, and states that it applies to all mortgages existing as of such effective date or entered into afterwards, as well as to all loans secured by such mortgages.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Estoppel Letters

In general, an estoppel letter (or estoppel certificate) is a legal document provided by one party that enables another party to rely on the document's accuracy, and that prevents the first party from later claiming different facts or terms regarding an agreement.[1] With respect to real estate, these types of letters are typically used to confirm amounts of moneys owed that attach to a certain piece of property, such as mortgage debt, condominium association fees, homeowners' association fees, and outstanding claims or deposits due to tenants. These types of letters are often sought prior to closing on a real estate transaction as part of due diligence to confirm proper amounts due that can affect the settlement of such transaction.

Mortgage Payoff Letters

In Florida, s. 701.04, F.S., provides the requirements for estoppel letters with respect to real estate mortgages; such letters are also commonly known as "mortgage payoff letters."[2] A mortgage payoff letter[3] may be requested by a mortgagor[4] who is selling the property that is collateral for the mortgage loan, refinancing the mortgage loan, or paying off the mortgage loan. Florida law requires that a mortgage lender or servicer deliver to the requestor, within 14 days after receipt of a written request, a mortgage payoff letter setting forth the unpaid balance of the loan secured by the mortgage.[5] The request may be made by a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property.[6]

Florida law specifies the information that must be contained in the mortgage payoff letter, depending on who requests the letter, as follows:[7]

- If the mortgagor, or any person lawfully authorized to act on behalf of the mortgagor, makes the request, the mortgage payoff letter must include an itemization of the principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.
- If a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request, the mortgage payoff letter may include the itemization of the information required above, but must at a minimum include the total unpaid balance due under or secured by the mortgage on a per-day basis.

When the amount of money due on any mortgage loan has been fully paid, the mortgage lender or servicer must execute a written instrument acknowledging satisfaction of the mortgage and have the instrument acknowledged, or proven, and duly entered in the official records of the proper county.[8] Within 60 days after receiving full payment of the mortgage loan, the person required to acknowledge satisfaction of the mortgage must send or cause to be sent the recorded satisfaction to the person who

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[1] CREPedia, *Estoppel Letter*, https://www.crepedia.com/dictionary/definitions/estoppel-letter/ (last visited Feb. 14, 2022); Redfin, *What is an Estoppel Certificate*, https://www.redfin.com/definition/estoppel-certificate (last visited Feb. 14, 2022).

[2] S. 701.041, F.S., defines an estoppel letter in regards to mortgages as a statement of the amount of the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage; and the interest on a per-day basis for the unpaid balance.

[3] Referred to as an "estoppel letter" in Florida statutes. *See* ss. 701.04 and 701.041, F.S.

[4] Mortgagor means "[s]omeone who mortgages property; the mortgage-debtor, or borrower." Black's Law Dictionary (11th ed. 2019).

[5] S. 701.04(1), F.S.

[6] *Id*.

[7] *Id*.

[8] S. 701.04(2), F.S.

has made the full payment.[9] In a civil action arising out of this requirement, the prevailing party is entitled to attorney fees and costs.

Section 701.04(2), F.S., requires the full payment of the mortgage, not the amount specified in an estoppel letter provided pursuant to 701.04(1), F.S. This is in contrast with homeowners' association estoppel certificates in Florida, where s. 720.30851(3), F.S., specifically states that a homeowners' association "waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns." Sections 718.116(8)(c), and 719.108(6)(c), F.S., provide similar language regarding estoppel certificates for any unpaid condominium association assessments and unpaid rents, and assessments due to cooperatives ("co-ops"), respectively.[10] A mortgagee is not necessarily held to the same waiver of rights to collect additional moneys from a mortgagor upon the provision of an estoppel letter, as s. 701.04, F.S., does not provide a similar waiver provision as those applying to homeowners' associations, condominium associations, and cooperatives.[11]

Some mortgage servicers and lenders, when sending the estoppel letter required under s. 701.04(2), F.S., include language which seeks to reserve that servicer's or lender's right to change the amounts listed in the payoff letter or disclaiming the reliance of others on the information in the payoff letter. Examples of such language include the following statements:

- "The payoff figures provided are subject to final verification by the Note Holder. The noteholder reserves the right to adjust these figures and refuse or accept any funds which are insufficient to satisfy the full indebtedness for any reason."
- "The payoff amount is subject to our final verification once we receive payoff funds…. If the payoff funds received are insufficient to pay off the account in full for any reason including, but not limited to, error in calculation, NSF, or additional escrow disbursements and/or adjustments. [We] reserve the right to decline to pay the account in full. In addition, any and all interest will be due at the time of payoff."
- "All payoff figures are subject to final verification of the mortgage lender. We may adjust any portion of this payoff statement, at any time, for the following reasons, including but not limited to: escrow disbursements made on behalf of the loan holder(s), fee advances, items returned by your financial institution including previously made payments, additional fees or charges, and any good faith and/or inadvertent clerical errors."
- "We will not be bound by errors and/or omissions contained herein."
- "Agent hereby reserves the right to adjust Payoff Amount or the Per Diem Amount in the event that we discover a mathematical, typographical, bookkeeping or clerical error."
- "Borrower forever releases and discharges Agent, the Lenders, and their respective officers, directors, employees, agents, representatives, successors and assigns…from any and all claims, causes of action, damages and liabilities of any nature whatsoever, known or unknown, which such person ever had, now has or might hereafter have against [the parties] which relates, directly or indirectly, to any of the Loan Documents or the Loan."[12]

Such language can frustrate the parties involved in a real estate transaction since such language essentially attempts to remove the mortgagee's right to rely on the amounts provided therein. In the event that the mortgage lender or servicer determines after sending an estoppel letter that the borrower

[9] *Id*.

[10] S. 701.116(8)(c) states that a condominium association "waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns." 719.108(6)(c), F.S. states that a cooperative association "waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns."

[11] *But see*, *Rissman on Behalf of Rissman Inv. Co. v. Kilbourne*, 643 So. 2d 1136, 1139 (Fla. 1st DCA 1994), where the 1st District Court of Appeal found that a lender could be estopped from claiming additional moneys after an estoppel letter. The facts of this case, however, were rather unique. As the court mentioned, the mortgagee regularly reaffirmed the amount given in the estoppel letter over a number of years. In addition, the mortgagor made a number of transactions based in detrimental reliance on the amount provided by the mortgagee.

[12] *See* Email from Melissa Murphy, Executive Vice President, Chief Legal Officer & General Counsel, The Fund (Feb. 4, 2022, 11:46 EST) (on file with the Senate Banking and Insurance Committee), which provided samples of escrow letters that were sent to Florida borrowers.

owes additional money beyond that provided in the estoppel letter, some mortgage lenders or servicers return all of the funds received from the closing and demand full payment, even if such funds were sent in reliance on an estoppel letter that was never corrected or revised by the lender or servicer. This can result in the continued accrual of interest on the full amount of the mortgage (not just the amount in dispute) during the pendency of resolving the discrepancy in the amount owed. Further, as long as the discrepancy or dispute continues, there may not be clear title to the property.[13]

Effect of the Bill

The bill reduces from 14 days to 10 days the timeframe within which a mortgage lender or servicer must send a requested mortgage payoff letter setting forth the unpaid balance of the mortgage loan. If the request for a mortgage payoff letter is made by a person other than the mortgagor,[14] the request must include a copy of the instrument showing such person's title in the property or other lawful authorization, and the mortgage lender or servicer must notify the mortgagor of the request.

The bill standardizes the information that must be contained in the mortgage payoff letter, regardless of whether the requestor is the mortgagor, a record title owner, or a person lawfully authorized to act on behalf of the mortgagor or record title owner. The letter must at least include the unpaid balance of the loan properly due under or secured by the mortgage as of the date specified in the letter, including an itemization of the principal, interest, and any other charges comprising the unpaid balance.

The bill specifies the process for requesting a mortgage payoff letter. A written request for a mortgage payoff letter must be sent to the mortgage lender or servicer by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic means at the address made available by the mortgage lender or servicer for such purpose, or through an automated system provided by the mortgage lender or servicer for requesting a mortgage payoff letter. The request is considered received:

- Five business days after the request sent by first-class mail is deposited with the United States Postal Service;
- The day the request is delivered by a common carrier delivery service; or
- The day the request is sent by e-mail, facsimile, or other electronic means or through an automated system provided by the mortgage lender or servicer for requesting a mortgage payoff letter.

If any of the foregoing days fall on a Saturday, Sunday, or legal holiday, the request for a mortgage payoff letter is considered timely received by the mortgagee or mortgage servicer on the next business day.

The bill also specifies the process by which a mortgage payoff letter must be sent. The mortgage lender or servicer must send a mortgage payoff letter by first-class mail; by common carrier delivery service; or by e-mail, facsimile, or other electronic means, as directed in the written request, or through an automated system provided by the mortgage lender or servicer for this purpose. However, the mortgage lender or servicer is not required to pay for a common carrier delivery service. If the 10-day period after a written request is received by the mortgage lender or servicer ends on a Saturday, Sunday, or legal holiday, the mortgage payoff letter is considered timely if it is sent by the close of business on the next business day.

The bill prohibits the mortgage lender or servicer from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on the information provided in a mortgage payoff letter, and any attempt to do so is void and unenforceable. However, this prohibition does not apply to

[13] *Id.*
[14] Definition of "mortgagor", *supra* note 4.

mortgages for which a notice of lis pendens[15] in a foreclosure action or a suggestion of bankruptcy[16] has been properly filed and recorded.

If the mortgage lender or servicer determines that any of the information in the mortgage payoff letter was inaccurate, the mortgage lender or servicer may send a corrected mortgage payoff letter. The corrected mortgage payoff letter supersedes any prior mortgage payoff letter so long as the corrected payoff letter is received by 3:00 p.m.[17] at least one business day before payment is made in reliance on the mortgage payoff letter. The bill provides that the corrected estoppel letter is considered received by the person who requested the original estoppel letter:

- Five business days after the corrected estoppel letter sent by first-class mail is deposited with the United States Postal Service;
- The day the corrected estoppel letter is delivered by a common carrier delivery service; or
- The day the corrected estoppel letter is sent by e-mail, facsimile, or other electronic means or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter.

If any of the information in the mortgage payoff letter was inaccurate and there was not a timely corrected payoff letter, the bill prohibits the mortgage lender or servicer from denying the accuracy of the mortgage payoff letter against any person who relied on it.

If a payment is received at the location and in the manner specified by the mortgage lender or servicer, the mortgage lender or servicer must accept, and may not return, any payment received in reliance on the mortgage payoff letter, and the mortgage lender or servicer must promptly apply such payment to the unpaid balance of the mortgage loan.

The bill requires the mortgage lender or servicer, within 60 days after the mortgage loan has been fully paid or paid pursuant to the mortgage payoff letter, to execute, send for recording in the official records of the proper county, and send to the mortgagor or record title owner an instrument acknowledging satisfaction of the mortgage. The prevailing party in a civil action brought against the mortgage lender or servicer to enforce this requirement is entitled to reasonable attorney fees and costs.

The bill conforms the definition of "estoppel letter" in s. 701.041, F.S., to the estoppel letter requirements in s. 701.04, F.S.

The bill provides a statement of legislative intent and clarifies that the bill is applicable to all mortgages existing at the time of the effective date of the bill and to all mortgages entered into on or after the effective date as well as to all loans secured by such mortgages.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 701.04, F.S., relating to cancellation of mortgages, liens, and judgments.

Section 2. Amends s. 701.041, F.S., relating to title insurer; mortgage release certificate.

Section 3. Provides a statement of legislative intent.

[15] A notice of lis pendens is "[a] notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome. Black's Law Dictionary (11th ed. 2019). *See also* s. 48.23, F.S., relating to lis pendens.

[16] "Suggestion of bankruptcy is a document filed with a court to put it on notice that the defendant in a pending lawsuit has filed a bankruptcy case. A party can file a suggestion of bankruptcy whenever a party believes that the bankruptcy or automatic stay provision of bankruptcy code has an effect on a state court case." US Legal, https://definitions.uslegal.com/s/suggestion-of-bankruptcy/ (last visited Feb. 14, 2022).

[17] The corrected estoppel letter must be received by the person who requested the original estoppel letter by 3:00 p.m. in such person's time zone.

Section 4. Provides that the bill applies to all mortgages entered into before and after the effective date.

Section 5. 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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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 lead to smoother real estate closings to the extent that mortgage lenders or servicers provide more accurate information in mortgage payoff letters. Additionally, the bill may help ensure clear title to the property.

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:

Due in part to the federal and state constitutional Contracts Clauses, the Legislature generally may not impair existing contractual obligations.[18] Florida courts have generally interpreted the state's Contract Clause to mirror the U.S. Constitution's Contract Clause; thus, Florida courts have sometimes struck down laws retroactively burdening or altering contracts.[19] The bill states that it applies to all mortgages that are in existence as of its effective date. Whether the Contracts Clauses or other constitutional provisions may be implicated by this provision will likely depend on the facts of each particular case.

B. RULE-MAKING AUTHORITY:

None.

[18] Art. I, s. 10, U.S. Const.; art. I, s. 10, Fla. Const.; *see also* U.S. Const. amends. V and XIV (prohibitions against violating due process).
[19] *See, e.g., Citrus Cnty. Hosp. Bd. v. Citrus Mem'l Health Found., Inc.*, 150 So. 3d 1102, 1108 (Fla. 2014).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 27, 2022, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from HB 353 in the following ways:

- Amends the process for requesting and sending a mortgage payoff letter.
- Exempts mortgages for which a foreclosure action or a suggestion of bankruptcy is filed from the prohibition on a mortgage lender or servicer sending a payoff letter that qualifies, reserves the right to change, or conditions or disclaims the reliance of others on the information provided in the payoff letter.
- Amends provisions relating to sending a corrected payoff letter.
- States certain rights and defenses of parties.
- Amends the provision requiring a mortgage lender or servicer to promptly apply funds received in reliance on the payoff letter.
- Removes a cause of action and related damages.
- Amends the definition of "estoppel letter".
- Makes other technical changes.

On February 16, 2022, the Civil Justice & Property Rights Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from CS/HB 353 in that it:

- Provides the circumstances by which the corrected estoppel letter is considered to be received by the party who requested the original estoppel letter;
- Removes a provision specifying that the bill does not affect the right or a mortgagee to recover any sum that it did not include in an estoppel letter from any person liable for the payment of the loan;
- Removes a provision which provided that the recorded release of the mortgage does not relieve the mortgagor from any personal liability on the loan;
- Provides a statement of legislative intent;
- Clarifies that the bill applies to all mortgages, not just mortgages entered into after the effective date; and
- Makes other clarifying and technical changes.

This analysis has been updated to reflect the committee substitute as passed by the Civil Justice & Property Rights Subcommittee.

A bill to be entitled

An act relating to mortgage payoff letters; amending s. 701.04, F.S.; revising the timeframe within which a mortgagee or mortgage servicer must send or cause to be sent an estoppel letter containing specified information; revising the circumstances under which a copy of the instrument showing title in the property or other lawful authorization must be included in a request for an estoppel letter; requiring notice to the mortgagor of a request for an estoppel letter under certain circumstances; revising requirements for an estoppel letter; prohibiting certain actions by the mortgagee or mortgage servicer; authorizing the mortgagee or mortgage servicer to send a corrected estoppel letter under certain circumstances; providing that a corrected estoppel letter supersedes any previous estoppel letter under certain circumstances; providing methods for sending a corrected estoppel letter; prohibiting the mortgagee or mortgage servicer from denying the accuracy of certain information provided in an estoppel letter under certain circumstances; prohibiting payments received pursuant to an estoppel letter from being returned and requiring such payments to be promptly applied to any unpaid balance of the loan properly due under or

secured by a mortgage; providing methods for sending a written request for an estoppel letter and for sending an estoppel letter; providing that the mortgagee or mortgage servicer is not required to pay for a common carrier delivery service; requiring the mortgagee or mortgage servicer to take certain actions within a specified time after the unpaid balance of a loan properly secured by a mortgage has been fully paid or paid pursuant to an estoppel letter; authorizing reasonable attorney fees and costs; amending s. 701.041, F.S.; revising the definition of the term "estoppel letter"; conforming provisions to changes made by the act; providing legislative findings; providing for retroactive applicability; providing an effective date.

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

Section 1. Section 701.04, Florida Statutes, is amended to read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1)(a) Within 10 ~~14~~ days after receipt of the written request of a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf

of a mortgagor or record title owner of the property, the mortgagee ~~holder of a mortgage shall deliver~~ or mortgage ~~cause the~~ servicer shall send or cause to be sent ~~of the mortgage to deliver to the person making the request at a place designated in the written request~~ an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage. If the written request is made by a person other than the mortgagor, the request must include a copy of the instrument showing such person's title in the property or other lawful authorization, and the mortgagee or mortgage servicer must notify the mortgagor of the request.

~~(a) If the mortgagor, or any person lawfully authorized to act on behalf of the mortgagor, makes the request, the estoppel letter must include an itemization of the principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.~~

(b) ~~If a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request:~~

~~1. The request must include a copy of the instrument showing title in the property or lawful authorization.~~

~~2.~~ The estoppel letter ~~may include the itemization of information required under paragraph (a), but~~ must at a minimum include:

1. The ~~total~~ unpaid balance of the loan properly due under

or secured by the mortgage as of the date specified in the estoppel letter, including an itemization of the principal, interest, and any other charges comprising the unpaid balance.

2. Interest accruing on a per-day basis for the unpaid balance, if applicable.

(c)1. Except for mortgages for which a notice of lis pendens in a foreclosure action or a suggestion of bankruptcy has been properly filed and recorded, the mortgagee or mortgage servicer may not qualify, reserve the right to change, or condition or disclaim the reliance of others on the information provided in an estoppel letter under paragraph (b), and any attempt to do so is void and unenforceable. However, if the mortgagee or mortgage servicer determines that any of the information provided in the estoppel letter under paragraph (b) was inaccurate, the mortgagee or mortgage servicer may send a corrected estoppel letter to the person who requested the estoppel letter.

2. If the person who requested the original estoppel letter under paragraph (a) receives a corrected estoppel letter by 3 p.m. in such person's time zone at least 1 business day before a payment is issued in reliance on the previous estoppel letter, the corrected estoppel letter supersedes all prior estoppel letters. The corrected estoppel letter is considered received by the person who requested the original estoppel letter:

a. Five business days after the corrected estoppel letter, which is to be sent by first-class mail, is deposited with the United States Postal Service;

b. The day the corrected estoppel letter is delivered by a common carrier delivery service; or

c. The day the corrected estoppel letter is sent by e-mail, facsimile, or other electronic means or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter.

3. If any of the information provided in the estoppel letter under paragraph (b) was inaccurate, but the person who requested the estoppel letter did not timely receive a corrected estoppel letter as provided in subparagraph 2., the mortgagee or mortgage servicer may not deny the accuracy of such information as against any person who relied on it.

(d)~~3.~~ The mortgagee or mortgage servicer ~~of the mortgagee~~ acting in accordance with a request in substantial compliance with this subsection ~~paragraph~~ is expressly discharged from any obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the terms of the estoppel letter.

(e) If a payment is received at the location and in the manner specified by the mortgagee or mortgage servicer, the mortgagee or mortgage servicer must accept, and may not return, any payment received in reliance on an estoppel letter and must

promptly apply such payment to the unpaid balance of the loan properly due under or secured by the mortgage.

(f)1. A written request for an estoppel letter under paragraph (a) must be sent to the mortgagee or mortgage servicer by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic means at the address made available by the mortgagee or mortgage servicer for such purpose or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter. The written request is considered received by the mortgagee or mortgage servicer:

a. Five business days after the request sent by first-class mail is deposited with the United States Postal Service;

b. The day the request is delivered by a common carrier delivery service; or

c. The day the request is sent by e-mail, facsimile, or other electronic means or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter.

If any of the days in sub-subparagraph a., sub-subparagraph b., or sub-subparagraph c. falls on a Saturday, Sunday, or legal holiday under the laws of the state or the United States, the request for an estoppel letter is considered timely received by the mortgagee or mortgage servicer on the next business day.

2. The mortgagee or mortgage servicer must send an estoppel letter by first-class mail; by common carrier delivery service; or by e-mail, facsimile, or other electronic means, as directed in the written request, or through an automated system provided by the mortgagee or mortgage servicer for this purpose. However, the mortgagee or mortgage servicer is not required to pay for a common carrier delivery service. If the 10-day period after a written request is received by the mortgagee or mortgage servicer ends on a Saturday, Sunday, or legal holiday under the laws of the state or the United States, the estoppel letter is considered timely if it is sent by the close of business on the next business day.

(g) ~~(c)~~ Notwithstanding s. 655.059, a mortgagee or mortgage servicer ~~mortgage holder~~ may provide the financial information required under this subsection to a person authorized under this subsection to request the financial information ~~notwithstanding s. 655.059~~.

(2) Within 60 days after the unpaid balance of a loan secured by a mortgage has been fully paid or paid pursuant to an estoppel letter under subsection (1), whichever is earlier, the mortgagee or mortgage servicer shall execute in writing an instrument acknowledging satisfaction of the mortgage; have the instrument acknowledged, or proven, and send it or cause it to be sent for recording in the official records of the proper county; and send or cause to be sent the recorded satisfaction

to the mortgagor or record title owner of the property. The prevailing party in a civil action brought against the mortgagee or mortgage servicer to enforce the requirements of this subsection is entitled to reasonable attorney fees and costs.

(3) ~~(2)~~ Within 60 days after the unpaid balance ~~Whenever the amount of money due~~ on a ~~any mortgage,~~ lien~~,~~ or judgment has been fully paid to the person ~~or party~~ entitled to the payment thereof, the ~~mortgagee,~~ creditor~~,~~ or assignee, or the attorney of record in the case of a judgment, to whom the payment was made~~,~~ shall execute in writing an instrument acknowledging satisfaction of the ~~mortgage,~~ lien~~,~~ or judgment; ~~and~~ have the instrument acknowledged, or proven, and send it or cause it to be sent for recording ~~duly entered~~ in the official records of the proper county; and~~. Within 60 days after the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall~~ send or cause to be sent the recorded satisfaction to the person who has made the full payment. ~~In the case of a civil action arising out of this section,~~ The prevailing party in a civil action brought against the creditor or assignee, or the attorney of record in the case of a judgment, to enforce the requirements of this subsection is entitled to reasonable attorney fees and costs.

(4) ~~(3)~~ When ~~Whenever~~ a writ of execution has been issued, docketed, and indexed with a sheriff and the judgment upon which

it was issued has been fully paid, it is the responsibility of the person ~~party~~ receiving payment to request, in writing, addressed to the sheriff, return of the writ of execution as fully satisfied.

Section 2. Paragraph (a) of subsection (1) and subsection (2) of section 701.041, Florida Statutes, are amended to read:

701.041 Title insurer; mortgage release certificate.—

(1) DEFINITIONS.—For purposes of this section:

(a) "Estoppel letter" means a statement containing, at a minimum, the information required in s. 701.04(1)(b) ~~of the amount of:~~

~~1. The unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage.~~

~~2. Interest on a per-day basis for the unpaid balance~~.

(2) CERTIFICATE OF RELEASE.—An officer or duly appointed agent of a title insurer may, on behalf of a mortgagor or a person who acquired from the mortgagor title to all or a part of the property described in a mortgage, execute a certificate of release that complies with the requirements of this section and record the certificate of release in the real property records of each county in which the mortgage is recorded if a satisfaction or release of the mortgage has not been executed and recorded after the date payment in full of the loan properly due under or secured by the mortgage was made in accordance with

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

an estoppel letter ~~a payoff statement~~ furnished by the mortgagee or ~~the~~ mortgage servicer.

Section 3. The Legislature finds that the timeliness and accuracy of an estoppel letter is critical because the parties to a real estate transaction must rely on the estoppel letter to establish the loan payoff amount necessary to release the mortgage, which in turn will allow the owner to confer clean title to a buyer or to refinance the property. The Legislature further finds that estoppel letters increasingly contain conditional language disclaiming the ability of an owner to rely on the stated loan payoff amounts, extending even to the return of such payments submitted by owners, creating unnecessary delays in the efficient operation of the state's real estate market, which is a vital economic contributor to the state, and imposing needless costs and burdens on property owners and buyers. Additionally, the Legislature finds that real estate lending, mortgages, real estate transactions, and estoppel letters are extensively regulated under both state and federal law. The Legislature finds and determines that this act makes changes to state law that appropriately balance the parties' interests, are reasonable and necessary to serve and achieve an important state interest, are necessary for the prosperity and welfare of the state and its property owners and inhabitants, and must be applied to existing mortgages in order to provide effective relief.

Section 4. This act applies to all mortgages, and all loans secured by such mortgages, existing as of, or entered into on or after, October 1, 2022.

Section 5. This act shall take effect October 1, 2022.

CS/HB 375

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 375 Structural Engineering Recognition Program for Professional Engineers
SPONSOR(S): Regulatory Reform Subcommittee, Toledo and others
TIED BILLS: HB 565 **IDEN./SIM. BILLS:** SB 940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	17 Y, 0 N, As CS	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The practice of engineering is regulated by the Florida Board of Professional Engineers (Board) under the Department of Business and Professional Regulation (DBPR) Division of Professions. The Board is responsible for reviewing applications, administering exams, licensing qualified applicants, and regulating and enforcing the proper practice of engineering in the state. The administrative, investigative, and prosecutorial services for the Board are administered by the Florida Engineers Management Corporation (FEMC). FEMC is a non-profit, single purpose corporation that operates through a contract with DBPR.

Current law requires that applicants for licensure as a professional engineer have certain qualifications, including passing a fundamentals examination and a principles and practice examination, having good moral character, obtaining a degree from a four year engineering curriculum, and having four years of engineering experience.

The bill:

- Establishes the "Structural Engineering Recognition Program for Professional Engineers" (Program).
- Requires the Board to recognize any licensed professional engineer who:
  - Has successfully passed the National Council of Examiners for Engineering and Surveying Structural Engineering 16-hour PE Structural examination or any other examination approved by the Board.
  - Specializes in structural engineering based on alternative criteria determined by the Board.
- Provides that upon application to the Board, a professional engineer who has the minimum program requirements must be recognized as a professional engineer who has gone above and beyond in the field of structural engineering.
- Prohibits the Board from collecting a fee for the application or for recognition by the Program.
- Authorizes a professional engineer who is recognized by the Program to identify the recognition in her or his professional practice, including in marketing and advertising materials.
- Provides that recognition by the Program is not required for a professional engineer to practice structural engineering.
- Requires the Board to adopt rules to implement these requirements.

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

Professional Engineering

The practice of engineering[1] is regulated by the Florida Board of Professional Engineers (Board) under the Department of Business and Professional Regulation (DBPR) Division of Professions.[2] The Board is responsible for reviewing applications, administering exams, licensing qualified applicants, and regulating and enforcing the proper practice of engineering in the state. The administrative, investigative, and prosecutorial services for the Board are administered by the Florida Engineers Management Corporation (FEMC).[3] FEMC is a non-profit, single purpose corporation that operates through a contract with DBPR.

There were 62,909 licensed professional engineers in Fiscal Year 2020-2021.[4] The FEMC processed 231 complaints regarding engineering practices during that period, with 137 of the complaints found to be legally sufficient to proceed, and filed 68 administrative complaints in cases where probable cause was found relating to a violation of the practice act.[5]

License Qualifications and Exemptions

Current law provides for license qualifications for a professional engineer to practice in the state.[6] In order to be licensed as a professional engineer, a person must successfully pass two examinations: the fundamentals examination and the principles and practices examination. Prior to being permitted to sit for the fundamentals examination, an applicant must have graduated from:[7]

- An approved engineering science curriculum of four years or more in a board-approved school, college, or university; or
- An approved engineering technology curriculum of four years or more in a board-approved school, college, or university.

The FEMC is required to issue a license to any applicant who the board certifies is qualified to practice engineering and who has passed the fundamentals and the principles and practice examination.[8]

The board is required to certify for licensure any applicant who has submitted proof of being at least 18 years old and has the required engineering experience.[9] For graduates of an approved engineering science curriculum, the applicant must have a record of at least four years of active engineering experience sufficient to indicate competence to be in responsible charge of engineering. Graduates of

[1] Ch. 471, F.S., governs the licensing and regulation of professional engineers.
[2] S. 20.165(4)(a)11., F.S.
[3] S. 471.038(3), F.S.
[4] Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2020-2021, for the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation* (2020-2021 Annual Report) at p. 20, http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf (last visited Feb. 02, 2022).
[5] *See* the Annual Report of the FEMC for FY 2020-2021, available at https://fbpe.org/wp-content/uploads/2021/10/2020-21-FEMC-Annual-Report.pdf, p. 2 (last visited Jan. 19, 2022). The FEMC also filed 89 Final Orders with the DBPR; entered into three negotiations, and tried one administrative hearing; dismissed two cases after re-consideration; issued 16 reprimands, three suspensions, four probations, three project reviews, and three license restrictions; and imposed $44,765.23 in administrative costs and $58,500 in fines. The board also issued 88 Final Orders against licensees.
[6] S. 471.013, F.S.,
[7] S. 471.013(1), F.S.
[8] S. 471.015(1), F.S.
[9] S. 471.015(2), F.S.

an approved engineering technology curriculum must have a record of at least six years of such qualified experience.[10]

The law also identifies certain persons who are exempted from the licensing requirements.[11]

Special Inspectors of Threshold Buildings

The board is authorized to establish by rule the qualifications for certification of licensees as inspectors of threshold buildings.[12] A "threshold building" is "any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons."[13]

The board is also authorized to establish minimum qualifications for the qualified representative of the special inspector who is authorized to perform inspections of threshold buildings on behalf of the special inspector.[14]

The agency charged with enforcing the building code (enforcing agency)[15] must require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record.[16]

Engineer Seals

The board is authorized to prescribe, by rule, one or more forms of seal to be used by licensed engineers.[17] Each licensee must obtain at least one seal.[18] All final drawings, specifications, plans, reports, or documents prepared or issued by the licensee and filed for public record and all final documents provided to the owner or the owner's representative must be signed by the licensee, dated, and sealed with the seal.[19] The signature, date, and seal are evidence of the authenticity of the document to which they are affixed.[20]

A licensee may not affix or permit to be affixed his or her seal, name, or digital signature to any plan, specification, drawing, final bid document, or other document that depicts work which he or she is not licensed to perform or which is beyond his or her profession or specialty.[21]

A successor engineer seeking to reuse documents previously sealed by another engineer must be able to independently re-create all of the work done by the original engineer, and assumes full professional and legal responsibility by signing and affixing his or her seal to the assumed documents.[22]

Descriptive Titles

Current law sets forth the permissible and prohibited titles for persons licensed under ch. 471, F.S., and for persons who are otherwise exempted from such licensure.[23] With certain exceptions for persons

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[10] *See* ss. 471.015(2)(a)1. and 2., F.S.
[11] S. 471.003(2), F.S.
[12] S. 471.015(7), F.S.
[13] *See* s. 553.71(12), F.S.
[14] *See* s. 471.015(7), F.S.
[15] *See* s. 553.71(5), F.S., which defines the term "local enforcement agency" to mean "an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities."
[16] S. 553.79(5)(a), F.S.
[17] S. 471.025(1), F.S.
[18] S. 471.025(1), F.S.
[19] *Id*.
[20] *Id*.
[21] S. 471.025(3), F.S.
[22] S. 471.025(4), F.S. The original engineer is released from any professional responsibility or civil liability for work that is assumed.
[23] S. 471.031, F.S.

exempted from licensure, the use of the name "professional engineer" or any other title, designation, abbreviation, or indication that a person holds an active license as an engineer when the person is not licensed under ch. 471, F.S., is prohibited, along with use of the following titles:

- Agricultural engineer;
- Air-conditioning engineer;
- Architectural engineer;
- Building engineer;
- Chemical engineer;
- Civil engineer;
- Control systems engineer;
- Electrical engineer;
- Environmental engineer;
- Fire protection engineer;
- Industrial engineer;
- Manufacturing engineer;
- Mechanical engineer;
- Metallurgical engineer;
- Mining engineer;
- Minerals engineer;
- Marine engineer;
- Nuclear engineer;
- Petroleum engineer;
- Plumbing engineer;
- Structural engineer;
- Transportation engineer;
- Software engineer;
- Computer hardware engineer; and
- Systems engineer.[24]

Violations are a first degree misdemeanor punishable as provided in ss. 775.082 or 775.083, F.S.[25]

Discipline by the Board

Current law outlines the conduct that constitutes grounds for the imposition of discipline by the board.[26] Such discipline includes denial of an application for licensure, suspension or revocation of a license, imposition of fines, reprimands, probation, or restitution, and restriction of the authorized scope of practice of a licensee.

Voluntary Structural Engineer Associations

The Florida Structural Engineers Association (FSEA) provides input on building codes and enforcement and sponsors technical seminars to address common concerns of the profession.[27] Members of FSEA become members of the National Council of Structural Engineers Associations (NCSEA).[28] The NCSEA was formed to improve the standard level of practice of the structural engineering profession and provide an identifiable resource for seeking communication with the profession.[29] It advocates for the practice of structural engineering on behalf of its 44 member organizations.[30] According to the

[24] *See* s. 471.031(1)(b), F.S.
[25] See s. 471.031(2), F.S.
[26] S. 471.033, F.S.
[27] Facebook, Florida Structural Engineers Association, https://www.facebook.com/pages/category/Local-business/Florida-Structural-Engineering-Association-242110399280593/ (last visited Feb. 02, 2022).
[28] National Council of Structural Engineers Associations, About Us, http://www.ncsea.com/about/ (last visited Feb. 02, 2022).
[29] *See* http://www.ncsea.com/about/ (last visited Jan. 19, 2022).
[30] *Id*.

NCSEA, two states restrict who may use the title "structural engineer,"[31] eight states have a partial practice act for structural engineers,[32] and two states have a full practice act for structural engineers.[33]

The National Council of Examiners for Engineering and Surveying is a nonprofit organization composed of 69 engineering and surveying licensing boards from all 50 states, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.[34] It provides services including engineering examinations, surveying examinations, exam preparation materials, records programs, and credentials evaluations among other services to licensing jurisdictions.[35]

Legislative History Related to Structural Engineers

In 2015, the Governor vetoed[36] legislation that created a separate license type for "structural engineers." Under the proposed legislation, structural engineers would have been licensed and regulated similar to licensed professional engineers.

The veto letter pointed out that the bill:

- Contained additional requirements and a new license for current and future engineers who wish to practice structural engineering.
- Required passing 16 hours of exams, and an unwarranted mechanism to exempt currently licensed engineers from having to take and pass the qualifying exams.

Effect of the Bill

The bill establishes the Structural Engineering Recognition Program for Professional Engineers (Program).

The bill requires the Board to:

- Recognize professional engineers who specialize in structural engineering and have gone above and beyond the required minimum professional engineer licensing standards.
- Establish minimum requirements to receive recognition through the Program.
- Recognize any licensed professional engineer who has successfully passed the National Council of Examiners for Engineering and Surveying Structural Engineering 16-hour PE Structural examination or any other examination approved by the Board.

The bill authorizes the Board to recognize any licensed professional engineer who specializes in structural engineering based on alternative criteria determined by the Board.

The bill prohibits the Board from collecting a fee for the application or for recognition by the Program.

The bill authorizes a professional engineer who is recognized by the Program to identify the recognition in her or his professional practice, including in marketing and advertising materials.

Recognition by the Program is not required for a professional engineer to practice structural engineering.

The bill requires the Board to adopt rules to implement these requirements.

B. SECTION DIRECTORY:

[31] Idaho and Nebraska. *See* http://www.ncsea.com/resources/licensure/ (last visited Jan. 19, 2022).
[32] Alaska, California, Georgia, Nevada, Oklahoma, Oregon, Utah, and Washington.
[33] Illinois and Hawaii.
[34] *See* The National Council of Examiners for Engineering and Surveying (ncees.org) (last visited Jan. 19, 2022).
[35] *Id*.
[36] Veto Letter from Governor Rick Scott to Secretary of State Kenneth W. Detzner, House Bill 217 (2015), https://www.flgov.com/wp-content/uploads/2015/06/Transmittal-Letter-6.11.15-HB-217.pdf (last visited Feb. 02, 2022).

Section 1: Creates s. 471.055, F.S., relating to the Structural Engineering Recognition Program for Professional Engineers.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires the Board to adopt rules to implement the provisions in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On Tuesday, February 8, 2022, the Regulatory Reform Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from HB 375 in the following ways:

- Establishes the "Structural Engineering Recognition Program for Professional Engineers."
- Requires the Board to recognize licensed professional engineers who pass the national structural engineering examination or any other examination as determined by the Board, or specialize in structural engineering or other criteria as determined by the Board.
- Requires the Board to recognize professional engineers who have the minimum program requirements as having gone above and beyond in the field of structural engineering.
- Prohibits the Board from collecting a fee to administer the program.
- Authorizes professional engineers to identify their recognition in their professional practice.
- Provides that such recognition is not required to practice structural engineering.
- Requires the Board to adopt rules to implement the program.
- Removes the licensing provisions for structural engineers created in the original bill.

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

A bill to be entitled

An act relating to Structural Engineering Recognition Program for Professional Engineers; creating s. 471.055, F.S.; establishing the Structural Engineering Recognition Program for Professional Engineers; requiring the Board of Professional Engineers to recognize a licensed professional engineer who has successfully passed a specified examination; providing requirements for application and recognition; prohibiting a fee for such application or for recognition; authorizing a professional engineer recognized by the program to identify such recognition in her or his professional practice and marketing and advertising materials; providing that recognition by the program is not required to practice structural engineering; requiring rulemaking; providing an effective date.

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

Section 1. Section 471.055, Florida Statutes, is created to read:

471.055 Structural Engineering Recognition Program for Professional Engineers.—

(1) The board shall establish the Structural Engineering

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

Recognition Program for Professional Engineers to recognize professional engineers who specialize in structural engineering and have gone above and beyond the required minimum professional engineer licensing standards. The board shall establish minimum requirements to receive recognition through the program. The board must recognize any licensed professional engineer who has successfully passed the National Council of Examiners for Engineering and Surveying Structural Engineering 16-hour PE Structural examination or any other examination approved by the board. In addition, the board may recognize any licensed professional engineer who specializes in structural engineering based on alternative criteria determined by the board.

(2) Upon application to the board, a professional engineer who has the minimum program requirements shall be recognized as a professional engineer who has gone above and beyond in the field of structural engineering. The board may not collect a fee for such application or for recognition by the program.

(3) A professional engineer who is recognized by the program may identify such recognition in her or his professional practice, including in marketing and advertising materials.

(4) Recognition by the program is not required for a professional engineer to practice structural engineering.

(5) The board shall adopt rules to implement this section.

Section 2. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 389 Money Services Businesses
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, Zika
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1536

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Hinshelwood	Luczynski
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N, As CS	Lee	Topp
3) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

The Office of Financial Regulation's (OFR) Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. MSB applicants must submit fingerprints to the Florida Department of Law Enforcement (FDLE) for a state criminal history background check, and the fingerprints must be submitted to the Federal Bureau of Investigation (FBI) for a federal criminal history background check. The OFR must review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.

Access to the FBI's criminal history record information (CHRI) system is authorized for fingerprints pursuant to ch. 560, F.S. However, in order to obtain CHRI for applicants to the recently created Financial Technology Sandbox, FDLE sent correspondence to the FBI's Criminal Justice Information Law Unit (CJILU) to obtain an Originating Agency Identifier (ORI). The ORI validates legal authorization to obtain criminal justice information and identifies the specific agency requesting the information. CJILU responded to this request stating that the MSB licensing statute does not qualify for access to CHRI because the terms "responsible person" and "control of a money services business", as used in that statute to specify persons who are required to submit fingerprints, are overly broad and, thus, do not sufficiently define the categories of people subject to the background check. The CJILU acknowledged that MSB fingerprinting was previously approved by the CJILU, and that the FBI will continue to honor fingerprints submitted for MSB licensure. However, the CJILU has placed MSB fingerprinting on a grace period of unspecified length in order to allow Florida to amend MSB fingerprinting statutes such that the statutes specifically identify the categories of licensees or employees falling within the purview of the statutes; CJILU will not allow fingerprinting of additional categories of applicants (i.e., those applying under the Financial Technology Sandbox) during this grace period.

The bill creates the term "control person" and repeals the definitions of "officer" and "responsible person". Some of the elements from these repealed definitions are made part of the "control person" definition. The bill inserts "control person" throughout ch. 560, F.S., in place of these repealed definitions as well as other positions within an MSB that are consolidated under the newly defined term "control person". A person who meets the definition of "control person", as defined in the bill, must submit fingerprints and be vetted by the OFR. The bill clarifies the OFR's duties associated with fingerprinting control persons who are added to existing MSBs. The bill relocates the definition of "publicly traded" such that the definition applies to all current uses of the term "publicly traded" throughout the chapter regulating MSBs.

The bill has no fiscal impact on the state, local governments, or the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The Division of Consumer Finance within the OFR licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. An MSB is any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as the following:[2]

- *Payment instrument seller*: A payment instrument seller sells, issues, provides, or delivers payment instruments.[3]
- *Foreign currency exchanger*: A foreign currency exchanger exchanges, for compensation, currency[4] of the United States or a foreign government to currency of another government.[5]
- *Check casher*: A check casher sells, issues, provides, or delivers currency[6] in exchange for payment instruments[7] received, except travelers checks.[8]
- *Money transmitter*: A money transmitter receives currency,[9] monetary value,[10] or payment instruments[11] 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.[12]

An MSB may engage in deferred presentment transactions, commonly known as "payday loans", by filing a declaration of intent to engage in deferred presentment transactions with the OFR.[13] A money transmitter or payment instrument seller may engage in the activities authorized for check cashers and foreign currency exchangers without paying additional licensing fees.[14] State and federally chartered depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.[15]

An applicant for an MSB license must submit the following to the OFR:

- An application;[16]
- A nonrefundable application fee;[17]

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[1] S. 20.121(3)(a)2., F.S.
[2] S. 560.103(22), F.S.
[3] S. 560.103(30) and (34), F.S. The term "payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. S. 560.103(29), F.S.
[4] The term "currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. S. 560.103(11), F.S.
[5] S. 560.103(17), F.S.
[6] Definition of "currency", *supra* note 4.
[7] Definition of "payment instrument", *supra* note 3.
[8] S. 560.103(6) and (34), F.S.
[9] Definition of "currency", *supra* note 4.
[10] The term "monetary value" means a medium of exchange, whether or not redeemable in currency. S. 560.103(21), F.S.
[11] Definition of "payment instrument", *supra* note 3.
[12] S. 560.103(23), F.S.
[13] S. 560.403, F.S.
[14] S. 560.204(2), F.S.
[15] S. 560.104, F.S.
[16] S. 560.141(1)(a), F.S.
[17] Ss. 560.141(1)(b) and 560.143, F.S.

- A copy of the applicant's written anti-money laundering program required by federal law;[18] and
- Fingerprints for the following individuals:[19]
    - An officer, which is defined as an individual, other than a director, who participates in, or has authority to participate in, the major policymaking functions of an MSB, regardless of whether the individual has an official title or receives a salary or other compensation.[20]
    - A director.
    - A responsible person, which is defined as an individual who is employed by or affiliated with an MSB and who has principal active management authority over the business decisions, actions, and activities of the MSB in this state.[21] In turn, "affiliated party" means a director, officer, responsible person, employee, or foreign affiliate of an MSB, or a person who has a controlling interest in an MSB.[22]
    - The compliance officer, which is defined as the individual in charge of overseeing, managing, and ensuring that an MSB is in compliance with all state and federal laws and rules relating to MSBs, as applicable, including all money laundering laws and rules.[23]
    - A controlling shareholder.
    - Any other person who has a controlling interest, meaning a person who:[24]
        - Possesses the power, directly or indirectly, to direct the management or policies of the MSB, whether through ownership, by contract, or otherwise;
        - Directly or indirectly may vote 25 percent or more of a class of a voting security or sell or direct the sale of 25 percent or more of a class of voting securities; or
        - In the case of a partnership, may receive upon dissolution or has contributed 25 percent or more of the capital.

Fingerprints are not required if the applicant is a publicly traded corporation.[25] If fingerprints are required, the fingerprints must be submitted for live-scan processing.[26] Live-scan is a device that electronically takes fingerprints and other information and uploads that information to the Florida Department of Law Enforcement (FDLE) who, in turn, sends the fingerprints to the Federal Bureau of Investigation (FBI) for a fingerprint background check.[27] The fingerprints may be submitted through a third-party vendor authorized by FDLE to provide live-scan fingerprinting.[28] FDLE must conduct the state criminal history background check, and a federal criminal history background check must be conducted through the FBI.[29] The costs of fingerprint processing, including the cost of retaining the fingerprints, must be borne by the person subject to the background check.[30] The OFR must review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.[31]

An MSB license must be renewed every two years.[32]

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[18] S. 560.141(d), F.S.
[19] Ss. 560.141(c) and 560.127, F.S.
[20] S. 560.103(26), F.S.
[21] S. 560.103(33), F.S.
[22] S. 560.103(1), F.S.
[23] S. 560.103(8), F.S.
[24] S. 560.127, F.S.
[25] S. 560.141(1)(c)6., F.S.
[26] S. 560.141(1)(c), F.S.
[27] Florida Live Scan, https://livescanflorida.com/#:~:text=LiveScan%20is%20a%20device%20that,for%20a%20fingerprint%20background%20check. (last visited Jan. 25, 2022).
[28] S. 560.141(1)(c)1., F.S.
[29] S. 560.141(1)(c)2., F.S.
[30] S. 560.141(1)(c)4., F.S.
[31] S. 560.141(1)(c)5., F.S.
[32] Ss. 560.141(2) and 560.142, F.S.

Once licensed, an MSB is required to report any change in the partners, officers, members, joint venturers, directors, controlling shareholders, or responsible persons.[33] If such person does not have a controlling interest in the MSB, then the person must simply comply with fingerprint requirements and be vetted by the OFR.[34] If any person, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in an MSB, such person or group must submit a new application for licensure at least 30 days before such purchase or acquisition.[35] Such a change of control application is not required where the person or group of persons has previously complied with applicable licensing provisions, provided that they are currently affiliated with the MSB, or where the person or group of persons is currently licensed with the OFR as an MSB.[36] A change of control application must be accompanied by the payment of an initial licensing fee and a fee per branch or authorized vendor, up to a maximum of $20,000.[37]

As previously mentioned, when fingerprinting is required, the fingerprints must be submitted to FDLE for a state and federal criminal history background check. The federal background check is conducted through the FBI's criminal history record information (CHRI) system. Federal law Pub. L. 92-544 authorizes the exchange of CHRI with officials of state and local governmental agencies for licensing and employment purposes.[38] One of the primary purposes for enacting Pub. L. 92-544 was to establish a national policy with adequate sanctions and administrative safeguards regarding the dissemination of FBI's CHRI to state and local governments for non-criminal justice licensing and employment purposes.[39] The FBI, with the assistance of the United States Department of Justice, has determined the parameters of Pub. L. 92-544.[40] The criteria for granting access to the FBI's CHRI are as follows:

a. The state's statute requiring fingerprinting must exist as a result of a legislative enactment;
b. It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
c. It must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants;
d. It must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding over breadth;
e. It must not be against public policy; and
f. It may not authorize receipt of the CHRI by a private entity.

Access to the FBI's CHRI is authorized for fingerprints pursuant to ch. 560, F.S. However, in order to obtain CHRI for applicants to the recently created Financial Technology Sandbox under s. 559.952, F.S., created in the 2020 legislative session,[41] FDLE sent correspondence to the FBI's Criminal Justice Information Law Unit (CJILU) to obtain an Originating Agency Identifier (ORI). The ORI validates legal authorization to obtain criminal justice information and identifies the specific agency requesting the information. CJILU reviewed s. 559.952, F.S., which derives its fingerprinting authority from s. 560.141, F.S. CJILU responded to this request stating that s. 560.141, F.S., does not qualify for access to CHRI because the terms "responsible person" and "control of a money services business" as used in s. 560.141, F.S., are overly broad and, thus, do not sufficiently define the categories of people subject to the background check.[42] The CJILU acknowledged that MSB fingerprinting was previously approved by the CJILU and that the FBI will continue to honor fingerprints submitted for MSB licensure.[43] However, the CJILU has placed MSB fingerprinting on a grace period of unspecified length in order to allow

[33] S. 560.126(3), F.S.
[34] S. 560.126(3)(b), F.S.
[35] S. 560.126(3)(a), F.S.; r. 69v-560.201(3), F.A.C.
[36] S. 560.126(3)(c), F.S.; r. 69v-560.201(6), F.A.C.
[37] Ss. 560.126(3) and 560.143(1), F.S.
[38] 20 C.F.R. § 20.33.
[39] Federal Bureau of Investigation, *Testimony of Dennis Lormel Before the House Financial Services Committee (Mar. 06, 2001)*, https://archives.fbi.gov/archives/news/testimony/fbis-perspective-on-criminal-history-record-information-checks-on-individuals-conducting-insurance-business (last visited Jan. 25, 2022).
[40] Email from Heather R. Postlethwait, FBI Office of the General Counsel, to Nathan Pate, Florida Department of Law Enforcement, RE: ORI Request - Florida Office of Financial Regulation (Mar. 22, 2021).
[41] Ch. 2020-161, Laws of Fla.
[42] Email from Heather R. Postlethwait, *supra* note 40.
[43] *Id*.

Florida to amend MSB fingerprinting statutes such that the statutes specifically identify the categories of licensees or employees falling within the purview of the statutes; CJILU will not allow fingerprinting of additional categories of applicants (i.e., those applying under the Financial Technology Sandbox) during this grace period.[44]

Effect of the Bill

The bill creates the term "control person" and defines the term as any of the following:

- A person who holds the title of president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, or compliance officer for an MSB.
- A person who holds any of the officer positions named in the MSB's governing documents.
- A person who holds any position named by the MSB's liability insurance coverage for directors and officers, if the business has such coverage.
- A director of the MSB's board of directors.
- A person who directs the affairs of an MSB or who participates in, or has authority to participate in, the major policymaking functions of an MSB, regardless of whether the person has an official title or receives a salary or other compensation.
- For an MSB that is a corporation, all shareholders that, directly or indirectly, own 25 percent or more or that have the power to vote 25 percent or more of a class of voting securities.
- For an MSB that is a partnership, all general partners, and those limited or special partners that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the partnership's capital.
- For an MSB that is a limited liability company, all managers, and those members that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the limited liability company's capital.

The bill repeals the definitions of "officer" and "responsible person", and some of the elements from these repealed definitions are made part of the "control person" definition. The bill inserts "control person" throughout ch. 560, F.S., in place of these repealed definitions as well as other positions within an MSB that are consolidated under the newly defined term "control person".

A person who meets the definition of "control person", as defined in the bill, must submit fingerprints and be vetted by the OFR. The bill clarifies the OFR's duties associated with fingerprinting control persons who are added to existing MSBs. Upon the addition of a control person, the OFR must evaluate the added control person and ensure that such person has submitted fingerprints for processing. If the OFR determines that addition of the control person would cause the MSB to no longer meet the licensure requirements under ch. 560, F.S., the OFR may bring an administrative action to enforce the provisions of the chapter.

The bill relocates the definition of "publicly traded" from within s. 560.141(1)(c)6., F.S., to the main definitions statute of ch. 560, F.S., such that the definition applies to all current uses of the term "publicly traded" throughout the chapter.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 560.103, F.S., relating to definitions.

Section 2. Amends s. 560.118, F.S., relating to reports.

Section 3. Amends s. 560.123, F.S., relating to Florida Control of Money Laundering in Money Services Business Act.

Section 4. Amends s. 560.126, F.S., required notice by licensee.

[44] *Id.*

Section 5. Amends s. 560.141, F.S., relating to license application.

Section 6 Reenacts s. 559.952, F.S., relating to Financial Technology Sandbox.

Section 7. Reenacts s. 560.114, F.S., disciplinary actions; penalties.

Section 8. 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.

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 Financial Services Commission (commission)[45] will need to amend rules to conform to changes made by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

[45] S. 657.028(6), F.S. The 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.

The changes proposed by the bill have not yet been reviewed by the FBI. Continued access to national criminal history record information for persons required to submit fingerprints pursuant to ch. 560, F.S., is reliant upon the FBI's approval of the changes made by the bill.[46]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 27, 2022, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from HB 389 in the following ways:

- Amends definitions.
- Removes provisions relating to permanent or temporary bars to licensure or suspension of a license.
- Makes other technical and conforming changes.

On February 15, 2022, the State Administration & Technology Appropriations Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute:

- Removes the fiscal impact of the bill by restoring current law relating to an application for change of control of a money services business.
- Further clarifies the fingerprint provisions for money services businesses.

The staff analysis has been updated to reflect the committee substitute as passed by the State Administration & Technology Appropriations Subcommittee.

[46] Florida Department of Law Enforcement, Agency Analysis of 2022 Senate Bill 1536 (Jan. 10, 2022).

A bill to be entitled

An act relating to money services businesses; amending s. 560.103, F.S.; defining the terms "control person" and "publicly traded"; revising and deleting definitions; amending s. 560.118, F.S.; providing that a rule may require certain reports to the Office of Financial Regulation to contain declarations by control persons, rather than officers or other responsible persons; amending s. 560.123, F.S.; providing that control persons, rather than officers, are not liable for loss or damages under certain circumstances; amending s. 560.126, F.S.; requiring licensees to report changes in control persons, rather than in certain other entities or persons; providing that the addition of a control person, rather than certain other entities or persons, is subject to certain requirements; amending s. 560.141, F.S.; revising requirements for applications for licensure as a money services business; deleting the definition of the term "publicly traded"; reenacting s. 559.952(4)(a), F.S., relating to the Financial Technology Sandbox, to incorporate the amendments made to ss. 560.118 and 560.141, F.S., in references thereto; reenacting s. 560.114(2)(c), F.S., relating to disciplinary actions and penalties, to incorporate

the amendment made to s. 560.141, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 560.103, Florida Statutes, is amended to read:

560.103 Definitions.—As used in this chapter, the term:

(1) "Affiliated party" means a control ~~director, officer, responsible~~ person, employee, or foreign affiliate of a money services business, or a person who has a controlling interest in a money services business as provided in s. 560.127.

(2) "Appropriate regulator" means a state, federal, or foreign agency that has been granted authority to enforce state, federal, or foreign laws related to a money services business or deferred presentment provider.

(3) "Authorized vendor" means a person designated by a money services business licensed under part II of this chapter to act on behalf of the licensee at locations in this state pursuant to a written contract with the licensee.

(4) "Branch office" means the physical location, other than the principal place of business, of a money services business operated by a licensee under this chapter.

(5) "Cashing" means providing currency for payment instruments except for travelers checks.

(6) "Check casher" means a person who sells currency in exchange for payment instruments received, except travelers checks.

(7) "Commission" means the Financial Services Commission.

(8) "Compliance officer" means the individual in charge of overseeing, managing, and ensuring that a money services business is in compliance with all state and federal laws and rules relating to money services businesses, as applicable, including all money laundering laws and rules.

(9) "Conductor" means a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument.

(10) "Control person" means any of the following:

(a) A person who holds the title of president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, or compliance officer for a money services business.

(b) A person who holds any of the officer positions named in the money services business's governing documents.

(c) A person who holds any position named by the money services business's liability insurance coverage for directors and officers, if the business has such coverage.

(d) A director of the money services business's board of directors.

(e) A person who directs the affairs of a money services

business or who participates in, or has authority to participate in, the major policymaking functions of a money services business, regardless of whether the person has an official title or receives a salary or other compensation.

(f) For a money services business that is a corporation, all shareholders that, directly or indirectly, own 25 percent or more or that have the power to vote 25 percent or more of a class of voting securities.

(g) For a money services business that is a partnership, all general partners, and those limited or special partners that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the partnership's capital.

(h) For a money services business that is a limited liability company, all managers, and those members that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the limited liability company's capital.

(11) ~~(10)~~ "Corporate payment instrument" means a payment instrument on which the payee named on the instrument's face is other than a natural person.

(12) ~~(11)~~ "Currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance.

Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(13) ~~(12)~~ "Deferred presentment provider" means a person who is licensed under part II or part III of this chapter and has filed a declaration of intent with the office to engage in deferred presentment transactions as provided under part IV of this chapter.

(14) ~~(13)~~ "Department" means the Department of Financial Services.

(15) ~~(14)~~ "Electronic instrument" means a card, tangible object, or other form of electronic payment for the transmission or payment of money or the exchange of monetary value, including a stored value card or device that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use.

(16) ~~(15)~~ "Financial audit report" means a report prepared in connection with a financial audit that is conducted in accordance with generally accepted auditing standards prescribed by the American Institute of Certified Public Accountants by a certified public accountant licensed to do business in the United States, and which must include:

(a) Financial statements, including notes related to the

financial statements and required supplementary information, prepared in conformity with accounting principles generally accepted in the United States. The notes must, at a minimum, include detailed disclosures regarding receivables that are greater than 90 days, if the total amount of such receivables represents more than 2 percent of the licensee's total assets.

(b) An expression of opinion regarding whether the financial statements are presented in conformity with accounting principles generally accepted in the United States, or an assertion to the effect that such an opinion cannot be expressed and the reasons.

(17) ~~(16)~~ "Foreign affiliate" means a person located outside this state who has been designated by a licensee to make payments on behalf of the licensee to persons who reside outside this state. The term also includes a person located outside of this state for whom the licensee has been designated to make payments in this state.

(18) ~~(17)~~ "Foreign currency exchanger" means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government.

(19) ~~(18)~~ "Fraudulent identification paraphernalia" means all equipment, products, or materials of any kind that are used, intended for use, or designed for use in the misrepresentation of a customer's identity. The term includes, but is not limited to:

(a) A signature stamp, thumbprint stamp, or other tool or device used to forge a customer's personal identification information.

(b) An original of any type of personal identification listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully issued.

(c) A blank, forged, fictitious, or counterfeit instrument in the similitude of any type of personal identification listed in s. 560.310(2)(b) which would in context lead a reasonably prudent person to believe that such instrument is an authentic original of such personal identification.

(d) Counterfeit, fictitious, or fabricated information in the similitude of a customer's personal identification information that, although not authentic, would in context lead a reasonably prudent person to credit its authenticity.

(20) ~~(19)~~ "Licensee" means a person licensed under this chapter.

(21) ~~(20)~~ "Location" means a branch office, mobile location, or location of an authorized vendor whose business activity is regulated under this chapter.

(22) ~~(21)~~ "Monetary value" means a medium of exchange, whether or not redeemable in currency.

(23) ~~(22)~~ "Money services business" means any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who

acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter.

(24) ~~(23)~~ "Money transmitter" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, 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.

(25) ~~(24)~~ "Net worth" means assets minus liabilities, determined in accordance with United States generally accepted accounting principles.

(26) ~~(25)~~ "Office" means the Office of Financial Regulation of the commission.

~~(26) "Officer" means an individual, other than a director, who participates in, or has authority to participate in, the major policymaking functions of a money services business, regardless of whether the individual has an official title or receives a salary or other compensation.~~

(27) "Outstanding money transmission" means a money transmission to a designated recipient or a refund to a sender that has not been completed.

(28) "Outstanding payment instrument" means an unpaid

payment instrument whose sale has been reported to a licensee.

(29) "Payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

(30) "Payment instrument seller" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which sells a payment instrument.

(31) "Person" means an individual, partnership, association, trust, corporation, limited liability company, or other group, however organized, but does not include a public agency or instrumentality thereof.

(32) "Personal identification information" means a customer's name that, alone or together with any of the following information, may be used to identify that specific customer:

(a) Customer's signature.

(b) Photograph, digital image, or other likeness of the customer.

(c) Unique biometric data, such as the customer's thumbprint or fingerprint, voice print, retina or iris image, or other unique physical representation of the customer.

~~(33) "Responsible person" means an individual who is employed by or affiliated with a money services business and who has principal active management authority over the business decisions, actions, and activities of the money services business in this state.~~

(33) "Publicly traded" means a stock is currently traded on a national securities exchange registered with the Securities and Exchange Commission, or traded on an exchange in a country other than the United States regulated by a regulator equivalent to the Securities and Exchange Commission and the disclosure and reporting requirements of such regulator are substantially similar to those of the Securities and Exchange Commission.

(34) "Sells" means to sell, issue, provide, or deliver.

(35) "Stored value" means funds or monetary value represented in digital electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically.

Section 2. Subsection (2) of section 560.118, Florida Statutes, is amended to read:

560.118 Reports.—

(2) Each licensee must submit quarterly reports to the office in a format and include information as specified by rule. The rule may require the report to contain a declaration by a control ~~an officer, or any other responsible~~ person authorized

to make such declaration, that the report is true and correct to the best of her or his knowledge and belief.

Section 3. Paragraph (d) of subsection (3) of section 560.123, Florida Statutes, is amended to read:

560.123 Florida Control of Money Laundering in Money Services Business Act.—

(3) A money services business shall keep a record of each financial transaction occurring in this state which it knows to involve currency or other payment instrument, as prescribed by the commission, having a value greater than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of this section or chapter 896. The money services business must maintain appropriate procedures to ensure compliance with this section and chapter 896.

(d) A money services business, or control person ~~officer~~, employee, or agent thereof, that files a report in good faith pursuant to this section is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.

Section 4. Subsection (3) of section 560.126, Florida Statutes, is amended to read:

560.126 Required notice by licensee.—

(3) Each licensee must report any change in the control

~~partners, officers, members, joint venturers, directors, controlling shareholders, or responsible~~ persons of the licensee or changes in the form of business organization by written amendment in such form and at such time as specified by rule.

(a) If any person, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a licensee, such person or group must submit an application for licensure as a money services business or deferred presentment provider before such purchase or acquisition at such time and in such form as prescribed by rule. As used in this subsection, the term "controlling interest" means the same as described in s. 560.127.

(b) Upon the addition of a control person, the office shall evaluate the added control person and ensure that such person has submitted fingerprints for processing pursuant to s. 560.141(1)(c) ~~partner, officer, member, joint venturer, director, controlling shareholder, or responsible person of the applicant who does not have a controlling interest and who has not previously complied with the applicable provisions of ss. 560.1401 and 560.141 is subject to such provisions~~. If the office determines that the addition of the control person would cause the money services business to no longer ~~the licensee does not continue to~~ meet the licensure requirements under this chapter, the office may bring an administrative action in accordance with s. 560.114 to enforce the provisions of this

chapter.

(c) The commission shall adopt rules providing for the waiver of the license application required by this subsection if the person or group of persons proposing to purchase or acquire a controlling interest in a licensee has previously complied with the applicable provisions of ss. 560.1401 and 560.141 under the same legal entity or is currently licensed under this chapter.

Section 5. Paragraphs (a) and (c) of subsection (1) of section 560.141, Florida Statutes, are amended to read:

560.141 License application.—

(1) To apply for a license as a money services business under this chapter, the applicant must submit:

(a) An application to the office on forms prescribed by rule which includes the following information:

1. The legal name and address of the applicant, including any fictitious or trade names used by the applicant in the conduct of its business.

2. The date of the applicant's formation and the state in which the applicant was formed, if applicable.

3. The name, social security number, alien identification or taxpayer identification number, business and residence addresses, and employment history for the past 5 years for each control person ~~officer, director, responsible person, the compliance officer, each controlling shareholder, and any other~~

~~person who has a controlling interest in the money services business as provided in s. 560.127~~.

4. A description of the organizational structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded.

5. The applicant's history of operations in other states if applicable and a description of the money services business or deferred presentment provider activities proposed to be conducted by the applicant in this state.

6. If the applicant or its parent is a publicly traded company, copies of all filings made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the preceding year.

7. The location at which the applicant proposes to establish its principal place of business and any other location, including branch offices and authorized vendors operating in this state. For each branch office and each location of an authorized vendor, the applicant shall include the nonrefundable fee required by s. 560.143.

8. The name and address of the clearing financial institution or financial institutions through which the applicant's payment instruments are drawn or through which the payment instruments are payable.

9. The history of the applicant's material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld.

10. The history of material litigation, arrests, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each control ~~executive officer, director, controlling shareholder, and responsible~~ person.

11. The name of the registered agent in this state for service of process unless the applicant is a sole proprietor.

12. Any other information specified in this chapter or by rule.

(c) Fingerprints for each person listed in subparagraph (a)3. for live-scan processing in accordance with rules adopted by the commission.

1. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting.

2. The Department of Law Enforcement must conduct the state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation.

3. All fingerprints submitted to the Department of Law Enforcement must be submitted electronically and entered into the statewide automated fingerprint identification system established in s. 943.05(2)(b) and available for use in

accordance with s. 943.05(2)(g) and (h). The office shall pay an annual fee to the Department of Law Enforcement to participate in the system and shall inform the Department of Law Enforcement of any person whose fingerprints no longer must be retained.

4. The costs of fingerprint processing, including the cost of retaining the fingerprints, shall be borne by the person subject to the background check.

5. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.

6. For purposes of this paragraph, fingerprints are not required to be submitted if the applicant is a publicly traded corporation or is exempted from this chapter under s. 560.104(1). ~~The term "publicly traded" means a stock is currently traded on a national securities exchange registered with the federal Securities and Exchange Commission or traded on an exchange in a country other than the United States regulated by a regulator equivalent to the Securities and Exchange Commission and the disclosure and reporting requirements of such regulator are substantially similar to those of the commission.~~

7. Licensees initially approved before October 1, 2013, who are seeking renewal must submit fingerprints for each person listed in subparagraph (a)3. for live-scan processing pursuant to this paragraph. Such fingerprints must be submitted before renewing a license that is scheduled to expire between April 30,

2014, and December 31, 2015.

Section 6. For the purpose of incorporating the amendments made by this act to sections 560.118 and 560.141, Florida Statutes, in references thereto, paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is reenacted to read:

559.952 Financial Technology Sandbox.—

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the following provisions and corresponding rule requirements are not applicable to the licensee during the sandbox period:

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least $25,000, and the office's authority to investigate the applicant's background. The office may prorate the license renewal fee for an extension granted under subsection (7).

2. Section 516.05(1) and (2), except that the office shall investigate the applicant's background.

3. Section 560.109, only to the extent that the section requires the office to examine a licensee at least once every 5 years.

4. Section 560.118(2).

5. Section 560.125(1), only to the extent that the

subsection would prohibit a licensee from engaging in the business of a money transmitter or payment instrument seller during the sandbox period.

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-10. and (b), (c), and (d).

9. Section 560.142(1) and (2), except that the office may prorate, but may not entirely eliminate, the license renewal fees in s. 560.143 for an extension granted under subsection (7).

10. Section 560.143(2), only to the extent necessary for proration of the renewal fee under subparagraph 9.

11. Section 560.204(1), only to the extent that the subsection would prohibit a licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a 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 7. For the purpose of incorporating the amendment made by this act to section 560.141, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 560.114, Florida Statutes, is reenacted, to read:

560.114 Disciplinary actions; penalties.—

(2) Pursuant to s. 120.60(6), the office may summarily suspend the license of a money services business if the office finds that a licensee poses an immediate, serious danger to the public health, safety, and welfare. A proceeding in which the office seeks the issuance of a final order for the summary suspension of a licensee shall be conducted by the commissioner of the office, or his or her designee, who shall issue such order. The following acts are deemed to constitute an immediate and serious danger to the public health, safety, and welfare, and the office may immediately suspend the license of a money services business if:

(c) A natural person required to be listed on the license application for a money services business pursuant to s.

560.141(1)(a)3. is criminally charged with, or arrested for, a crime described in paragraph (1)(o), paragraph (1)(p), or paragraph(1)(q).

Section 8. This act shall take effect October 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 503 Insurance
SPONSOR(S): Insurance & Banking Subcommittee, Gregory
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 468

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Fortenberry	Luczynski
2) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

- **Florida Hurricane Catastrophe (FHCF) Coverage** – modifies when a collateral protection insurance policy is eligible for FHCF coverage.
- **Worker's Compensation Payroll Audits** – modifies the requirement that the annual audit for construction businesses be conducted onsite to only be onsite if the estimated annual premium is $10,000 or more.
- **Meeting Requirements** – authorizes associations, trusts, and pools that provide self-insurance for public entities to use communications media technology to establish a quorum and conduct public business.
- **Adjusters and Agents** – adds an additional professional designation to the list of designations that exempt an applicant for all-lines adjuster licensure from the requirement to pass a written examination before being licensed; adds adjusters employed by an insurer's affiliate to the definition of company employee adjuster; allows licensed general or personal lines agents to sell service agreements or warranties without a salesperson or sales representative license.
- **Hurricane Modeling** – provides that a property insurer may use a weighted or straight average of two or more approved hurricane models in a rate filing.
- **Mitigation Credits in Residential Property Insurance Rate Filings** – allows insurers to give mitigation credit for evaluation by, and compliance with, standards developed by an independent, not-for-profit, scientific research organization.
- **Automatic Withdrawal of Premium** – modifies the notice requirement for a change in the amount of premium by automatic bank withdrawal from an increase of any amount to increases greater than $10.
- **Citizens Property Insurance Corporation (Citizens)** – allows Citizens the option to insure residential condominiums under commercial residential wind-only coverage if the units are intended for residential use, but are rented on a short-term basis.
- **Policy Documents** – authorizes electronic transmission of policy documents and revises notice requirements for certain automobile insurance policies.
- **Method to Reject/Exclude Certain Property Insurance Deductibles/Coverages** – permits the required statements related to waiving the 10 percent limit on hurricane deductibles, excluding windstorm coverage, and excluding contents coverage, to be either personally written or typed by the policyholder.
- **Assignment Agreements** – adds inspection to the definition of assignment agreement, specifies that the list of services that is specified in the definition of assignment agreement is not exhaustive, specifies that fees charged by a public adjuster are not included in the definition of assignment agreement, and establishes where the pre-suit notice required before filing a suit over a claim with an assignment agreement must be sent, whether sent by certified mail or email.

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

The bill has an effective date of July 1, 2022, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Hurricane Catastrophe Fund – Collateral Protection Insurance

The Florida Hurricane Catastrophe Fund (FHCF) is a tax-exempt trust fund created by the Legislature in 1993 as a form of reinsurance for residential property insurance losses.[1] The purpose of the FHCF is to protect and advance the state's interest in maintaining insurance capacity in Florida by providing reimbursements to insurers for a portion of their catastrophic losses.[2] The FHCF is administered by the State Board of Administration and reimburses property insurers for a selected percentage of hurricane losses to residential property when those losses exceed the insurer's retention (deductible).[3] As a condition of transacting insurance business in the state, residential property insurers are required to enter reimbursement contracts with the FHCF.

The FHCF reimburses participating insurers for losses under covered polices, subject to limitations.[4] Covered policies include collateral protection[5] insurance policies covering personal residences that protect both the borrower's and the lender's financial interest in an amount at least equal to coverage for the dwelling in place under a lapsed homeowner's policy, if such policies meet certain statutory conditions.[6]

Collateral protection insurance is placed by an insurer when a homeowner's policy on the property has lapsed. Sometimes, the insurer is unable to obtain correct information from the homeowner and places coverage at an amount other than the amount of the homeowner's lapsed policy. This can create a discrepancy between the coverage in place and the amount of the homeowner's lapsed policy, which makes the policy ineligible for FHCF coverage.

Effect of the Bill

The bill amends the conditions under which a collateral protection insurance policy can be considered a "covered policy" and, thus, eligible for FHCF coverage. The bill provides that a collateral protection insurance policy is eligible for FHCF coverage if it is placed for the amount of the last known coverage, the amount that the homeowner was notified of by the collateral protection insurer, or the amount that the homeowner requests from the collateral protection insurer.

Workers' Compensation – Payroll Audit Procedures

The cost of workers' compensation insurance is based primarily upon an employer's payroll and the types of duties employees perform. Employers pay an estimated premium at the commencement of a workers' compensation policy and receive a refund or a bill for additional premium due at the end of the policy year, based on a payroll audit conducted by the insurance carrier.

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[1] *See* s. 215.555, F.S.

[22] *See id.*

[3] *Id.*

[4] S. 215.555(2)(d), F.S.

[5] "Collateral protection insurance" means commercial property insurance of which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. Collateral protection insurance is not residential coverage. Ss. 215.555(15) and 624.6085, F.S.

[6] S. 215.555(2)(c), F.S.

The law requires that the Financial Services Commission[7] establish by rule the minimum requirements for audits of payroll and classifications[8] to ensure that the appropriate premium is charged for workers' compensation coverage. The rules shall require payroll audits no less than every other year for non-construction businesses. Businesses in the construction industry that are large enough to have an experience rating factor applied to their premium (meaning the policy is based on Florida estimated annual premium of $5,750 or more[9]) must be audited annually and the audit must take place at the employer's worksite.[10]

The Office of Insurance Regulation (OIR) has promulgated rules for payroll audits that were adopted by the Financial Services Commission. The rules require:

- An annual physical audit for policies with an estimated annual premium of $10,000 or more, regardless of governing classification;
- An annual mail or physical audit for policies with an estimated annual premium of $1 to $9,999;
- A physical audit for all new businesses that have construction classifications, regardless of premium;
- An annual physical audit for renewal policies that have construction classifications if the estimated annual premium is $5,000 or more;[11] and
- A mail or physical audit not less than every other year for per capita policies, which use the number of workers during the policy period to measure exposure.

Audits conducted by telephone are not permitted in lieu of mail or physical audits.[12]

Effect of the Bill

The bill requires in-person audits for construction businesses only if the construction business has an estimated annual premium of $10,000 or more. Passage of the bill would require changes to OIR rules that require physical audits for all new construction businesses and for construction businesses that have an annual premium of $5,000 or more.

Meeting Requirements – Risk Management Mechanisms and Self-Insurance Pools

Current law does not address whether associations, trusts, and pools formed to provide self-insurance for public entities can establish a quorum, and conduct public business, virtually. The authority to conduct business virtually has become a greater issue as COVID-19 has forced private and public entities to work remotely.

Effect of the Bill

The bill authorizes associations, trusts, and pools formed to provide self-insurance for public entities to establish a quorum, and to conduct public business, through communications media technology.

Adjusters and Agents

[7] 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 OIR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.
[8] Classifications, or classification codes, are three- or four-digit codes used to identify types of work so that risk can be estimated when establishing workers' compensation insurance rates. The Hartford, *Workers' Comp Class Codes*, https://www.thehartford.com/workers-compensation/workers-comp-class-codes (last visited Jan. 5, 2022).
[9] OIR, 2020 Workers' Compensation Annual Report, p. 32 (Jan. 15, 2021), 2020WorkersCompensationAnnualReport.pdf (floir.com) (last visited Jan. 5, 2022).
[10] S. 440.381, F.S.
[11] R. 69O-189.003(4)(b)1, F.A.C.
[12] R. 69O-189.003(4)(b)3, F.A.C.

All-lines Adjuster

Ordinarily, any applicant to the Department of Financial Services for licensure as an all-lines adjuster must pass a written examination in order to receive licensure. However, an applicant who has a professional designation listed in s. 626.221(2)(j), F.S., is exempt from the examination requirement.

Effect of the Bill

The bill adds an additional professional designation to the list of designations under which an applicant to become a licensed all-lines adjuster is exempt from the licensure examination requirement.

Company Employee Adjuster

A "company employee adjuster" is a licensed insurance adjuster who is appointed and employed on an insurer's adjusting staff or a wholly owned subsidiary of the insurer.[13] The duties of such an adjuster include determining the amount of a claim, loss, or damage payable under an insurance policy, and settling the claim, loss, or damage.[14]

Effect of the Bill

The bill adds adjusters employed by an insurer's affiliate to the definition of company employee adjuster.

Agent Licensing

General Lines Agent

A general lines agent[15] is one who sells the following lines of insurance: property;[16] casualty,[17] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,[18] or a workers' compensation self-insurance fund;[19] surety;[20] health;[21] and, marine.[22] The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.[23]

Personal Lines Agent

A personal lines agent is a general lines agent who is limited to transacting business related to property and casualty insurance sold to individuals and families for noncommercial purposes.[24]

Motor Vehicle Servicing Agreements

Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the

[13] S. 626.856, F.S.
[14] *Id.*
[15] S. 626.015(5), F.S.
[16] S. 624.604, F.S.
[17] S. 624.605, F.S.
[18] S. 624.462, F.S.
[19] S. 624.4621, F.S.
[20] S. 626.606, F.S.
[21] Ss. 624.603 and 627.6482, F.S.
[22] S. 624.607, F.S.
[23] S. 626.829, F.S.
[24] S. 626.015(17), F.S.

agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended.[25] Motor vehicle service agreements can only be sold by a licensed and appointed salesperson. Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.

Service Warranty Associations

Service warranty associations are entities, other than insurers, which issue service warranties. A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.[26] No person or entity shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative.[27]

Home Warranty Contracts

A home warranty association is any corporation or any other organization, other than an authorized insurer, issuing home warranties. A home warranty is any contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. No person may solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative.[28]

Effect of the Bill

The bill allows a licensed general lines agent or licensed personal lines agent to advertise, solicit, negotiate, or sell motor vehicle service agreements, home warranty contracts, or service warranty contracts without being separately licensed as a sales representative or insurance representative, as applicable.

Use of Hurricane Models in Residential Property Insurance Rate Filings

The law regarding OIR's review and approval of residential property insurance rate filings requires that a rate filing consider mitigation measures that policyholders undertake to reduce hurricane losses.[29] It sets forth the criteria under which OIR may disapprove rate filings, including disapproval of rates that it determines to be excessive, inadequate, or unfairly discriminatory.[30] The law also establishes criteria for the Florida Commission on Hurricane Loss Projection Methodology's (Commission) consideration, and approval, of hurricane loss models and prescribes how those models affect OIR's approval of property insurance rate filings.[31]

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[25] S. 634.011(8), F.S.
[26] S. 634.401(13).
[27] S. 634.419, F.S. A "sales representative" is any person, retail store, corporation, partnership, or sole proprietorship utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties. However, in the case of service warranty associations selling service warranties from one or more business locations, the person in charge of each location may be considered the sales representative. S. 634.401(12), F.S.
[28] S. 634.317, F.S. "Sales representative" is any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term includes all employees of an insurer or association engaged directly in the sale or issuance of home warranties. S. 634.301(12), F.S
[29] S. 627.062(2)(j), F.S.
[30] S. 627.062(2)(b), F.S.
[31] Ss. 627.0628-627.06281, F.S.

Effect of the Bill

The bill provides parameters for OIR's approval or disapproval of rate filings by providing that, with respect to residential property insurance rate filings, the rate filing may use a modeling indication that is the weighted or straight average of two or more hurricane loss models found to be accurate or reliable by the Commission.

Mitigation Credits in Residential Property Insurance Rate Filings

Current law requires residential property insurers to include "positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses the risk of wind damage" in their rate filings that are filed with, and approved by, OIR.[32] Insurers utilize factors from statewide organizations' building code rating factor plans that evaluate how building code enforcement in particular jurisdictions evaluate risk.[33] Often times these ratings are flawed and not an accurate depiction of actual building code enforcement activity in a jurisdiction.

Since 2003, residential property insurers have been required to provide credits, discounts, and other rate differentials to reduce insurance premiums for properties with mitigation features.[34] Mitigation features are construction techniques used or items installed to protect a structure against windstorm damage or loss.[35] Examples of mitigation features include hurricane shutters, a hip roof, or a specific type of roof covering.

Code-plus programs help property owners avoid or reduce damage caused by natural hazards and other risks by implementing additional levels of resilience to hazards beyond those required by building codes.[36] Presently, insurers are unable to submit rating plans for review and approval by OIR that include mitigation credits for those insureds that are evaluated by, and comply with, code-plus standards established by independent, not-for-profit, scientific research organizations.[37]

Effect of the Bill

The bill allows insurers to file a rating plan with OIR in which it offers additional windstorm mitigation credits based on standards established by an independent, not-for-profit, scientific research organization that meets the requirements of the rate filing statute.

Notification of Automatic Withdrawal of Insurance Premiums

Insurers issuing personal lines residential and commercial property policies are required to provide premium payment options for quarterly and semiannual payments. They may, but are not required to, offer monthly payment plans.[38] Insurers and policyholders may enter into automatic bank withdrawal agreements for paying insurance premiums.[39] Current law requires insurers to provide the policyholder with 15 days advance written notice prior to any automatic bank withdrawal if the premium payment increases from the previous withdrawal period by any amount.

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[32] S. 627.0629(2)(b), F.S.
[33] *See, e.g.*, ISO Mitigation, *ISO's Building Code Effectiveness Grading Schedule (BCEGS)*, https://www.isomitigation.com/bcegs/ (last visited Dec. 16, 2021). BCEGS is a program that provides these rating factors.
[34] *See* s. 627.0629, F.S.
[35] *See id.*
[36] Whole Building Design Guide, *Code-Plus Program for Disaster Resistance*, https://www.wbdg.org/resources/code-plus-programs-disaster-resistance (last visited Dec. 16, 2021).
[37] *See, e.g.,* Insurance Institute of Business & Home Safety, https://ibhs.org/ (last visited Dec. 16, 2021).
[38] S. 627.4035(1)(a), F.S.
[39] S. 627.0665, F.S.

Federal law gives consumers the option of receiving notice of a change in an automatic bank withdrawal only when the withdrawal differs from the most recent withdrawal by more than an agreed-upon amount.[40]

Effect of the Bill

The bill changes the 15-day written notice requirement of any increase in policy premiums to require the notice only if the increase in policy premiums results in the next automatic withdrawal being increased by more than $10.

Citizens Property Insurance Corporation

Citizens is a state-created, not-for-profit, tax-exempt government entity that is an integral part of the state, whose public purpose is to provide property insurance to those unable to find affordable coverage in the private market.[41] Citizens offers property insurance in three separate accounts: the personal lines account; the commercial lines account; and the coastal account. The commercial lines account offers commercial lines residential and nonresidential policies. Currently, residential condominiums are ineligible for coverage as "commercial residential" if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.[42]

Effect of the Bill

The bill allows Citizens the option to insure residential condominiums under commercial residential wind-only coverage if the units are intended for residential use, but are rented on a short-term basis.

Delivery of Policy Documents

The law requires that an insurance policy be mailed, delivered, or electronically transmitted to an insured or other person entitled to receive the policy (designated person) within 60 days of the policy taking effect.[43] An insurer may allow a personal lines policyholder to elect delivery of policy documents by electronic means instead of by mail.[44] Electronic delivery of commercial risks constitutes delivery to the insured or designated person, unless the insured or designated person notifies the insurer that he or she does not agree to electronic delivery.[45] However, if a policy is delivered electronically, the insurer must include with the policy, a notice of the right to receive the policy by mail rather than electronically.[46] Additionally, an insurer must provide a paper copy of an insurance policy to an insured or designated person upon his or her request.[47]

Effect of the Bill

The bill eliminates the requirement that an insurer provide notice with the policy of the right to receive the policy by mail. It also eliminates the requirement that a paper copy of a policy be provided to the insured or designated person upon request. The proposed change does not prevent an insured or designated person from requesting a paper copy of a policy; the insurer may, but would not be required to, provide a paper copy, unless the insured or designated person communicated to the insurer that he or she no longer agrees to delivery by electronic means.

Method to Reject/Exclude Certain Property Insurance Deductibles/Coverages

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[40] 12 CFR 1005(10)(d).
[41] S. 627.351(6)(a)1., F.S.
[42] S. 627.351(6), F.S.
[43] S. 627.421(1), F.S.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*

With certain exceptions, prior to issuing a personal lines residential property insurance policy, the insurer must offer alternative deductible amounts applicable to hurricane losses equal to $500, 2 percent, 5 percent, and 10 percent of the policy dwelling limits. For such policies covering a risk valued at less than $500,000, a hurricane deductible may not be greater than 10 percent of the policy dwelling limits unless the policyholder personally writes and provides to the insurer, in his or her own handwriting the following statement: "I do not want the insurance on my home to pay for the first (specify dollar value) of the damage from hurricanes. I will pay those costs. My insurance will not."

An insurer issuing a residential property insurance policy must provide windstorm coverage; however, the insurer must also make available, at the option of the policyholder, an exclusion for the windstorm coverage.[48] To exclude windstorm coverage, the policyholder must personally write and provide to the insurer, in his or her own handwriting, the following statement: "I do not want the insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not."[49]

An insurer issuing a residential property insurance policy, except for a condominium unit owner policy or a tenant policy, must make available, at the option of the policyholder, an exclusion of contents coverage.[50] To exclude contents coverage, the policyholder must personally write and provide to the insurer, in his or her own handwriting, the following statement: "I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not." [51]

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Effect of the Bill

For the above three provisions related to waiving the 10 percent limit on hurricane deductibles, excluding windstorm coverage, and excluding contents coverage, the bill permits the required statements to be either personally written or typed by the policyholder. The proposed change should give insurers and policyholders more options for conducting business electronically.

Assignment Agreements

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows a policyholder to assign the post-loss benefits of the policy, such as the right to be paid, to another party. This assignment is often called an assignment of benefits (AOB). An assignment agreement is an instrument that assigns or transfers post-loss benefits under a residential or commercial property insurance policy to or from a person who protects, repairs, restores, or replaces property or mitigates against further property damage.[52]

Once an assignment agreement is executed, the assignee can take action to enforce the insurance policy. Accordingly, if an insurer refuses to pay an assignee for a claim submitted under the policy, the assignee may file a lawsuit against the insurer. An assignee must give an insurer and the assignor prior written notice of at least 10 business days before filing suit on a claim (pre-suit notice).[53] The pre-suit notice may not be served before the insurer has made a determination of coverage.[54] It must specify the damages in dispute, the amount claimed, and a pre-suit settlement demand, and must include an itemized, detailed, written invoice or estimate of the work performed or to be performed.[55]

The law requires pre-suit notice to be sent by certified mail, return receipt requested, or by electronic delivery, but does not specify the mailing address or email address where the pre-suit notice must be

[48] S. 627.712(1)-(2), F.S.
[49] S. 627.712(2)(a)1., F.S.
[50] S. 627.712(3), F.S.
[51] *Id.*
[52] *S.* 627.7152(1)(b), F.S.
[53] S. 627.7152(9)(b), F.S.
[54] *Id.*
[55] *Id.*

sent.[56] The lack of a specific address may delay an insurer's or assignor's receipt of the notice, and thus reduce an insurer's time to respond to the notice.

Effect of the Bill

The bill adds inspection to the list of services included in the definition of assignment agreement to address the concern that certain individuals providing services, but who did not otherwise engage in protecting, repairing, restoring, or replacing insured property following a loss, were not subject to the requirements of s. 627.7152, F.S. The bill establishes that the list of services in s. 627.7152, F.S., is not exhaustive. The bill specifies that fees charged by a public adjuster are not included in the definition of assignment agreement. Additionally, the bill requires that the pre-suit notice, if sent by certified mail, be sent to the name and mailing address specified by an insurer in its policy forms, and if sent by email, be sent to the email address specified by an insurer in its policy forms.

Limited Coverage Notice Requirements

Automobile insurance policies that do not contain coverage for bodily injury and property damage[57] must be stamped on the policy declarations page with the following language in a font larger than the largest font otherwise used in the declarations page (notice):

> THIS POLICY DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE OR ANY OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW.

The stamping requirement is antiquated and prevents these types of policies from being delivered electronically.

Effect of the Bill

The bill eliminates the requirement that the notice be stamped on the declarations page of limited coverage automobile policies. Instead, the notice must accompany the declarations page and must be typed in a font at least as large as the font used in the declarations page. This change will allow these types of policies to be delivered electronically.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.555, F.S., relating to Florida Hurricane Catastrophe Fund.

Section 2. Amends s. 440.381, F.S., relating to application for coverage; reporting payroll; payroll audit procedures; penalties.

Section 3. Creates s. 624.46227, F.S., relating to meeting requirements.

Section 4. Amends s. 626.221, F.S., relating to examination requirement; exemptions.

Section 5. Amends s. 626.856, F.S., relating to "company employee adjuster" defined.

Section 6. Amends. 627.062, F.S., relating to rate standards.

Section 7. Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

Section 8. Amends s. 627.0665, F.S., relating to automatic bank withdrawal agreements; notification required.

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[56] *See id.*

[57] S. 627.7276, F.S. These limited policies are typically issued to certain antique cars.

Section 9. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 10. Amends s. 627.421, F.S., relating to delivery of policy.

Section 11. Amends s. 627.701, F.S., relating to liability of insureds; coinsurance; deductibles.

Section 12. Amends s. 627.712, F.S., relating to residential windstorm coverage required; availability of exclusions for windstorm or contents.

Section 13. Amends s. 627.7152, F.S., relating to assignment agreements.

Section 14. Amends s. 627.7276, F.S., relating to notice of limited coverage.

Section 15. Amends s. 634.171, F.S., relating to salesperson to be licensed and appointed.

Section 16. Amends s. 634.317, F.S., relating to license and appointment required.

Section 17. Amends s. 634.419, F.S., relating to license and appointment required.

Section 18. Reenacts s. 624.424, F.S., relating to annual statement and other information.

Section 19. Reenacts s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 20. Reenacts s. 626.865, F.S., relating to public adjuster's qualifications, bond.

Section 21. Reenacts s. 626.8734, F.S., relating to nonresident all-lines adjuster license qualifications.

Section 22. Reenacts s. 627.7153, F.S., relating to policies restricting assignment of post-loss benefits under a property insurance policy.

Section 23. Provides an effective date of July 1, 2022, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

OIR has indicated that the bill may have a positive economic impact for policyholders, who may benefit from lower collateral protection insurance costs if more policies are eligible for coverage from the FHCF.[58]

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 will require modification of the rule related to workers' compensation payroll audit procedures to reflect the changes to audits for businesses with construction classifications.[59]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 13, 2022, the Insurance and Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Removed the section of the bill addressing service of process on an insurer.
- Added an additional professional designation to the list of designations under which an applicant to become a licensed all-lines adjuster is exempt from the written examination normally required to be passed to receive licensure.
- Made various formatting and minor technical wording changes for clarity.

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

[58] OIR Agency Analysis of House Bill 815, p. 6 (Feb. 23, 2021). House Bill 815 from the 2021 Legislative Session is largely the same as this bill.
[59] R. 69O-189.003, F.A.C.

A bill to be entitled

An act relating to insurance; amending s. 215.555, F.S.; revising the definition of the term "covered policy" under the Florida Hurricane Catastrophe Fund in relation to certain collateral protection insurance policies; amending s. 440.381, F.S.; revising the annual audit requirement for construction classes to apply to policies having estimated annual premiums of at least a specified amount; creating s. 624.46227, F.S.; authorizing any association, trust, or pool created for the purpose of forming a risk management mechanism or providing self-insurance for a public entity to use communications media technology to establish a quorum and conduct public business; amending s. 626.221, F.S.; exempting certain applicants for licensure as all-lines adjusters from a required examination; amending s. 626.856, F.S.; revising the definition of the term "company employee adjuster"; amending s. 627.062, F.S.; authorizing the use of a certain modeling indication for residential property insurance rate filings; amending s. 627.0629, F.S.; authorizing insurers to file certain insurance rating plans based on certain windstorm mitigation construction standards, if certain requirements are met; amending s. 627.0665, F.S.; revising notification

requirements for insurers who have automatic bank withdrawal agreements with insureds to include notices when withdrawal amounts increase above a specified threshold; amending s. 627.351, F.S.; revising conditions for determining the ineligibility of condominiums for wind-only coverage; amending s. 627.421, F.S.; deleting a requirement for electronic transmission of certain documents to include specified notices; deleting a requirement that paper copies of policies be provided upon request; amending ss. 627.701 and 627.712, F.S.; revising policyholder acknowledgment statement requirements for property insurance policies having certain hurricane deductibles or windstorm or contents coverage exclusions, respectively; amending s. 627.7152, F.S.; revising the definition of the term "assignment agreement"; specifying the addresses to which a notice of intent must be served; amending s. 627.7276, F.S.; revising notice requirements for motor vehicle policies that do not provide coverage for bodily injury and property damage liability; amending ss. 634.171, 634.317, and 634.419, F.S.; authorizing licensed personal lines or general lines agents to solicit, negotiate, advertise, or sell motor vehicle service agreements, home warranty contracts, and

service warranty contracts, respectively, without a sales representative license; making technical changes; reenacting ss. 624.424(10) and 627.351(6)(v), F.S., relating to annual statements and other information and Citizens Property Insurance Corporation, respectively, to incorporate the amendment made to s. 215.555, F.S., in references thereto; reenacting s. 626.865(1)(e), F.S., relating to public adjuster's qualifications, to incorporate the amendment made to s. 626.856, F.S., in a reference thereto; reenacting s. 626.8734(1)(b), F.S., relating to nonresident all-lines adjuster license qualifications, to incorporate the amendment made to s. 626.221, F.S., in a reference thereto; reenacting s. 627.7153(1) and (2)(d), F.S., relating to policies restricting assignment of post-loss benefits under a property insurance policy, to incorporate the amendment made to s. 627.7152, F.S., in references thereto; providing effective dates.

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

Section 1. Effective June 1, 2023, paragraph (c) of subsection (2) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(c) "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner, mobile home owner, farm owner, condominium association, condominium unit owner, tenant, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including a commercial self-insurance fund holding a certificate of authority issued by the Office of Insurance Regulation under s. 624.462, the Citizens Property Insurance Corporation, and any joint underwriting association or similar entity created under law. The term ~~"covered policy"~~ includes any collateral protection insurance policy covering personal residences which protects both the borrower's and the lender's financial interests, in an amount at least equal to the coverage amount for the dwelling in place under the lapsed homeowner's policy, the coverage amount that the homeowner has been notified of by the collateral protection insurer, or the coverage amount the homeowner requests from the collateral protection insurer, if such collateral protection insurance policy can be accurately reported as required in subsection (5). Additionally, covered policies include policies covering the peril of wind removed from the Florida Residential Property and Casualty Joint Underwriting Association or from the Citizens Property Insurance

Corporation, created under s. 627.351(6), or from the Florida Windstorm Underwriting Association, created under s. 627.351(2), by an authorized insurer under the terms and conditions of an executed assumption agreement between the authorized insurer and such association or Citizens Property Insurance Corporation. Each assumption agreement between the association and such authorized insurer or Citizens Property Insurance Corporation must be approved by the Office of Insurance Regulation before the effective date of the assumption, and the Office of Insurance Regulation must provide written notification to the board within 15 working days after such approval. "Covered policy" does not include any policy that excludes wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer. All commercial residential excess policies and all deductible buy-back policies that, based on sound actuarial principles, require individual ratemaking must ~~shall~~ be excluded by rule if the actuarial soundness of the fund is not jeopardized. For this purpose, the term "excess policy" means a policy that provides insurance protection for large commercial property risks and that provides a layer of coverage above a primary layer insured by another insurer.

Section 2. Subsection (3) of section 440.381, Florida Statutes, is amended to read:

440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—

(3) The Financial Services Commission, in consultation with the department, shall establish by rule minimum requirements for audits of payroll and classifications ~~in order~~ to ensure that the appropriate premium is charged for workers' compensation coverage. The rules must ~~shall~~ ensure that audits performed by both carriers and employers are adequate to provide that all sources of payments to employees, subcontractors, and independent contractors are ~~have been~~ reviewed and that the accuracy of classification of employees is ~~has been~~ verified. The rules must require ~~shall provide~~ that employers in all classes other than the construction class be audited at least ~~not less frequently than~~ biennially and may provide for more frequent audits of employers in specified classifications based on factors such as amount of premium, type of business, loss ratios, or other relevant factors. ~~In no event shall~~ Employers in the construction class~~,~~ generating more than the amount of premium required to be experience rated must~~,~~ be audited at least ~~less than~~ annually. The annual audits required for construction classes must ~~shall~~ consist of physical onsite audits of policies only if the estimated annual premium is $10,000 or more. Payroll verification audit rules must include, but need not be limited to, the use of state and federal reports of employee income, payroll and other accounting records,

certificates of insurance maintained by subcontractors, and duties of employees. At the completion of an audit, the employer or officer of the corporation and the auditor must print and sign their names on the audit document and attach proof of identification to the audit document.

Section 3. Section 624.46227, Florida Statutes, is created to read:

624.46227 Meeting requirements.—Any association, trust, or pool authorized by state law and created for the purpose of forming a risk management mechanism or providing self-insurance for public entities in this state may use communications media technology to establish a quorum and conduct public business.

Section 4. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

626.221 Examination requirement; exemptions.—

(1) The department may not issue any license as agent or adjuster to any individual who has not qualified for, taken, and passed to the satisfaction of the department a written examination of the scope prescribed in s. 626.241.

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

(j) An applicant for license as an all-lines adjuster who has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state,

Certified All Lines Adjuster (CALA) from Kaplan, Associate in Claims (AIC) from the Insurance Institute of America, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, Certified Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster (CCA) from AE21 Incorporated, Claims Adjuster Certified Professional (CACP) from WebCE, Inc., Accredited Insurance Claims Specialist (AICS) from Encore Claim Services, or Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM) whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 5. Section 626.856, Florida Statutes, is amended to read:

626.856 "Company employee adjuster" defined.—A "company employee adjuster" means a person licensed as an all-lines adjuster who is appointed and employed on an insurer's staff of adjusters, by an affiliate, or by a wholly owned subsidiary of the insurer, and who undertakes on behalf of such insurer or other insurers under common control or ownership to ascertain and determine the amount of any claim, loss, or damage payable

under a contract of insurance, or undertakes to effect settlement of such claim, loss, or damage.

Section 6. Paragraph (j) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(j) With respect to residential property insurance rate filings, the rate filing:

1. Must account for mitigation measures undertaken by policyholders to reduce hurricane losses.

2. May use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the commission to be accurate or reliable pursuant to s. 627.0628.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 7. Subsection (9) is added to section 627.0629, Florida Statutes, to read:

627.0629 Residential property insurance; rate filings.—

(9) An insurer may file with the office a personal lines residential property insurance rating plan that provides justified premium discounts, credits, or other rate differentials based on windstorm mitigation construction

standards developed by an independent, not-for-profit scientific research organization, if such standards meet the requirements of this section.

Section 8. Section 627.0665, Florida Statutes, is amended to read:

627.0665 Automatic bank withdrawal agreements; notification required.—Any insurer licensed to issue insurance in this ~~the~~ state who has an automatic bank withdrawal agreement with an insured party for the payment of insurance premiums for any type of insurance shall give the named insured at least 15 days advance written notice of any increase in policy premiums that results in the next automatic bank withdrawal being increased by more than $10. Such notice must be provided before ~~prior to~~ any automatic bank withdrawal containing the ~~of an~~ increased premium amount.

Section 9. Paragraph (a) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The

absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in this ~~the~~ state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes.

Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the

type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures:

a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.

b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.

c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.

d. Effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term.

The requirements of sub-subparagraphs b.-d. do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that

generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal

Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, ~~effective July 1, 2014,~~ a condominium may ~~shall~~ be deemed ineligible for coverage when ~~if~~ 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

Section 10. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed, delivered, or electronically transmitted to the insured or to the person entitled thereto not later than 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks, including, but not limited to, workers' compensation and employers' liability, commercial automobile liability, commercial automobile physical damage, commercial lines residential property, commercial nonresidential property,

farmowners insurance, and the types of commercial lines risks set forth in s. 627.062(3)(d), constitutes delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. ~~Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.~~

Section 11. Paragraph (d) of subsection (4) of section 627.701, Florida Statutes, is amended to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(4)

(d)1. A personal lines residential property insurance policy covering a risk valued at less than $500,000 may not have a hurricane deductible in excess of 10 percent of the policy dwelling limits, unless the following conditions are met:

a. The policyholder must personally write or type and provide to the insurer the following statement ~~in his or her own handwriting~~ and sign his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my home to pay for the first (specify

dollar value) of damage from hurricanes. I will pay those costs. My insurance will not."

b. If the structure insured by the policy is subject to a mortgage or lien, the policyholder must provide the insurer with a written statement from the mortgageholder or lienholder indicating that the mortgageholder or lienholder approves the policyholder electing to have the specified deductible.

2. A deductible subject to the requirements of this paragraph applies for the term of the policy and for each renewal thereafter. Changes to the deductible percentage may be implemented only as of the date of renewal.

3. An insurer shall keep the original copy of the signed statement required by this paragraph, electronically or otherwise, and provide a copy to the policyholder providing the signed statement. A signed statement meeting the requirements of this paragraph creates a presumption that there was an informed, knowing election of coverage.

4. The commission shall adopt rules providing appropriate alternative methods for providing the statements required by this section for policyholders who have a handicapping or disabling condition that prevents them from providing a handwritten statement.

Section 12. Paragraph (a) of subsection (2) and subsection (3) of section 627.712, Florida Statutes, are amended to read:

627.712 Residential windstorm coverage required;

availability of exclusions for windstorm or contents.—

(2) A property insurer must make available, at the option of the policyholder, an exclusion of windstorm coverage.

(a) The coverage may be excluded only if:

1. When the policyholder is a natural person, the policyholder personally writes or types and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not."

2. When the policyholder is other than a natural person, the policyholder provides to the insurer on the policyholder's letterhead the following statement that must be signed by the policyholder's authorized representative and dated: "...(Name of entity)... does not want the insurance on its ...(type of structure)... to pay for damage from windstorms. ...(Name of entity)... will be responsible for these costs. ...(Name of entity's)... insurance will not."

(3) An insurer issuing a residential property insurance policy, except for a condominium unit owner policy or a tenant policy, must make available, at the option of the policyholder, an exclusion of coverage for the contents. The coverage may be excluded only if the policyholder personally writes or types and

provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her signature, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not."

Section 13. Effective upon this act becoming a law, paragraph (b) of subsection (1) and paragraph (a) of subsection (9) of section 627.7152, Florida Statutes, are amended to read:

627.7152 Assignment agreements.—

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

(b) "Assignment agreement" means any instrument by which post-loss benefits under a residential property insurance policy or commercial property insurance policy, as that term is defined in s. 627.0625(1), are assigned or transferred, or acquired in any manner, in whole or in part, to or from a person providing services, including, but not limited to, inspecting, protecting, repairing, restoring, or replacing the ~~protect, repair, restore, or replace~~ property or mitigating ~~to mitigate~~ against further damage to the property. The term does not include fees collected by a public adjuster, as defined in s. 626.854(1).

(9)(a) An assignee must provide the named insured, insurer, and the assignor, if not the named insured, with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served at least 10

business days before filing suit, but not before the insurer has made a determination of coverage under s. 627.70131, by certified mail, return receipt requested, to the name and mailing address designated by the insurer in the policy forms or by electronic delivery to the e-mail address designated by the insurer in the policy forms ~~at least 10 business days before filing suit, but may not be served before the insurer has made a determination of coverage under s. 627.70131~~. The notice must specify the damages in dispute, the amount claimed, and a presuit settlement demand. Concurrent with the notice, and as a precondition to filing suit, the assignee must provide the named insured, insurer, and the assignor, if not the named insured, a detailed written invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof that the work has been performed in accordance with accepted industry standards.

Section 14. Section 627.7276, Florida Statutes, is amended to read:

627.7276 Notice of limited coverage.—

(1) An automobile policy that does not contain coverage for bodily injury and property damage must include a notice ~~be clearly stamped or printed to the effect~~ that such coverage is not included in the policy in the following manner:

"THIS POLICY DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE OR ANY OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW."

(2) This notice ~~legend~~ must accompany ~~appear on~~ the policy declarations ~~declaration~~ page and ~~on the filing back of the policy and~~ be ~~printed~~ in a ~~contrasting color from that used on the policy and in~~ type size at least as large as the type size used on the declarations page ~~larger than the largest type used in the text thereof, as an overprint or by a rubber stamp impression~~.

Section 15. Section 634.171, Florida Statutes, is amended to read:

634.171 Salesperson to be licensed and appointed; exemptions.—Salespersons for motor vehicle service agreement companies and insurers must ~~shall~~ be licensed, appointed, renewed, continued, reinstated, or terminated as prescribed in chapter 626 for insurance representatives in general. However, they are ~~shall be~~ exempt from all other provisions of chapter 626, including those relating to fingerprinting, photo identification, education, and examination ~~provisions~~. Applicable license, appointment, and other fees are as ~~shall be those~~ prescribed in s. 624.501. A licensed and appointed

salesperson is ~~shall be~~ directly responsible and accountable for all acts of her or his employees and other representatives. Each service agreement company or insurer shall, on forms prescribed by the department, within 30 days after termination of the appointment, notify the department of such termination. An ~~No~~ employee or a salesperson of a motor vehicle service agreement company or an insurer may not directly or indirectly solicit or negotiate insurance contracts, or hold herself or himself out in any manner to be an insurance agent, unless so qualified, licensed, and appointed therefor under the Florida Insurance Code. A licensed personal lines or general lines agent is not required to be licensed as a salesperson under this section to solicit, negotiate, advertise, or sell motor vehicle service agreements. A motor vehicle service agreement company is not required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the motor vehicle service agreements issued by the motor vehicle service agreement company.

Section 16. Section 634.317, Florida Statutes, is amended to read:

634.317 License and appointment required; exemptions.—A ~~No~~ person may not solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative. A licensed and appointed sales representative is ~~shall be~~ directly responsible

and accountable for all acts of the licensee's employees. A licensed personal lines or general lines agent is not required to be licensed as a sales representative under this section to solicit, negotiate, advertise, or sell home warranty contracts.

Section 17. Section 634.419, Florida Statutes, is amended to read:

634.419 License and appointment required; exemptions.—A ~~No~~ person or an entity may not ~~shall~~ solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative. Sales representatives are ~~shall be~~ responsible for the actions of persons under their supervision. However, a service warranty association licensed as such under this part is ~~shall~~ not ~~be~~ required to be licensed and appointed as a sales representative to solicit, negotiate, advertise, or effectuate its products. A licensed personal lines or general lines agent is not required to be licensed as a sales representative under this section to solicit, negotiate, advertise, or sell service warranty contracts.

Section 18. Effective June 1, 2023, for the purpose of incorporating the amendment made by this act to section 215.555, Florida Statutes, in a reference thereto, subsection (10) of section 624.424, Florida Statutes, is reenacted to read:

624.424 Annual statement and other information.—

(10) Each insurer or insurer group doing business in this

state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report shall include the following information for each county on a monthly basis:

(a) Total number of policies in force at the end of each month.

(b) Total number of policies canceled.

(c) Total number of policies nonrenewed.

(d) Number of policies canceled due to hurricane risk.

(e) Number of policies nonrenewed due to hurricane risk.

(f) Number of new policies written.

(g) Total dollar value of structure exposure under policies that include wind coverage.

(h) Number of policies that exclude wind coverage.

Section 19. Effective June 1, 2023, for the purpose of incorporating the amendment made by this act to section 215.555, Florida Statutes, in a reference thereto, paragraph (v) of

subsection (6) of section 627.351, Florida Statutes, is reenacted to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(v)1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association become policies of the corporation. All obligations, rights, assets and liabilities of the association, including bonds, note and debt obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

2. Effective July 1, 2002, policies of the Florida Windstorm Underwriting Association are transferred to the corporation and become policies of the corporation. All obligations, rights, assets, and liabilities of the association, including bonds, note and debt obligations, and the financing documents pertaining to them are transferred to and assumed by the corporation on July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association shall take all actions necessary to further evidence the

transfers and provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed by the corporation. Subject to the relevant financing documents pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the coastal account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Residential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.

4. Effective July 1, 2002, a new applicant for property insurance coverage who would otherwise have been eligible for coverage in the Florida Windstorm Underwriting Association is

eligible for coverage from the corporation as provided in this subsection.

5. The transfer of all policies, obligations, rights, assets, and liabilities from the Florida Windstorm Underwriting Association to the corporation and the renaming of the Residential Property and Casualty Joint Underwriting Association as the corporation does not affect the coverage with respect to covered policies as defined in s. 215.555(2)(c) provided to these entities by the Florida Hurricane Catastrophe Fund. The coverage provided by the fund to the Florida Windstorm Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be redesignated as coverage for the coastal account of the corporation. Notwithstanding any other provision of law, the coverage provided by the fund to the Residential Property and Casualty Joint Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter shall be transferred to the personal lines account and the commercial lines account of the corporation. Notwithstanding any other provision of law, the coastal account shall be treated, for all Florida Hurricane Catastrophe Fund purposes, as if it were a separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal lines and commercial lines accounts shall be viewed together, for all fund purposes, as if the two accounts were one and represent a

single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. The coverage provided by the fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association to the corporation.

Section 20. For the purpose of incorporating the amendment made by this act to section 626.856, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 626.865, Florida Statutes, is reenacted to read:

626.865 Public adjuster's qualifications, bond.—

(1) The department shall issue a license to an applicant for a public adjuster's license upon determining that the applicant has paid the applicable fees specified in s. 624.501 and possesses the following qualifications:

(e) Has been licensed in this state as an all-lines adjuster, and has been appointed on a continual basis for the previous 6 months as a public adjuster apprentice under s. 626.8561, as an independent adjuster under s. 626.855, or as a company employee adjuster under s. 626.856.

Section 21. For the purpose of incorporating the amendment made by this act to section 626.221, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 626.8734, Florida Statutes, is reenacted to read:

626.8734 Nonresident all-lines adjuster license

qualifications.—

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

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

1. An applicant who is licensed as an all-lines adjuster in his or her home state if that state has entered into a reciprocal agreement with the department;

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

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

Section 22. Effective upon this act becoming a law, for the purpose of incorporating the amendment made by this act to section 627.7152, Florida Statutes, in references thereto, subsection (1) and paragraph (d) of subsection (2) of section 627.7153, Florida Statutes, are reenacted to read:

627.7153 Policies restricting assignment of post-loss benefits under a property insurance policy.—

(1) As used in this section, the term "assignment agreement" has the same meaning as provided in s. 627.7152.

(2) An insurer may make available a policy that restricts in whole or in part an insured's right to execute an assignment agreement only if all of the following conditions are met:

(d) Each restricted policy include on its face the following notice in 18-point uppercase and boldfaced type:

THIS POLICY DOES NOT ALLOW THE UNRESTRICTED ASSIGNMENT OF POST-LOSS INSURANCE BENEFITS. BY SELECTING THIS POLICY, YOU WAIVE YOUR RIGHT TO FREELY ASSIGN OR TRANSFER THE POST-LOSS PROPERTY INSURANCE BENEFITS AVAILABLE UNDER THIS POLICY TO A THIRD PARTY OR TO OTHERWISE FREELY ENTER INTO AN ASSIGNMENT AGREEMENT AS THE TERM IS DEFINED IN SECTION 627.7152 OF THE FLORIDA STATUTES.

Section 23. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2022.

COMMERCE COMMITTEE

CS/HB 503 by Rep. Gregory
Insurance

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Gregory (line 155): Allows the Office of Insurance Regulation (OIR) to conduct background checks on person who maintain citizenship from, reside in, or are domiciled in, the same jurisdiction outside the United States if the aggregate ownership by such persons exceeds 10% of either:

- A newly established insurer applying for a certificate of authority from OIR; or
- An existing stock insurer possessing a certificate of authority from OIR.

Amendment 2 by Gregory (line 218): provides that a designee of the Director of the Division of Emergency Management may be a member of the Florida Commission on Hurricane Loss Projection Methodology in lieu of the Director.

Amendment 3 by Gregory (line 235): amends from 15 to 10 the number of days' notice that an insurer must give a policyholder before a change in the amount of premium automatically withdrawn from a policyholders' account in order to comply with federal law.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 155 and 156, insert:

Section 3. Subsection (3) is added to of section 624.413, Florida Statutes, to read:

624.413 Application for certificate of authority.—

(3)(a) If the aggregate percentage of ownership by persons maintaining citizenship from, residing in, or domiciled in, the same jurisdiction outside the United States exceeds 10 percent or more of an applicant for a certificate of authority from the office, or if such persons acquire or intend to acquire in the aggregate more than 10 percent ownership in an existing stock insurer possessing a certificate of authority from the office, then such persons may be:

1. Deemed to have control; and

2. Subject to the requirements of a sworn biographical statements, copies of fingerprints, and authority for release of information in regarding to the investigation of such persons' backgrounds as specified in s. 628.051(2)(b).

(b) The office may apply the same criteria described in paragraph (a) to each of the following applications to determine if a person is deemed to have control and is subject to the requirements of a sworn biographical statement, copies of fingerprints, and authority for release of information as specified in s. 628.051(2)(b):

1. A certificate of authority to form multiple-employer welfare arrangements under s. 624.437;

2. A certificate of authority to act as insurance administrators under s. 626.8805;

3. A permit to form insurers under s. 628.051;

4. An acquisition under s. 628.461;

5. A specialty acquisition under s. 628.4615;

6. A certificate of authority to transact insurance as a reciprocal insurer under s. 629.081;

7. A license to issue motor vehicle service agreements under s. 634.014;

8. A license to issue home warranties under s. 634.304;

9. A icense to issue service warranties under s. 634.404;

10. A certificate of authority to operate as a prepaid limited health service organization under s. 636.008;

11. A license to operate as a discount plan organization under s. 636.204;

12. A certificate for a health maintenance organization under s. 641.21;

13. A certificate of authority to operate a prepaid health clinics under s. 641.405; and

14. A certificate of authority to offer continuing care contracts under ss. 651.022-651.0245.

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

Remove line 9 and insert:
at least a specified amount; amending s. 624.413, F.S.; providing circumstances under which certain persons are deemed to have control; revising the Office of Insurance Regulation's authority to conduct background checks on certain persons; creating s. 624.46227,

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 218 and 219, insert:

Section 7. Paragraph (b) of subsection (2) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(2) COMMISSION CREATED.—

(b) The commission shall consist of the following 12 members:

1. The insurance consumer advocate.

2. The senior employee of the State Board of Administration responsible for operations of the Florida Hurricane Catastrophe Fund.

3. The Executive Director of the Citizens Property Insurance Corporation.

4. The Director of the Division of Emergency Management, or the director's designee, provided such designee is a full-time employee of the division.

5. The actuary member of the Florida Hurricane Catastrophe Fund Advisory Council.

6. An employee of the office who is an actuary responsible for property insurance rate filings and who is appointed by the director of the office.

7. Five members appointed by the Chief Financial Officer, as follows:

a. An actuary who is employed full time by a property and casualty insurer that was responsible for at least 1 percent of the aggregate statewide direct written premium for homeowner insurance in the calendar year preceding the member's appointment to the commission.

b. An expert in insurance finance who is a full-time member of the faculty of the State University System and who has a background in actuarial science.

c. An expert in statistics who is a full-time member of the faculty of the State University System and who has a background in insurance.

d. An expert in computer system design who is a full-time member of the faculty of the State University System.

e. An expert in meteorology who is a full-time member of the faculty of the State University System and who specializes in hurricanes.

8. A licensed professional structural engineer who is a full-time faculty member in the State University System and who has expertise in wind mitigation techniques. This appointment shall be made by the Governor.

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

Remove line 21 and insert:
property insurance rate filings; amending s. 627.0628, F.S.; revising the membership of the Florida Commission on Hurricane Loss Projection Methodology; amending s. 627.0629,

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove line 235 and insert:

any type of insurance shall give the named insured at least 10 ~~15~~

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

Remove line 25 and insert:

met; amending s. 627.0665, F.S.; revising the number of days advance written notice that an insurer must give a named insured when a policy premium is increased; revising notification

CS/HB 557

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 557 Fire Investigator Cancer Treatment Benefits
SPONSOR(S): Government Operations Subcommittee, Salzman & others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 838

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N	Herendeen	Luczynski
2) Government Operations Subcommittee	16 Y, 0 N, As CS	Roth	Toliver
3) Appropriations Committee	23 Y, 0 N	Lee	Pridgeon
4) Commerce Committee		Herendeen	Hamon

SUMMARY ANALYSIS

In 2019, the Legislature created a special benefit package for firefighters suffering from certain types of cancer, because studies have demonstrated a link between firefighting and cancer. The special benefit package is an alternative to filing a workers' compensation claim, which requires proof that workplace exposures are the cause of a firefighter's occupational disease. Like firefighters, fire investigators sustain significant exposure to hazardous vapors, gases and particles that are known to contribute to chronic health conditions, including cancer; however, fire investigators are not eligible for the special benefit package.

The special benefit package provides that firefighters who are diagnosed with certain types of cancer are eligible for a one-time payment of $25,000 and employer-sponsored health insurance, including reimbursement for any deductible, co-payment, or co-insurance costs the firefighter incurs for the treatment of cancer. To qualify for these benefits, a firefighter must: (1) have been working full-time as a firefighter, for a government employer, for at least 5 continuous years; (2) have not used tobacco products for at least the 5 years prior to the cancer diagnosis; and (3) have not been employed in any other position which is proven to create a high risk of cancer during the 5 years prior to the cancer diagnosis.

Employment-sponsored health benefits must be made available for 10 years after the firefighter terminates employment, so long as the firefighter is not subsequently re-employed as a firefighter.

If a firefighter becomes disabled or dies due to cancer, the employer must consider the cancer diagnosis as an injury or illness incurred in the line of duty. This makes the firefighter eligible for line-of-duty disability retirement benefits and also makes surviving family members eligible for line-of-duty death benefits.

The number of Florida-certified fire investigators working full-time for state and local governments, including special fire districts, is unclear. The Florida State Fire College has certified 1,740 fire investigators since 2005, and about half of these people also hold certifications as firefighters. The State Fire Marshal employs 104 fire investigators; 86 of these fire investigators are Florida-certified or in the process of becoming certified.

The bill amends the definition of "firefighter" to include Florida-certified fire investigators, making fire investigators eligible for the special benefit package related to a cancer diagnosis. The costs to provide the enhanced benefits under s. 112.118, F.S., must be borne by the employer.

The bill has an indeterminate significant negative fiscal impact on state and local governments, which are responsible for the cost of the special benefit package. *See* Fiscal & Analysis & Economic Impact Statement.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Firefighters Face an Increased Risk of Cancer

A two-part study by the Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety (NIOSH) concluded that firefighters have a nine percent greater risk of being diagnosed with cancer – and a 14 percent greater risk of dying from cancer – than the general population of the United States.[1]

The study was launched in 2010 and reviewed records of nearly 30,000 career firefighters who served in Chicago, Philadelphia, and San Francisco fire departments between 1950 and 2009.[2]

- In 2013, researchers reported statistically significant mortality and incidence rates of cancers of the esophagus, intestine, lung, kidney, and oral cavity, as well as increased mesothelioma for firefighters compared with the general population, and excess risk of bladder and prostate cancer at younger ages.[3]
- In 2015, researchers reported that the risk of developing lung cancer and leukemia increases with exposure to smoke and hazardous chemicals that are released from burning materials, asbestos, and diesel exhaust.[4]

In 2018, the federal government directed the Centers for Disease Control to create a National Firefighter Registry that, with voluntary participation from firefighters, will track cancer and occupational risk factors to help researchers and the medical community better understand the causes of disease and death among firefighters.[5]

Special Benefit Package for Firefighters in Lieu of Workers' Compensation Benefits

The Legislature took action in 2019 by creating s. 112.1816, F.S.[6] Instead of seeking benefits through the workers' compensation system,[7] where the employee must prove that workplace exposures caused cancer, a firefighter diagnosed with certain types of cancer is entitled to certain benefits. An affected firefighter may receive a one-time cash payment of $25,000 and a guarantee that their employer-sponsored health insurance will continue while the firefighter remains on the job and for 10 years after the firefighter terminates employment, so long as the firefighter is not subsequently re-employed as a firefighter. The employer must reimburse the firefighter for any deductible, co-payment, or co-insurance costs paid for the treatment of cancer.

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[1] Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety, *Findings from a Study of Cancer among U.S. Fire Fighters*, cdc.gov/niosh/pgms/worknotify/pdfs/ff-cancer-factsheet-final-508.pdf (last visited Feb.18, 2022).

[2] *Id.*

[3] Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety, *Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia* (1950− 2009), http://www.cdc.gov/niosh/firefighters/pdfs/OEM_FF_Ca_Study_10-2013.pdf (last visited Feb. 18, 2022).

[4] Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety, *Exposure–response relationships for select cancer and non-cancer health outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009)*, https://stacks.cdc.gov/view/cdc/34054, (last visited Feb. 18, 2022).

[5] Centers for Disease Control and Prevention/National Institute for Occupational Health and Safety, *National Firefighter Registry*, https://www.cdc.gov/niosh/firefighters/registry.html (last visited Feb. 18, 2022).

[6] Ch. 2019-21, Laws of Fla.

[7] *See* ch. 440, F.S.

Every state board, commission, department, division, bureau, agency, county, municipality, or other political subdivision of the state that employs firefighters,[8] including fire control districts, must make these benefits available to firefighters who are employed on a full-time basis. There are approximately 650 state-employed firefighters currently covered by the State Risk Management Trust Fund (SRMTF).[9]

Eligibility Requirements

To be eligible, a firefighter must be diagnosed with one of the following types of cancer: bladder cancer, brain cancer, breast cancer, cervical cancer, colon cancer, esophageal cancer, invasive skin cancer, kidney cancer, large intestinal cancer, lung cancer, malignant melanoma, mesothelioma, multiple myeloma, non-Hodgkin's lymphoma, oral cavity and pharynx cancer, ovarian cancer, prostate cancer, rectal cancer, stomach cancer, testicular cancer, and thyroid cancer.[10] Additionally, the firefighter:

- Must have been employed by his or her employer for at least 5 continuous years;
- Must not have used tobacco products for at least the 5 years preceding the cancer diagnosis; and
- Must not have been employed in any other position in the 5 years preceding the cancer diagnosis which is proven to create a higher risk for any cancer.[11]

Line-of-Duty Disability Retirement and Death Benefits

Many firefighters are members of the Florida Retirement System (FRS), which provides retirement benefits to 980 participating employers, including all state and county government agencies, school boards, state universities and community colleges, as well as many cities and special districts.[12] Firefighters who are members of the FRS are included in a special risk class whose members receive enhanced benefits, due to the unique challenges and risks of their jobs.[13]

Municipalities and special fire districts that do not participate in the FRS offer retirement plans that are secured by the Firefighters' Pension Trust Fund (FPTF)[14], which must meet minimum requirements established by the Division of Retirement of the Department of Management Services.[15]

When a firefighter diagnosed with cancer qualifies for the $25,000 cash payment and health benefits, the employer must consider a firefighter's cancer diagnosis as an injury incurred in the line of duty.[16]

If the firefighter becomes totally and permanently disabled by cancer, the firefighter is entitled to a line-of-duty retirement,[17] as follows:

- Under the FRS, a line-of-duty disability retirement results in payment of 65 percent of the firefighter's average final compensation for the remainder of his or her life; [18]

[8] S. 112.191(1)(a), F.S.
[9] Florida Department of Financial Services (DFS), Agency Analysis of 2022 CS/House Bill 557, p. 1 (Feb. 7, 2022).
[10] S. 112.1816(1)(a), F.S.
[11] S. 112.1816(2), F.S.
[12] Department of Management Services, Division of Retirement, Florida Retirement System Pension Plan and other State Administered Systems, *Comprehensive Annual Financial Report FY 2019-2020*, p. 8, Annual Reports / Publications / Retirement / Workforce Operations / Florida Department of Management Services - DMS (myflorida.com) (last visited Feb. 18, 2022).
[13] S. 121.0515, F.S.
[14] S. 175.041, F.S.
[15] Ss. 175.021, and 175.351, F.S.; *also see* Department of Management Services, *Municipal Police and Fire Plans/Overview*, Overview / Municipal Police and Fire Plans / Local Retirement Plans / Retirement / Workforce Operations / Florida Department of Management Services - DMS (myflorida.com) (last visited Feb. 18, 2022).
[16] S. 112.1816(2)(b), F.S.
[17] S. 112.1816(3), F.S.
[18] Department of Management Services, s*upra* note 12, at 39. Under s. 121.091(4)(b), F.S., an employee is totally and permanently disabled if he or she cannot render useful and efficient service as an officer or employee.

- Under the FPTF, a line-of-duty disability retirement results in payment of at least 42 percent of the firefighters' average monthly compensation for the remainder of his or her life;[19] and
- If the firefighter did not participate in a retirement plan, the employer must pay 42 percent of the firefighters' most recent annual salary, for life.[20]

If the firefighter dies due to cancer or the treatment of cancer, the firefighter's beneficiary is entitled to line-of-duty death benefits,[21] as follows:

- Under the FRS, a line-of-duty death benefit provides a lifetime monthly benefit equal to the firefighter's salary at death to the surviving spouse. If the spouse dies, the benefit is paid on behalf of the member's dependent children until the youngest reaches age 18, and the benefit may be extended until the youngest child reaches age 25 if the child is unmarried and a full-time student.[22]
- State law does not require a line-of-duty death benefit for the FPTF. However, if a firefighter with 10 years of service dies prior to retirement, the firefighter's beneficiary receives either early or normal retirement benefits for 10 years.[23]
- If the firefighter did not participate in a retirement plan, the employer must provide a death benefit of at least 42 percent of the firefighters' most recent annual salary to the beneficiary, for at least 10 years.[24]

Additionally, the firefighter's beneficiary is eligible for a death benefit of $75,000.[25]

The employer is required to pay the costs of the special benefit package without increasing employee contributions to a retirement plan.[26]

Workers' Compensation Benefits

A firefighter who declines the special benefit package may instead file a claim for workers' compensation benefits. Workers' compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment.

The Employee Must Demonstrate Causation

In addition to on-the-job injuries, employers may be required to pay compensation for lost wages or furnish benefits (such as medical care, medical devices, attendant care) if an occupational disease causes disablement, is due to the nature of the employee's occupation, and the employee contracted the disease during the course of his or her employment.[27] In general, occupational diseases are compensable if:

- A condition peculiar to the occupation causes the disease;
- The employee contracts the disease on the job;
- The job presents a particular hazard of the disease;
- The incidence of the disease is substantially higher in the occupation than in the public;
- The nature of the employment was a major contributing cause of the disease; and
- Epidemiological studies show that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.[28]

[19] S. 175.191, F.S., states that an employee is totally and permanently disabled if he or she cannot render useful and efficient service as a firefighter and is likely to remain so disabled continuously and permanently.
[20] S. 112.1816(3)(b), F.S.
[21] S. 112.1816(3)(a), F.S
[22] Department of Management Services, s*upra* note 12, at 39.
[23] S. 175.201, F.S.
[24] S. 112.1816(3)(b), F.S.
[25] S. 112.191(2)(a), F.S.
[26] S. 112.1816(5), F.S.
[27] Ss. 440.09 and 440.151, F.S.
[28] S. 440.151(2), F.S.

Thus, under the workers' compensation system, a firefighter suffering from cancer must show a causal relationship between the diagnosis of cancer and his or her work as a firefighter to receive medical benefits and compensation for lost work time.

Temporary Disability

Disability is defined as the incapacity to earn wages the employee was receiving at the time of injury.[29] It is a measure of the earning capacity that is lost as a result of a work-related injury.[30] Disability may be temporary or permanent, and partial or total.[31]

When an authorized doctor declares an injured employee to be temporarily but totally disabled, the employee is eligible for up to 260 weeks (5 years) of disability benefits.[32]

Injured workers who earn less than the statewide average weekly wage[33] are paid two thirds of their average weekly salary, typically beginning on the 8th day after the employee loses time from work.[34] The minimum payment is $20 per week and the maximum payment is 100 percent of the statewide average weekly wage; thus, payments to injured workers who earn more than the statewide average weekly wage are capped at the statewide average weekly wage that was in effect on the date of injury.[35]

Temporary disability benefits end when the injured worker's doctor indicates that the employee can work in some capacity and the employee returns to work, or when the employee reaches the maximum medical improvement and the carrier has paid 5 years of benefits.[36]

Total and Permanent Disability

When an employee is totally and permanently disabled after the date of maximum medical improvement, the employee who is not able to work in any job, for any employer, must be paid 66 2/3 percent of the employee's average weekly wage at the time of injury, or up to 100 percent of the statewide average weekly wage, until age 75, or until the end of the injured workers' life if the injury prevented the worker from working sufficient quarters to be eligible for Social Security disability.[37]

An order of compensation may require lifetime medical benefits for a catastrophic injury. Additionally, people who are disabled prior to age 65 are eligible for Medicare.[38] If a totally and permanently disabled worker receives Social Security disability benefits, the federal benefit may offset some or all of the benefits paid by the workers' compensation system.[39]

Death Benefits

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[29] S. 440.02(13), F.S.
[30] *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121 (1997).
[31] S. 440.15, F.S.
[32] S. 440.15(2)(a), F.S., limits disability benefits to 104 weeks (2 years), but the Florida Supreme Court held that this limit was unconstitutional and directed that a prior limit of 260 weeks (5 years) be reinstated. *See Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016).
[33] S. 440.12(2), F.S., defines the "statewide average weekly wage" as the average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity.
[34] S. 440.14(1), F.S.
[35] S. 440.12(2), F.S.
[36] S. 440.15(3)(d), F.S.
[37] S. 440.15(1)(a) and (b), F.S.
[38] Department of Management Services, myBenefits, *Frequently Asked Questions-Retirees*, https://www.mybenefits.myflorida.com/health/resources/faq_s/frequently_asked_questions_retirees (last visited Feb. 18, 2022).
[39] S. 440.15(1)(b) and (f), F.S.

In the event that an injured worker dies within one year of an accident that causes injury or within 5 years of continuous disability, the employer must pay up to $7,500 for funeral expenses and compensation up to $150,000.[40]

The surviving spouse may also receive payment for up to 1,800 classroom hours at a college or career center, or 80 semester hours at a community college. If the deceased was a state employee, the spouse is entitled to a full tuition waiver at a state university or community college.[41]

In cases that involve a compensable occupational disease, death benefits are provided to surviving beneficiaries, if the employee demonstrates causation and sufficient exposure to a specific harmful substance shown to be present in the workplace, and the employee dies within 350 weeks (6.7 years) after the last exposure to the harmful substance.[42]

Statutory Presumptions

Florida law includes several statutory presumptions that make a disability due to certain communicable diseases compensable under workers' compensation law, for first responders, unless the employer can prove that the disease was caused by a non-work related event or exposure. For firefighters, these laws include heart disease, hypertension, hepatitis, meningococcal meningitis, and tuberculosis.[43]

Workers' compensation law does not include any statutory presumption for firefighters who are diagnosed with cancer.

Florida-certified Fire Investigators

Fire investigators determine the origin and cause of fires and explosions, preserve evidence and ensure that the chain of custody is maintained, and create a record of the investigation. They also support law enforcement in the detection and apprehension of persons suspected of arson and explosive-related crimes.

According to experts in the field, the best evidence of the cause and origin of a fire may be found after a fire has been suppressed and before the process of "overhaul" begins. Overhaul involves detecting and extinguishing hidden fires or hot spots that may rekindle. Thus, fire investigators, like firefighters, face significant exposure to hazardous vapors, gases, and dangerous chemicals and carcinogens that contribute to chronic health conditions, including cancer.[44] Respiratory protective equipment is crucial to first responders working in and around a fire scene.[45]

The Florida State Fire College provides training for firefighters, fire inspectors, fire investigators, and a variety of administrative positions within the fire service.[46] Certified firefighters, certified law enforcement officers, law enforcement crime scene technicians, and certified fire safety inspectors who have fire investigation responsibilities may become certified fire investigators by completing a 360-hour certification

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[40] S. 440.16(1)(a)-(b), F.S., states that compensation is based on 50 percent of the statewide average weekly wage to the surviving spouse if there are no children, and 66 2/3 percent of the statewide average weekly wage if the injured worker had a surviving spouse and children.

[41] S. 440.16(1)(c), F.S.

[42] S. 440.151(1)(a), F.S.

[43] Ss. 112.18, 112.181 and 175.231, F.S.

[44] International Association of Arson Investigators, Inc., *Fire Investigator Health and Safety Best Practices*, May 4, 2020, FireInvestigatorHealthSafetyBestPracticesSecond.pdf, (last visited Feb. 18, 2022); and FireRescue1, *It's in the smoke: cancer-causing compounds and contaminates*, August 31, 2018, www.firerescue1.com/fire-products/turnoutgear/articles/its-in-the-smoke-cancer-causing-compounds-and-contaminates-oNwVFdIZBpJlUZMr/ (last visited Feb. 18, 2022).

[45] ScienceDirect, *The "Warm Zone" Cases: Environmental Monitoring Immediately Outside the Fire Incident Response Arena by Firefighters*, September 2018, at 352-355, The "Warm Zone" Cases: Environmental Monitoring Immediately Outside the Fire Incident Response Arena by Firefighters - ScienceDirect (last visited Feb. 18, 2022).

[46] Department of Financial Services, Division of State Fire Marshal, *Certification and Testing*, www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm (last visited Feb. 18, 2022).

program and passing a certification exam.[47] The program includes coursework on fire chemistry, fire origin and cause, fire protection systems, building construction, latent investigation, arson investigation, post blast investigation, and legal issues for fire investigators.[48]

Since 2005, the Florida State Fire College has certified 1,740 fire investigators; 947 of these persons also hold a firefighter certification.[49] The number of certified investigators working as full-time fire investigators for state and local governments is not known.

The State Fire Marshal's Division of Investigative and Forensic Services, Bureau of Fire and Arson Investigation employs 104 fire investigators and 86 of these employees are either Florida-certified or in the process of becoming certified. These fire investigators respond to fire scenes throughout the state, on the day of a fire or within 3 days of a fire, and spend an average of 3 hours on site for each investigation.[50] They handled an average of 39 fires per fire investigator in 2019, and 33 fires per investigator in 2020.[51]

The State Fire Marshal conducts investigations when:

- A local agency does not have an organized fire department or arson investigators within its law enforcement agency;
- An initial investigation gives reason to believe a fire or explosion was the result of an intentional or reckless act, or the cause of a fire or explosion is not readily determined by the initial investigation;
- A firefighter is injured or killed in the line of duty;
- A civilian is injured or killed by a fire or explosion;
- The cost of a fire or explosion exceeds $1 million; or
- A fire or explosion may be due to the failure of a fire suppression or detection device.[52]

According to the U.S. Fire Administration, firefighters in Florida spent about 1.8 percent of their time fighting fires, and 73.2 percent of their time responding to requests for emergency medical services.[53] Thus, fire investigators employed by the State Fire Marshal likely have as much exposure to cancer-causing carcinogens as the 19,000 firefighters who respond to the scenes of active fires in Florida.[54]

According to the Department of Management Services, which oversees the FRS, some employers that participate in FRS consider fire investigators to be members of the special risk class, while others place fire investigators in the regular class.[55] Employees in the special risk class receive enhanced benefits. For example, a line-of-duty disability retirement benefit for a member of the special risk class is 65 percent of the employee's monthly salary, while an employee in the regular class receives 42 percent of his or her monthly salary.[56] If a fire investigator placed in the regular class wishes to receive the increased benefits of the special risk class, he or she must complete an application and his or her employer must certify that the fire inspectors' duties include on-the-scene firefighting, fire prevention, or fire training, or the supervision of persons who have such responsibilities.[57]

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[47] Department of Financial Services, Division of State Fire Marshal, Bureau of Fire Standards & Training, *Fire Investigation Certification*, https://www.myfloridacfo.com/division/sfm/bfst/Standards/FireInvestigator.pdf (last visited Feb. 18, 2022).
[48] R. 69A-37.065(3), F.A.C.
[49] DFS, *supra* note 9, at 2.
[50] DFS, *supra* note 9, at 1.
[51] Email from Austin Stowers, Director of Legislative Affairs, Department of Financial Services, RE: HB 557 / SB 838 (Jan. 11, 2021).
[52] S. 633.112, F.S., and R. 69D-4.001, F.A.C.
[53] U.S. Fire Administration, *Florida Fire Loss and Fire Department Profile*, https://www.usfa.fema.gov/data/statistics/states/florida.html (last visited Feb. 18, 2022). The U.S. Fire Administration is an entity of the U.S. Department of Homeland Security's Federal Emergency Management Agency.
[54] U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, May 2020, Firefighters, https://www.bls.gov/oes/current/oes332011.htm (last visited Feb. 18, 2022).
[55] Email from Sam Kerce, Deputy Director of Legislative Affairs, Department of Management Services, RE: Qualifying for Special Risk (Feb. 1, 2022).
[56] S. 121.091(4)(f), F.S.
[57] S. 121.0515(3)(b), F.S., and R. 60S-1.005, F.A.C.

A fire investigator who is diagnosed with cancer may file a petition for workers' compensation benefits. If the fire investigator's cancer is compensable as an occupational disease, the fire investigator is eligible for temporary disability benefits described above, based on his or her level of impairment, and may be deemed totally and permanently disabled if he or she is unable to work in any job for any employer.

A fire investigator who is disabled by cancer, but denied workers' compensation benefits, may be eligible for a general disability retirement rather than a line-of-duty retirement, so long as the fire investigator has completed 8 years of service as a member of the FRS or 10 years of service as a member of the FPTF. The fire investigator would be paid 25 percent of his or her average monthly compensation.[58]

Effect of the Bill

The bill amends the definition of "firefighter" to make full-time fire investigators certified by the Florida State Fire College eligible for the special benefit package provided by s. 112.1816, F.S.

The bill also expands the duties of firefighters to include the investigation of fires and explosives in addition to the prevention and extinguishing of fires, the protection of life and property, and the enforcement of fire prevention codes and laws.

The special benefit package would be available to any full-time firefighter or certified fire investigator who has been employed by the state or a local government, including special fire districts, for at least 5 continuous years and is diagnosed with one of 21 types of cancer discussed above. Additionally, the fire investigator must not have used tobacco products and cannot have been employed in any other position which is proven to create a high risk of cancer during the 5 years prior to diagnosis.

A certified fire investigator who qualifies for the special benefit package would be presumed to have developed cancer in the course of employment, due to the exposures of the job, and be eligible for a line-of-duty disability retirement (discussed above) if he or she became unable to work as a firefighter.

If a certified fire investigator qualifies for the special benefit package and dies due to cancer or the treatment of cancer, his or her beneficiaries would be eligible for line-of-duty death benefits (discussed above). The fire investigator's beneficiary would also be eligible for a $75,000 death benefit paid by the employer or the employer's liability insurance carrier.

The cost of the benefits would be paid by the employer;[59] the employer would not be permitted to increase employee contributions required to participate in a retirement plan or system to pay for the enhanced retirement benefits.[60]

[58] Ss. 121.091(4)(f) and 175.191(1), F.S.
[59] S. 112.1816(5)(a) and (c), F.S.
[60] S. 112.1816(5)(c), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.1816, F.S., relating to firefighters; cancer diagnosis.

Section 2. Provides a statement of important state interest.

Section 3. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

State agencies that employ certified fire investigators would pay the full costs of the enhanced benefits and may not raise employee contributions to an employer-sponsored retirement plan to do so.[61] Costs include the $25,000 payment; continuation of health insurance for 10 years after the firefighter separates from employment; reimbursement for all co-payments, deductibles, and co-insurance payments related to the treatment of cancer; and the cost of any line-of-duty disability or death benefits that may be required. The state employing agency would also pay a $75,000 survivor's benefit if a fire investigator is eligible for the benefits in s. 112.1816, F.S., and dies from cancer.

Since s. 112.1816, F.S., went into effect on July 1, 2019, there have been three cancer claims with payments totaling $66,308 from the State Risk Management Trust Fund (SRMTF) reported by state agencies that employ firefighters.[62] Two claimants received the $25,000 cash payment and compensation for medical benefits, and one claim was settled for $15,000.[63] The Department of Financial Services (DFS) currently employs 104 fire investigators within the Division of Investigative and Forensic Services, 86 of which are Florida-certified fire investigators or in the process of becoming certified.[64] The bill has an indeterminate negative fiscal impact on the SRMTF; however, the impact is likely significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local governments that employ certified fire investigators, including special fire districts, are responsible for the costs of the special benefits package and may not raise employee contributions to an employer-sponsored retirement plan to do so.[65] Costs include the $25,000 payment; continuation of health insurance for 10 years after the firefighter separates from employment; reimbursement for all co-payments, deductibles, and co-insurance payments related to the treatment of cancer; and the cost of any line-of-duty disability or death benefits that may be required. The local government employer also would pay a $75,000 survivor's benefit if a fire investigator is eligible for the benefits in s. 112.1816, F.S., and dies from cancer.

The total number of fire investigators employed by local governments or special fire districts is unknown. Since 2005, the State Fire College has certified 1,740 individuals as a fire investigator. Of those 1,740 individuals, 947 individuals also hold firefighter certifications covered by the current

[61] *Id.*

[62] DFS, *supra* note 9, at 1.

[63] Email from Austin Stowers, Director of Legislative Affairs, Department of Financial Services, RE: HB 557 (Dec. 22, 2021).

[64] DFS, *supra* note 9, at 1.

[65] S. 112.1816(5), F.S.

definition of firefighter in s. 112.1816, F.S.[66] Under the bill, the remaining 793 certified fire investigators could potentially be eligible for the special benefits package. Therefore, the bill has an indeterminate, but likely significant, fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires cities and counties and special districts to spend money or take an action that requires the expenditure of money; however, an exemption may apply as the Legislature has determined that this bill satisfies an important state interest and similarly situated persons are all required to comply.

2. Other:

Actuarial Requirements
Article X, s. 14 of the Florida Constitution provides:

> A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

B. RULE-MAKING AUTHORITY:

The bill does not alter existing rulemaking authority or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 3, 2022, the Government Operations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified that fire investigators have separate responsibilities from those of other firefighters by moving the language "the investigation of fires and explosives" to the end of the paragraph.

This analysis is drafted to the committee substitute as adopted by the Government Operations Subcommittee.

[66] DFS, *supra* note 9, at 2.

A bill to be entitled

An act relating to fire investigator cancer treatment benefits; amending s. 112.1816, F.S.; revising the definition of the term "firefighter" to include full-time, Florida-certified fire investigators for the purpose of expanding eligibility for certain cancer treatment benefits to include such investigators; providing a declaration of important state interest; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 112.1816, Florida Statutes, is amended to read:

112.1816 Firefighters; cancer diagnosis.—

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

(c) "Firefighter" means an individual employed as a full-time firefighter or full-time, Florida-certified fire investigator within the fire department or public safety department of an employer whose primary responsibilities are the prevention and extinguishing of fires; the protection of life and property; ~~and~~ the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires; or the investigation of fires and explosives.

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

Section 2. The Legislature determines and declares that this act fulfills an important state interest.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 749 Fraud Prevention
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, Clemons and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N, As CS	Fortenberry	Luczynski
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N, As CS	Lee	Topp
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes the following changes to existing law to help prevent insurance fraud:

- **Electronic Insurance Verification –** requires that, in addition to driver licenses and identification cards, the Department of Highway Safety and Motor Vehicle's (DHSMV) electronic credentialing system display vehicle registration and insurance information, provide a driver with notification of any lapse in insurance coverage, and allow the driver to update policy information in the system; requires DHSMV to provide the Legislature with recommendations by October 1, 2023, regarding electronic verification of drivers' compliance with financial responsibility laws.
- **Service Contracts and Agreements**
  - **Contracts –** establishes that sellers of service contracts that include automatic renewal provisions must allow consumers to cancel these contracts in the same manner and by the same means as the consumers entered the contracts;
  - **Agreements –** expands the advertising violations for which a service agreement company or salesperson can be subject to licensure discipline or criminal penalties; requires a service agreement company's or salesperson's disclosures in written advertisements meet certain requirements; requires such company or salesperson disclose the company's or salesperson's full name in radio or television advertisements; requires that a service agreement salesperson provide his or her full legal name and license number when beginning a solicitation call and his or her telephone number when ending a call.
- **Public Adjusters and Public Adjuster Apprentices –** establishes a new maximum fine amount, not to exceed $20,000 per act, for a public adjusters or public adjuster apprentices who commit certain prohibited acts during a state of emergency declared by the Governor; implements the same penalties for unlicensed individuals who engage in these prohibited acts.
- **Investigation by the Division of Investigative and Forensic Services (DIFS) and the State Fire Marshal (SFM) –** deletes a provision that makes it a misdemeanor to violate a statute regarding the investigation of fraudulent insurance claims and crimes related to a fire or explosion loss; establishes that Department of Financial Services (DFS) may fine insurers up to $2,000 per day if the insurer fails or refuses to comply with the investigation of a fraudulent insurance act by DIFS, or a fire or explosion by the SFM.
- **Prosecution of False and Fraudulent Insurance Claims –** replaces the word "and" with the word "or" so that violations of certain statutes are separate crimes, and criminal prosecution for violation of either section must begin within 5 years of the violation; allows an insurer that has been damaged by a false or fraudulent insurance act to recover investigation and litigation expenses, including attorney fees, if the insurer reported the false or fraudulent act to DIFS and there was a criminal adjudication of guilt.

For Fiscal Year 2022-23, the bill directs DFS to transfer funds from the Insurance Regulatory Trust Fund to the DHSMV's Highway Safety Operating Trust Fund and appropriates a nonrecurring sum of $1,413,270 to DHSMV for the implementation of the electronic insurance verification provisions of the bill. See Fiscal Analysis & Economic Impact Statement.

The bill is effective upon becoming law except as otherwise provided within the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Electronic Insurance Verification

Current law requires that the Department of Highway Safety and Motor Vehicles (DHSMV) establish a secure and uniform electronic credentialing system (system) for displaying driver licenses[1] and identification cards. The system is defined as "a computer system accessed using a computer, a cellular telephone, or any other personal device which queries" DHSMV's driver license and identification card records, displays or transmits digital proof of driver licenses and identification cards, and verifies the authenticity of driver licenses and identification cards.[2]

Effect of the Bill

The bill requires by July 1, 2023, that, in addition to driver licenses and identification cards, the system must display vehicle registration and insurance information, provide a driver with notification of any lapse in insurance coverage needed to meet financial responsibility requirements, and allow the driver to update policy information in the system. The bill also requires DHSMV to provide the Legislature with recommendations by October 1, 2023, regarding electronic verification of drivers' compliance with financial responsibility laws.[3]

Service Contracts and Agreements

A service contract is a written contract for the performance of services over a fixed time period or for a specific duration of time.[4] A service agreement is a contract or agreement indemnifying the agreement holder for the motor vehicle listed on the agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended.[5]

Cancellation of Service Contracts

A consumer may enter a service contract in a variety of ways. Sometimes entering a service contract is accomplished easily by a consumer, but the consumer may have difficulty cancelling the contract because the service contract requires cancellation by a different method.[6] Any seller that sells or offers to sell a service contract to a consumer that has an automatic renewal provision must "disclose the automatic renewal provision clearly and conspicuously in the contract or contract offer."[7] However, current law does not require that a service contract or offer for a contract to provide a specific method of contract cancellation.[8]

Effect of the Bill

The bill establishes that sellers of service contracts that include automatic renewal provisions must allow consumers to cancel these contracts in the same manner and by the same means as the consumers entered into the contracts.

Advertising Disclosures by Service Agreement Companies and Salespersons

[1] S. 322.032, F.S.
[2] S. 322.032(c), F.S.
[3] Ch. 324, F.S.
[4] S. 501.165(1)(d), F.S. This statute does not apply to warranty associations licensed under ch. 634, F.S.
[5] S. 634.011(8), F.S.
[6] Department of Financial Services (DFS), Agency Analysis of 2022 House Bill 749, p. 1 (Dec. 16, 2021).
[7] S. 501.165(2)(a), F.S.
[8] DFS, *supra* note 6.

Current law provides that a service agreement company or salesperson that engages in certain acts is subject to denial, suspension, revocation, or refusal to renew or continue any appointment or license, or is guilty of a second-degree misdemeanor.[9] These acts include limited violations of advertising requirements.[10]

Effect of the Bill

The bill expands the advertising violations for which a service agreement company or salesperson can be subject to licensure discipline or criminal penalties. The bill requires that a service agreement company or salesperson make disclosures in written advertisements in at least 12-point, boldface type. Such written advertisements must include a Florida Company Code in addition to the name and address of the company. The bill requires that a service agreement company or salesperson disclose the full legal name of the company or salesperson in radio or television advertisements. Additionally, the bill requires a service agreement salesperson to identify his or her full legal name and license number when beginning a solicitation call and his or her telephone number when ending such a call. The bill specifies that the phone number may be either the telephone number on file with the Department of Financial Service (DFS) or another number at which the salesperson may be reached. Violation of any of these requirements by a company or a salesperson may result in the denial, suspension, revocation, or refusal to renew or continue an appointment or license, or a second-degree misdemeanor. These portions of the bill are effective January 1, 2023.

Public Adjusters and Public Adjuster Apprentices

Public adjusters and public adjuster apprentices are prohibited from engaging in a list of practices in current law and can be fined up to $10,000 per act for engaging in these practices at any time, including a declared state of emergency.[11] Any person who engages in the same acts, but is not a public adjuster or public adjuster apprentice, and who is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may also be subject to the same fines.[12]

Effect of the Bill

The bill establishes a new maximum fine amount, not to exceed $20,000 per act, for a public adjusters or public adjuster apprentices who commit certain prohibited acts during a state of emergency declared by the Governor through an executive order or proclamation. The bill implements the same penalties for individuals who engage in these prohibited acts, but are not public adjusters or public adjuster apprentices, and are not otherwise exempt from licensure.

Investigations by the Division of Investigative and Forensic Services (DIFS) and the State Fire Marshal (SFM)

Current law requires insurers to report to the SFM if the insurance company has reason to suspect that a fire or explosion loss was caused by intentional means.[13] However, these statutes do not provide consequences for an insurer's failure to report this knowledge.

Effect of the Bill

The bill specifies that DFS may fine an insurer up to $2,000 per day, until it deems the insurer to be compliant, if an insurer fails or refuses to comply with the DIFS investigation of a fraudulent insurance act or SFM's investigation of a fire or explosion, including the requirement to report fraudulent acts to

[9] S. 634.095, F.S.
[10] S. 634.095(3), F.S.
[11] S. 626.854(22), F.S.
[12] S. 626.854(22)(c), F.S.
[13] S. 633.126(2), F.S.

DFS. The bill deletes a provision that makes it a misdemeanor to violate a statute regarding the investigation of fraudulent insurance claims and crimes related to a fire or explosion loss.

Prosecution of False and Fraudulent Insurance Claims and Crimes

Criminal Charges for Insurance Fraud

Section 775.15(11), F.S., provides that a felony violation of a workers' compensation and an insurance fraud statute must be commenced within 5 years after the violation is committed. The statute states "[a] prosecution for a felony violation of ss. 440.105 **and** 817.234 must be commenced within 5 years after the violation is committed." The plain language of the statute could be read to require the violation of both statutes before there may be a prosecution for a felony violation of s. 775.15(11), F.S.

Effect of the Bill

The bill replaces the word "and" with the word "or" between two statutory sections to clarify that a violation of either section is a separate crime, and that criminal prosecution for violation of either section must begin within 5 years of the violation of that section.

Recovery of Costs by Insurers

Section 817.234, F.S., provides criminal penalties for any person who commits insurance fraud by engaging in certain acts with intent to injure, defraud, or deceive any insurer. An insurer that has been damaged as a result of a violation of this statute has a cause of action to recover compensatory damages, plus reasonable investigation and litigation expenses, including attorney fees, at a trial or appellate court, if the violation has resulted in a criminal adjudication of guilt.[14]

Effect of the Bill

In addition to the requirement under existing law that there has been a criminal adjudication of guilt, the bill adds the requirement that, in order to recover reasonable investigation and litigation expenses, including attorney fees when it has been damaged due to a false or fraudulent insurance claim, an insurer must have reported the false or fraudulent claim to DIFS.

B. SECTION DIRECTORY:

Section 1. Creates s. 324.252, F.S., relating to electronic insurance verification.

Section 2. Amends s. 501.165, F.S., relating to automatic renewal of service contracts.

Section 3. Amends s. 626.854, F.S., relating to "public adjuster" defined; prohibitions.

Section 4. Amends s. 626.989, F.S., relating to investigation by department or Division of Investigative and Forensic Services; compliance; immunity. Confidential information; reports to division; division investigator's power of arrest.

Section 5. Amends s. 633.126, F.S., relating to Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.

Section 6. Amends s. 634.095, F.S., relating to prohibited acts.

Section 7. Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 8. Amends s. 817.234, F.S., relating to false and fraudulent insurance claims.

Section 9. Provides a transfer of funds.

[14] S. 817.235(5), F.S.

Section 10. Provides an appropriation.

Section 11. Provides that the bill is effective upon becoming law except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Department of Financial Services (DFS)

Section 3 of the bill increases the cap on fines for unlicensed activity from $10,000 to $20,000 during a state of emergency. DFS anticipates this will have a minimal positive fiscal impact on revenues.[15]

The bill also authorizes DFS to assess fines against insurers who do not comply with reporting requirements, but DFS does not anticipate a significant fiscal impact from this change.[16]

2. Expenditures:

DFS
For Fiscal Year 2022-23, the bill directs DFS to transfer $1,413,270 from the Insurance Regulatory Trust Fund to the Highway Safety Operating Trust Fund of the Department of Highway Safety and Motor Vehicles (DHSMV) to implement s. 324.252, F.S.

DHSMV
The bill appropriates funds for the purpose of implementing the electronic insurance verification provisions in s. 324.252, F.S. For Fiscal Year 2022-23, the bill appropriates a nonrecurring sum of $1,413,270 to the Information Systems Administration budget entity in DHSMV for the costs to modify its digital driver's license system to require that it also display and verify driver vehicle registration and insurance information by July 1, 2023. The estimated annual cost of system operations and maintenance is $200,000;[17] however, DHSMV can absorb the recurring costs within existing resources.[18]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the DHSMV system updates result in additional tickets or fines issued to drivers, the bill could have an indeterminate negative impact on the private sector.

D. FISCAL COMMENTS:

[15] Department of Financial Services, Agency Analysis of 2022 CS/House Bill 749, p. 4 (Jan. 26, 2022).
[16] *Id.*
[17] Email from Pace Callaway, Chief Financial Officer, Department of Highway Safety and Motor Vehicles (DHSMV), RE: Copy of Insurance Estimate Final.xlsx (Jan. 28, 2022).
[18] *Id.*

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 requires DIFS to adopt rules to administer the statutory sections regarding investigation of fraudulent insurance acts and fire or explosion claims or crimes, but the bill provides DIFS with the authority necessary to adopt these rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2022, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably as a committee substitute. The strike-all amendment contained the substance of the bill as originally filed and made the following modifications and clarifications:

- Requires the DHSMV electronic credentialing system (system) to display vehicle registration and insurance information, provide a driver with notification of any lapse in insurance coverage needed to meet financial responsibility requirements, and allow the driver to update policy information by the system.
- Requires DHSMV to provide the Legislature with recommendations regarding electronic verification of drivers' compliance with financial responsibility laws.
- Removed the sections of the bill that change the definition of "active" so that the current definitions of "active" investigations by DIFS and SFM will remain unchanged.
- Made various formatting and minor technical wording changes for clarity.

On February 15, 2022, the State Administration & Technology Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute for a committee substitute. The amendment added two sections to the bill and provided funding for Fiscal Year 2022-23, as follows:

- Directs DFS to transfer $1,413,270 from the Insurance Regulatory Trust Fund to the Highway Safety Operating Trust Fund in the DHSMV.
- Appropriates a nonrecurring sum of $1,413,270 from the Highway Safety Operating Trust Fund to the Information Systems Administration budget entity in the DHSMV for the implementation of the electronic insurance verification provisions of s. 324.252, F.S.

The analysis is drafted to the committee substitute as passed by the State Administration & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to fraud prevention; creating s. 324.252, F.S.; requiring that the electronic credentialing system display certain vehicle information, provide certain notification for a specified purpose, and allow drivers to update certain information by a specified date; requiring the Department of Highway Safety and Motor Vehicles to provide the Legislature with recommendations for compliance verification with certain financial responsibility requirements by a specified date; amending s. 501.165, F.S.; requiring sellers to allow consumers to cancel in a specified manner and by specified means service contracts that have automatic renewal provisions; amending s. 626.854, F.S.; revising maximum fines for public adjusters and public adjuster apprentices for certain violations under a specified circumstance; revising maximum fines for certain violations by certain persons under a specified circumstance; amending s. 626.989, F.S.; authorizing the Department of Financial Services to impose an administrative fine on insurers under certain circumstances; authorizing the Division of Investigative and Forensic Services to adopt certain rules; amending s. 633.126, F.S.; authorizing the

department to impose an administrative fine on insurance companies under certain circumstances; deleting criminal penalties; authorizing the division to adopt certain rules; amending s. 634.095, F.S.; revising requirements for advertisements issued or caused to be issued by service agreement companies or salespersons; amending s. 775.15, F.S.; revising felony violations for which prosecutions must be commenced within a specified timeframe; amending s. 817.234, F.S.; providing that certain insurers are entitled to recover specified expenses at the trial and appellate courts under certain circumstances; providing a transfer of funds; providing an appropriation; providing effective dates.

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

Section 1. Section 324.252, Florida Statutes, is created to read:

324.252 Electronic insurance verification.—

(1) In order to empower drivers in this state and reduce the incidence of automobile insurance fraud within this state, by July 1, 2023, the electronic credentialing system, as defined in s. 322.032(1), must display driver vehicle registration and insurance information, provide a driver with notification of any

lapse in his or her insurance coverage needed for compliance with the financial responsibility requirements of this chapter, and allow the driver to update his or her policy information via the system.

(2) By October 1, 2023, the department shall provide the Legislature with recommendations on the means by which the department, law enforcement agencies, and other entities authorized by the department may electronically verify a driver's compliance with the financial responsibility requirements of this chapter.

Section 2. Subsection (2) of section 501.165, Florida Statutes, is amended to read:

501.165 Automatic renewal of service contracts.—

(2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—

(a) A ~~Any~~ seller that sells, leases, or offers to sell or lease any service to a consumer pursuant to a service contract that has an automatic renewal provision, unless the consumer cancels that contract, shall disclose the automatic renewal provision clearly and conspicuously in the contract or contract offer.

(b) A ~~Any~~ seller that sells or offers to sell any service to a consumer pursuant to a service contract the term of which is a specified period of 12 months or more and that automatically renews for a specified period of more than 1 month, unless the consumer cancels the contract, shall provide

the consumer with written or electronic notification of the automatic renewal provision. Notification shall be provided to the consumer no less than 30 days or no more than 60 days before the cancellation deadline pursuant to the automatic renewal provision. Such notification shall disclose clearly and conspicuously:

1. That unless the consumer cancels the contract the contract will automatically renew.

2. Methods by which the consumer may obtain details of the automatic renewal provision and cancellation procedure, whether by contacting the seller at a specified telephone number or address, by referring to the contract, or by any other method.

(c) A seller that fails to comply with the requirements of this subsection violates ~~is in violation of~~ this subsection unless the seller demonstrates that:

1. As part of the seller's routine business practice, the seller has established and implemented written procedures to comply with this section and enforces compliance with the procedures;

2. Any failure to comply with this subsection is the result of error; and

3. As part of the seller's routine business practice, where an error has caused the failure to comply with this subsection, the unearned portion of the contract subject to the automatic renewal provision is refunded as of the date on which

the seller is notified of the error.

(d) A seller shall allow a consumer to cancel a service contract that has an automatic renewal provision in the same manner, and by the same means, as the service contract was entered into.

(e) This subsection does not apply to:

1. A financial institution as defined in s. 655.005 or any depository institution as defined in 12 U.S.C. s. 1813(c)(2).

2. A foreign bank maintaining a branch or agency licensed under the laws of any state of the United States.

3. Any subsidiary or affiliate of an entity described in subparagraph 1. or subparagraph 2.

4. A health studio as defined in s. 501.0125.

5. Any entity licensed under chapter 624, chapter 627, chapter 634, chapter 636, or chapter 641.

6. Any electric utility as defined in s. 366.02.

7. Any private company as defined in s. 180.05 providing services described in chapter 180 which is competing against a governmental entity or has a governmental entity providing billing services on its behalf.

(f) ~~(e)~~ A violation of this subsection renders the automatic renewal provision void and unenforceable.

Section 3. Paragraphs (b) and (c) of subsection (22) of section 626.854, Florida Statutes, are amended, and paragraph (a) of that subsection is republished, to read:

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

(22)(a) Any following act by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice is prohibited and shall result in discipline as applicable under this part:

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

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

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

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

(b) Notwithstanding the fine set forth in s. 626.8698, a public adjuster or public adjuster apprentice may be subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a

violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

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

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

2. Notwithstanding subparagraph 1., subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

Section 4. Present subsections (7), (8), and (9) of section 626.989, Florida Statutes, are redesignated as subsections (9), (10), and (11), respectively, new subsections (7) and (8) and subsection (12) are added to that section, and subsection (6) of that section is amended, to read:

626.989 Investigation by department or Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.—

(6) Any person, other than an insurer, agent, or other

person licensed under the code, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being or has been committed may send to the Division of Investigative and Forensic Services a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may request. Any professional practitioner licensed or regulated by the Department of Business and Professional Regulation, except as otherwise provided by law, any medical review committee as defined in s. 766.101, any private medical review committee, and any insurer, agent, or other person licensed under the code, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being or has been committed shall send to the Division of Investigative and Forensic Services a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may require.

(7) If an insurer fails or otherwise refuses to comply with this section, the department may impose an administrative fine of not more than $2,000 per day for such failure until the department deems the insurer to be in compliance.

(8) The Division of Investigative and Forensic Services shall review such information or reports and select such information or reports as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being committed. The Division of Investigative and Forensic Services shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney or other prosecuting agency having jurisdiction with respect to any such violation, as provided in s. 624.310. If prosecution by the state attorney or other prosecuting agency having jurisdiction with respect to such violation is not begun within 60 days of the division's report, the state attorney or other prosecuting agency having jurisdiction with respect to such violation shall inform the division of the reasons for the lack of prosecution.

(12) The Division of Investigative and Forensic Services may adopt reasonable rules as are necessary to administer this section. Such rules must meet all of the following requirements:

(a) They may not enlarge upon or extend the provisions of this section.

(b) They must identify specific factors that determine the

grades of penalty.

(c) They must specify mitigating and aggravating factors for a violation of this section.

Section 5. Subsection (9) of section 633.126, Florida Statutes, is amended, subsection (10) is added to that section, and subsection (2) of that section is republished, to read:

633.126 Investigation of fraudulent insurance claims and crimes; immunity of insurance companies supplying information.—

(2) If an insurance company has reason to suspect that a fire or explosion loss to its insured's real or personal property was caused by intentional means, the company shall notify the State Fire Marshal and shall furnish her or him with all material acquired by the company during its investigation. The State Fire Marshal may adopt rules to implement this subsection.

(9) If an insurance company fails or otherwise refuses to comply with this section, the department may impose an administrative fine of not more than $2,000 per day for such failure until the department deems the insurance company to be in compliance ~~A person who willfully violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~.

(10) The Division of Investigative and Forensic Services may adopt reasonable rules as are necessary to administer this section. Such rules must meet all of the following requirements:

(a) They may not enlarge upon or extend the provisions of this section.

(b) They must identify specific factors that determine the grades of penalty.

(c) They must specify mitigating and aggravating factors for a violation of this section.

Section 6. Effective January 1, 2023, present paragraphs (b), (c), and (d) of subsection (3) of section 634.095, Florida Statutes, are redesignated as paragraphs (d), (e), and (f), respectively, new paragraphs (b) and (c) are added to that subsection, and paragraph (a) of that subsection is amended, to read:

634.095 Prohibited acts.—Any service agreement company or salesperson that engages in one or more of the following acts is, in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any appointment or license, guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(3) Issuing or causing to be issued any advertisement that ~~which~~:

(a) Does not fully disclose in a written advertisement, in at least 12-point, boldfaced type, the name, address, and Florida Company Code ~~license number~~ of the service agreement company.

(b) Does not fully disclose in a radio or television

advertisement the full legal name of the licensed salesperson or the service agreement company.

(c) Does not fully identify the soliciting licensed salesperson's full legal name and license number when the salesperson begins, and the soliciting salesperson's telephone number when the salesperson concludes, each outbound telephone solicitation. For the purposes of this paragraph, the actual telephone number of the salesperson may be the number on file with the department or the number at which the salesperson may be contacted.

Section 7. Subsection (11) of section 775.15, Florida Statutes, is amended to read:

775.15 Time limitations; general time limitations; exceptions.—

(11) A prosecution for a felony violation of s. 440.105 or s. 817.234 ~~ss. 440.105 and 817.234~~ must be commenced within 5 years after the violation is committed.

Section 8. Subsection (5) of section 817.234, Florida Statutes, is amended to read:

817.234 False and fraudulent insurance claims.—

(5)(a) Any insurer damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorney ~~attorneys'~~ fees, at the

trial and appellate courts.

(b) If an insurer damaged as a result of a violation of any provision of this section has reported the possible fraudulent insurance act to the Division of Investigative and Forensic Services pursuant to s. 626.9891 and if there has been a criminal adjudication of guilt, the insurer is entitled to recover reasonable investigation and litigation expenses, including attorney fees, at the trial and appellate courts.

Section 9. The nonrecurring sum of $1,413,270 for Fiscal Year 2022-2023 shall be transferred by nonoperating budget authority from the Insurance Regulatory Trust Fund of the Department of Financial Services to the Highway Safety Operating Trust Fund of the Department of Highway Safety and Motor Vehicles to implement the electronic insurance verification provisions of s. 324.252, Florida Statutes.

Section 10. For the 2022-2023 fiscal year, the nonrecurring sum of $1,413,270 from the Highway Safety Operating Trust Fund is appropriated to the Information Systems Administration budget entity in the Department of Highway Safety and Motor Vehicles to implement the electronic insurance verification provisions required under s. 324.252, Florida Statutes.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/CS/HB 749 by Rep. Clemons
Fraud Prevention

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Clemons (line 102): clarifies a consumer's right to cancel a service contract with an automatic renewal provision in the same manner and the same means the consumer entered the contract.

Amendment 2 by Clemons (line 166): removes the section of the bill that allows the Department of Financial Services (DFS) to fine an insurer up to $2,000 per day for failure to comply with the statute regarding investigation of insurance fraud by the DFS Division of Investigative and Forensic Services.

Amendment 3 by Clemons (line 257): changes the effective date for new provisions regarding solicitation by service agreement companies and sales people from January 1, 2023, to March 1, 2023.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Clemons offered the following:

Amendment

Remove lines 102-105 and insert:

(d) A seller who enters into or renews any service contract with a consumer which includes an automatic renewal provision must allow the consumer to cancel the service contract in the same manner, and by the same means, as the consumer manifested his or her acceptance of the service contract.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)
Remove lines 166-228

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

Remove lines 20-25 and insert:
specified circumstance; amending s. 633.126, F.S.; authorizing the

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Clemons offered the following:

Amendment

Remove line 257 and insert:

Section 6. Effective March 1, 2023, present paragraphs

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 763 Tax Exemption for Charges for Private Investigations
SPONSOR(S): Ways & Means Committee, Regulatory Reform Subcommittee, Casello and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	17 Y, 0 N, As CS	Thompson	Anstead
2) Ways & Means Committee	15 Y, 0 N, As CS	Berg	Aldridge
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions, transient rentals, and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.

The state of Florida does not usually collect sales tax from the vast majority of services performed. Currently, charges for detective, burglar protection, and other protection services listed under the North American Industry Classification System (NAICS), including investigative services, security guards and patrol services, armored car services, and security systems services, except locksmiths, are subject to the 6 percent sales and use tax.

The bill exempts charges for private investigative services provided by a small private investigative agency from the sales and use tax.

The bill defines the term "small private investigative agency" as a licensed private investigator that employs three or fewer employees and reported less than $150,000 in taxable sales during the preceding calendar year for providing private investigative services.

The bill provides emergency rulemaking authority for the Department of Revenue.

The Revenue Estimating Conference (REC) estimated that the bill as filed would have a negative cash and recurring impact on General Revenue of $0.3 million in FY 2022-23, and a negative cash and recurring impact on local government revenues of $0.1 million in FY 2022-23. The REC has not reviewed the bill as amended; however, staff estimates that the amended bill may have a larger negative revenue impact due to additional entities that would qualify for the exemption.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Sales and Use Tax

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property,[1] admissions,[2] transient rentals,[3] and a limited number of services. Chapter 212, F.S., authorizes the levy and collection of Florida's sales and use tax and provides the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.[4]

The state of Florida does not usually collect sales tax from the vast majority of services performed. An example of taxed services would be investigative and crime protection services, interior nonresidential cleaning services, nonresidential pest control services, or a service which includes repairing or creating a product. This means that a yoga instructor would not be required to collect sales tax, while a janitor or private investigator may be required to collect sales tax.

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.[5] A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202, F.S."[6] The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently being levied vary by county in a range of 0.5 to 1.5 percent.[7]

Currently, charges for detective, burglar protection, and other protection services listed under the North American Industry Classification System (NAICS) National Numbers 561611 (investigative services), 561612 (security guards and patrol services), 561613 (armored car services), and 561621 (security systems services, except locksmiths) are subject to the 6 percent sales and use tax.[8] Fingerprint services required under s. 790.06, F.S., or s. 790.062, F.S., are not subject to the tax.

Law enforcement[9] and public safety services are not subject to tax irrespective of whether the duty is characterized as "extra duty," "off-duty," or "secondary employment," and irrespective of whether the officer is paid directly or through the officer's agency by an outside source.

Charges for detective, burglar protection, and other protection security services performed in this state but used outside this state are exempt from taxation. Charges for detective, burglar protection, and other protection security services performed outside this state and used in this state are subject to tax.[10]

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[1] S. 212.05(1)(a)1.a., F.S.
[2] S. 212.04(1)(b), F.S.
[3] S. 212.03(1)(a), F.S.
[4] S. 212.07(2), F.S.
[5] S. 212.055, F.S.
[6] Section 212.054(2)(a), F.S.
[7] Office of Economic and Demographic Research, *Florida Tax Handbook*, 227-228 (2021), http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2021.pdf (last visited Feb. 02, 2022).
[8] S. 212.05(1)(i)1., F.S.
[9] S. 943.10(1), F.S., defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.
[10] S. 212.05(1)(i)3., F.S.

Private Investigative Services

The Division of Licensing within the Department of Agriculture and Consumer Services (DACS) oversees the regulation of licensing of private investigative services.[11] As of December 31, 2021, the Division has issued 2,627 private investigative agency licenses and 6,992 private investigator licenses.[12]

A "private investigator" is defined as any individual who, for consideration, advertises as providing or performs private investigations.[13] A "private investigative agency" means any person who, for consideration, advertises as providing or is engaged in the business of furnishing privation investigations.[14] "Private investigation" is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation thereof.[15]

Applicants for licensure as a private investigator must complete and submit an application to DACS and meet certain requirements. An applicant must:

- Be at least 18 years old;
- Be one of the following:
  - A United States citizen,
  - A permanent legal resident, or
  - A holder of a work visa from the United States Citizenship and Immigration Service;
- Have no disqualifying criminal history;
- Be of good moral character;
- Have no history of:
  - Mental illness,
  - Alcohol abuse, or
  - Substance abuse; and
- Submit an application with certain identifying information;[16] and
- Complete 40 hours of required training and submit proof thereof to DACS.[17]

Any person, firm, company, partnership, or corporation which engages in business as a private investigative agency shall have a Class "A" license.[18] To become a private investigator in Florida, a Class "C" Private Investigator license is required.[19] An applicant for the Class "C" Private Investigator license must have two years of lawfully gained, verifiable, full-time experience to qualify for the

[11] Ch. 493, F.S.
[12] Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports* (as of December 31, 2021), *available at* https://www.fdacs.gov/Divisions-Offices/Licensing/Statistical-Reports (last visited Jan. 28, 2022).
[13] Section 493.6101(16), F.S.
[14] Section 493.6101(15), F.S.
[15] Section 493.6101(17), F.S.
[16] S. 493.6105, F.S.
[17] S. 493.6303(4)(a), F.S.
[18] S. 493.6201(1), F.S.
[19] S. 493.6201(5), F.S.

license.[20] In order to carry a firearm in the course of performing such duties, the licensee must also obtain a Class "G" Statewide Firearm license in addition to the Class "C" Private Investigator license.[21]

Effect of the Bill

The bill exempts charges for investigative services provided by a "small private investigative agency" from the sales and use tax.

The bill defines the term "small private investigative agency" as:

A private investigator licensed as under s. 493.6201, F.S., that:

- Employs three or fewer full-time or part-time employees, including those performing services pursuant to an employment leasing arrangement as defined in s. 468.520(4), F.S., and
- Reported less than $150,000 in taxable sales during the preceding calendar year for providing private investigative services for all businesses related through common ownership.

The bill grants emergency rulemaking authority to the Department of Revenue.

The bill takes effect July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S., to exempt private investigative services provided by a small private investigative agency.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating conference estimated that the bill will have a negative cash and recurring impact on General Revenue of $0.3 million in FY 2022-23.[22] The REC has not reviewed the bill as amended; however, staff estimates that the amended bill may have a larger negative revenue impact due to additional entities that would qualify for the exemption.

2. Expenditures:

   None.

[20] S. 493.6203, F.S.
[21] S. 493.6115(2), F.S.
[22] 2022 Regular Session Revenue Estimating Conference, Impact Conference Results (Jan. 07, 2022), ps. 173-175, http://edr.state.fl.us/content/conferences/revenueimpact/archives/2022/_pdf/Impact0107.pdf (last visited Feb. 02, 2022).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating conference estimated that the bill as filed would have a negative cash and recurring impact on local government revenues of $0.1 million in FY 2022-23.[23] The REC has not reviewed the bill as amended; however, staff estimates that the amended bill may have a larger negative revenue impact due to additional entities that would qualify for the exemption.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Charges for private investigations provided by small private investigative agencies will be exempt from sales tax.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue is granted emergency rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[23] *Id.*

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On Tuesday, February 8, 2022, the Regulatory Reform Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarified that the sales tax exemption applies to "private investigative agencies."
- Applied the $50,000 compensation threshold to each of the three or fewer employees, instead of to the business as a whole, and specifies that it must be "taxable" compensation.

On Thursday, February 17, 2022, the Ways & Means Committee adopted a strike-all amendment and reported the bill favorable as a committee substitute. The committee substitute:

- Revised the location of the exemption, from s. 212.05 to s. 212.08.
- Clarified that the definition of "small private investigative agency" was limited to agencies with a total of less than $150,000 in taxable services in the prior calendar year.
- Provided emergency rulemaking authority to the Department of Revenue.

The analysis is drafted to the committee substitute as passed by the Ways & Means Committee.

A bill to be entitled

An act relating to tax exemption for charges for private investigations; amending s. 212.08, F.S.; defining the term "small private investigative agency"; providing an exemption from the state tax on sales, use, and other transactions for investigative services provided by a small private investigative agency; authorizing the Department of Revenue to adopt emergency rules to implement the act; providing effective dates.

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

Section 1. Paragraph (ppp) is added to subsection (7) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means,

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

including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(ppp) Small private investigative agencies.—

1. As used in this paragraph, the term "small private investigative agency" means a private investigator licensed under s. 493.6201 which:

a. Employs three or fewer full-time or part-time employees, including those performing services pursuant to an employee leasing arrangement as defined in s. 468.520(4), in total; and

b. Reported less than $150,000 in taxable sales during the previous calendar year for providing private investigative services as defined in s. 493.6101(17) for all its businesses

related through common ownership.

2. The sale of investigative services by a small private investigative agency to a client is exempt from the tax imposed by this chapter.

Section 2. (1) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing the amendment made by this act to s. 212.08, Florida Statutes.

(2) Notwithstanding any other law, emergency rules adopted pursuant to this subsection are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section shall take effect upon this act becoming a law and expires January 1, 2026.

Section 3. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 785 Two-way Radio Communication Enhancement Systems
SPONSOR(S): Insurance & Banking Subcommittee, Botana
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1190

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

SUMMARY ANALYSIS

Chapter 633, F.S., Fire Prevention and Control, designates the Chief Financial Officer (CFO) as the State Fire Marshal (SFM). The SFM, through the Division of the State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety. The SFM adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, and is the minimum fire prevention code deemed adopted in each municipality, county, and special district with firesafety responsibilities. Local fire authorities (authorities having jurisdiction) set standards for radio signal strength throughout buildings within their jurisdiction to ensure consistent fire and rescue communication capabilities.

Two-way radio communication enhancement systems are devices installed after a building is constructed that accept, and then amplify, radio signals used by first responders. The generally desired effect is that the radio signal strength at ground level, where a fire rescue operation might be based, is equal to the radio signal strength in all locations throughout the building, to ensure consistent communication. Several devices are available to boost signal strength to meet required radio signal strength. Amendments to the FFPC, effective January 1, 2018, provided that all new and existing buildings must maintain minimum radio signal strength at a level determined by the authority having jurisdiction.

Section 633.202(18), F.S., enacted in 2016, provides that authorities having jurisdiction shall determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings. The FFPC defines a high-rise building as a building where the floor of an occupiable story is greater than 75 feet above the lowest level of fire department vehicle access. Currently, existing high-rise buildings are not required to comply with minimum radio strength for fire department communications and two-way radio communication enhancement systems as required by the FFPC until January 1, 2025. By January 1, 2024, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply to the local government agency having jurisdiction for an appropriate permit for the required system installation. Such an existing building must demonstrate that the building will become compliant with the FFPC by January 1, 2025.

The bill establishes that two-way radio communication enhancement, or equivalent systems may be used to comply with the minimum radio signal strength requirements for fire department communications. However, the bill also establishes that these systems are not required in apartment buildings that are 75 feet or less in height with exterior components constructed of wood frame. The bill also establishes that evidence of wood frame construction shall be shown by the property owner providing building permit documentation that confirms this type of construction.

The bill has no impact on state or local government revenues or expenditures, and may have an indeterminate, positive impact on the private sector.

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

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:
Background

State Fire Marshal

Chapter 633, F.S., Fire Prevention and Control, designates the Chief Financial Officer (CFO) as the State Fire Marshal (SFM). The SFM, through the Division of the State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety.[1] The SFM also has the responsibility to minimize the loss of life and property due to fire.[2] Pursuant to this authority, the SFM regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

Florida Fire Prevention Code

The SFM adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules.[3] The SFM adopts a new edition of the FFPC every three years[4] and the 7th edition of the FFPC took effect on December 31, 2020.[5] The FFPC is largely based on the *National Fire Protection Association's (NFPA) Standard 1, Fire Prevention Code,* along with the current edition of the *NFPA's Life Safety Code, NFPA 101*.[6]

The FFPC is the minimum fire prevention code deemed adopted in each municipality, county, and special district with firesafety responsibilities, and applies to every building and structure throughout the state with few exceptions.[7] Municipalities, counties, and special districts with firesafety responsibilities may supplement the FFPC with more stringent standards.[8] Local fire authorities (authorities having jurisdiction) set standards for radio signal strength throughout buildings within their jurisdiction to ensure consistent fire and rescue communication capabilities.

Radio Signal Strength for Fire Department Communications

The life safety of firefighters and citizens depends on reliable, functional communication tools that work in the harshest and most hostile of environments.[9] "All firefighters, professional and volunteer, operate in extreme environments that are markedly different from those of any other radio users."[10] The radio connects the firefighters to command and outside assistance in the most desperate of situations.[11] The focus on radio signal strength stems from difficulties firefighters experienced when attempting rescue operations on September 11, 2001, in the World Trade Center Towers.[12] These firefighters found that in

[1] S. 633.104 F.S.
[2] *Id.*
[3] Ch. 69A, F.A.C.
[4] S. 633.202, F.S.
[5] *See* Florida Fire Prevention Code (FFPC), https://www.myfloridacfo.com/division/sfm/bfp/floridafirepreventioncodepage.htm (last visited Jan. 28, 2022).
[6] S. 633.202(2), F.S.
[7] S. 633.208, F.S. and R. 69A-60.002(1), F.A.C.
[8] S. 633.208(3), F.S., and 69A-60.002(2), F.A.C.
[9] U.S. Fire Administration, *Voice Radio Communications Guide for the Fire Service* (June 2016), https://www.usfa.fema.gov/downloads/pdf/publications/Voice_Radio_Communications_Guide_for_the_Fire_Service.pdf (last visited Jan. 28, 2022).
[10] *Id.*
[11] *Id.*
[12] *See* National Fire Protection Association, *Assessment of Total Evacuation Systems for Tall Buildings: Literature Review*, evacsystemstallbuildingsliteraturereviewexecsum.ashx (nfpa.org) (last visited Jan. 29, 2022).

certain areas of the buildings their radio signal degraded, making live communications difficult or impossible.[13]

Two-way radio communication enhancement systems are devices installed after a building is constructed that accept, and then amplify, radio signals used by first responders. A radio frequency site survey may be conducted in a building to determine areas where radio signal strength drops due to materials used in construction, such as thick walls, metal construction, underground structures, and low-emissivity glass windows. The generally desired effect is that the radio signal strength at ground level, where a fire rescue operation might be based, is equal to the radio signal strength in all locations throughout the building, to ensure consistent communication. Several devices are available to boost signal strength to meet required radio signal strength. These include bi-directional amplifiers and networks of indoor antennae, referred to collectively as a distributed antenna system.[14]

Florida Fire Code Minimum Radio Signal Strength

Amendments to the FFPC, effective January 1, 2018, provided that all new and existing buildings must maintain minimum radio signal strength at a level determined by the authority having jurisdiction.[15] Where required by a local fire authority, two-way radio communication enhancement systems must comply with federal standards for installation and upkeep.[16] Additionally, if a two-way radio communication enhancement system would have a negative impact on the operations of a facility, the local fire authority may accept an automatically activated emergency responder radio coverage system in the alternative.[17]

Minimum Radio Signal Strength for High-Rise Buildings

Section 633.202(18), F.S., enacted in 2016,[18] provides that authorities having jurisdiction shall determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings. The FFPC defines a high-rise building as a building where the floor of an occupiable story is greater than 75 feet above the lowest level of fire department vehicle access.[19] Currently, existing high-rise buildings are not required to comply with minimum radio strength for fire department communications and two-way radio communication enhancement systems as required by the FFPC until January 1, 2025.[20] By January 1, 2024, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply to the local government agency having jurisdiction for an appropriate permit for the required system installation.[21] Such an existing building must demonstrate that the building will become compliant with the FFPC by January 1, 2025.[22]

Effect of the Bill

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[13] *Id.*

[14] *See* City of Treasure Island, Florida, *Two-Way Radio Communications Enhancement Systems Requirements* (Apr. 20, 2019), High-Rise Public Safety System Integrators (mytreasureisland.org) (last visited Jan. 29, 2022); *see also* East Lake Tarpon Special Fire Control District, *Information Bulletin: Two-Way Radio Communication Enhancement System Requirements*, Bulletin+East+Lake+Two+Way+Communications.pdf (elfr.org) (last visited Jan. 29, 2022).

[15] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.1, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Jan. 29, 2022).

[16] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.2, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Jan. 29, 2022).

[17] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.3, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Jan. 29, 2022).

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

[19] Florida Fire Prevention Code (7th ed. 2020) s. 3.3.29.6, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Jan. 29, 2022).

[20] S. 633.202(18), F.S. Under current law, the compliance dates for existing apartment buildings are the same as those for all other high-rise buildings.

[21] *Id.*

[22] *Id.*

The bill establishes that two-way radio communication enhancement, or equivalent, systems may be used to comply with the minimum radio signal strength requirements for fire department communications. The bill also establishes that these systems are not required in apartment buildings that are 75 feet or less in height with exterior components constructed of wood frame. The bill also establishes that evidence of wood frame construction shall be shown by the property owner providing building permit documentation that confirms this type of construction.

B. SECTION DIRECTORY:
Section 1. Amends s. 633.202, F.S., relating to Fire Prevention Code.

Section 2. Provides and effective date of 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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate, but potentially positive impact on the private sector. Certain apartment buildings will be made exempt from putting in two-way radio systems and will save the cost associated with putting in those systems.

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:

While the bill states that two-way radio communication enhancement systems are not required in buildings that are 75 feet or less in height with exterior components constructed of wood frame, language not changed by the bill in s. 633.202(18), F.S., reads as though all existing apartment buildings are required to comply with the communication requirements. It is suggested that a clarification be made to the statutory language not changed by the bill to address compliance by apartment buildings greater than 75 feet, apartment buildings less than 75 feet that are wood frame, and apartment buildings less than 75 feet that are not wood frame.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 2, 2022, the Insurance & Banking Subcommittee Considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment made the following modifications to the bill:

- Established that apartment buildings that are 75 feet or less in height with exterior components constructed of wood frame are exempt from the requirement to install two-way radio communication enhancement, or equivalent, systems.
- Established that evidence of wood-frame construction shall be shown by the property owner providing building permit documentation that confirms this type of construction.

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

A bill to be entitled

An act relating to two-way radio communication enhancement systems; amending s. 633.202, F.S.; authorizing the use of two-way radio communication enhancement systems to comply with certain radio signal strength requirements in the Florida Fire Prevention Code; exempting certain apartment buildings from requiring two-way radio communication enhancement systems; providing an effective date.

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

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

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings. Two-way radio communication enhancement systems or equivalent systems may be used to comply with the minimum radio signal strength requirements. However, two-way radio communication enhancement systems or equivalent systems are not required in apartment buildings 75 feet or less in height with the exterior components constructed of wood frame. Evidence of wood frame construction shall be shown by the property owner providing building permit

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

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

Section 2. This act shall take effect July 1, 2022.

COMMERCE COMMITTEE

CS/HB 785 by Rep. Botana
Two-way Radio Communication Enhancement Systems

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Botana (strike-all): The strike-all amendment contains the current provisions of the bill and makes the following modifications and clarifications:

- Clarifies that the authority having jurisdiction to determine the minimum radio signal strength for fire department communications has jurisdiction over buildings of any height, not just high-rise buildings.
- Establishes that apartment buildings that are 75 feet or less in height and constructed of wood frame must also meet the following in order to be exempt from the requirement to install two-way radio communication enhancement systems or equivalent systems:
    - The building has 150 or less dwelling units; and
    - All dwelling units in the building discharge to the exterior or to a corridor that leads directly to an exit as defined in the Florida Building Code.
- Provides clarification about which buildings, other than apartment buildings 75 feet or less in height must comply with the requirements for minimum radio signal strength.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove everything after the enacting clause and insert:

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

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new ~~high-rise~~ and existing ~~high-rise~~ buildings. Two-way radio communication enhancement systems or equivalent systems may be used to comply with the minimum radio signal strength requirements. However, two-way radio communication enhancement systems or equivalent systems are not required in apartment buildings 75 feet or less in height that are constructed using

wood framing, provided that the building has less than 150 dwelling units and that all dwelling units discharge to the exterior or to a corridor that leads directly to an exit as defined by the Florida Building Code. Evidence of wood frame construction shall be shown by the owner providing building permit documentation which identifies the construction type as wood frame. Existing high-rise buildings, as defined by the Florida Building code are not required to comply with minimum radio strength for fire department communications and two-way radio communication enhancement systems ~~system enhancement communications~~ as required by the Florida Fire Prevention Code until January 1, 2025. However, by January 1, 2024, an existing high-rise building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2025. Existing high-rise apartment buildings are not required to comply until January 1, 2025. However, existing high-rise apartment buildings are required to apply for the appropriate permit for the required communications installation by January 1, 2024.

Section 2. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 837 Hurricane Loss Mitigation Program
SPONSOR(S): Infrastructure & Tourism Appropriations Subcommittee and Insurance & Banking Subcommittee, Willhite
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 578

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N, As CS	Fortenberry	Luczynski
2) Infrastructure & Tourism Appropriations Subcommittee	13 Y, 0 N, As CS	Hicks	Davis
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund, in 1993, in response to problems that developed in the residential property insurance industry following a series of catastrophic events, including Hurricane Andrew in 1992. When the Internal Revenue Service granted tax-exempt status to the FHCF, it required a certain amount of FHCF funds be appropriated for hurricane mitigation purposes.

Since Fiscal Year 1997-1998 and annually thereafter, Florida law directs the Legislature to appropriate no less than $10 million and no more than 35 percent of the FHCF's investment income from the prior fiscal year for the purpose of providing funding to state agencies, local governments, public and private educational institutions, and nonprofit organizations to support programs intended to:

- Improve hurricane preparedness;
- Reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures or in the financing of; or
- Protect local infrastructure from potential hurricane damage.

In 1999, the Legislature created the Hurricane Loss Mitigation Program (HLMP). The HLMP is funded by the annual appropriation of $10 million from the FHCF. The funds are to be used as follows:

- $3 million for retrofitting public facilities for use as hurricane shelters.
- $7 million for programs to improve the wind resistance of residences and mobile homes, education concerning the Florida Building Code's cooperative programs with local governments and the Federal Government, and other efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster. These funds are further directed as follows:
    - $2.8 million to the Mobile Home Tie-Down Program (MHTDP);
    - $700,000 to the Florida International University center for hurricane research; and
    - $3.5 million to the Hurricane Loss Mitigation Program Retrofit Grant for the purpose of improving community resiliency.

The bill establishes that funds currently appropriated for the retrofitting of hurricane shelters may also be used for the construction of hurricane shelters. The bill transfers the Manufactured Housing and Mobile Home Mitigation and Enhancement Program, including the MHTDP, from Tallahassee Community College to Gulf Coast State College. This transfer includes all powers, duties, records and unspent appropriation balances of the programs. The bill saves the HLMP from repeal by extending its expiration date to June 30, 2032.

The bill maintains the annual $10 million transfer of investment income from the FHCF to the Division of Emergency Management to support the expenditures associated with the HLMP. This bill conforms to HB 5001, the proposed House of Representatives General Appropriations Act for Fiscal Year 2022-2023. See Fiscal Analysis Section.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund, in 1993.[1] The creation of the FHCF stemmed from issues that developed in the residential property insurance market following property losses due to a series of catastrophic events, including Hurricane Andrew in 1992.[2] State action was required to correct the inability of the private insurance and reinsurance markets to maintain sufficient capacity.[3] The FHCF is intended to provide a stable and ongoing source of reimbursement to insurers for a portion of their catastrophic hurricane losses, creating additional insurance capacity for the state.[4] The FHCF is administered by the State Board of Administration, which is governed by a three-member Board of Trustees, comprised of the Governor, who serves as the chair, the Chief Financial Officer, and the Attorney General.[5]

The Internal Revenue Service issued a private letter ruling (PLR)[6] granting tax-exempt status to the FHCF, which requires a certain amount of FHCF funds to be appropriated for hurricane mitigation purposes.[7] Annually since Fiscal Year 1997-1998, Florida law directs the Legislature to appropriate no less than $10 million, but not more than 35 percent, from the investment income of the FHCF from the prior fiscal year.[8] The FHCF appropriation is for the purpose of providing funding for state agencies, local governments, public and private educational institutions, and nonprofit organizations to support programs intended to:

- Improve hurricane preparedness;
- Reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures or in the financing of upgrades; or
- Protect local infrastructure from potential hurricane damage.[9]

In 1999,[10] the Legislature created the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA); however, the HLMP is currently located in the Division of Emergency Management (DEM) as the DCA was dissolved.[11] The HLMP is funded by the annual transfer of $10 million of investment income from the FHCF to the DEM, which is appropriated for the program.

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[1] Chapter 93-409, Laws of Florida.
[2] *See* s. 215.555(1)(b), F.S.
[3] S. 215.555(1)(c), F.S.
[4] S. 215.555(1)(e), F.S.
[5] Ss. 215.555(3) and 215.44(1), F.S.
[6] A "private letter ruling," or PLR, is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. Internal Revenue Service, *Tax Exempt Bonds Private Letter Rulings: Some Basic Concepts*, https://www.irs.gov/tax-exempt-bonds/teb-private-letter-ruling-some-basic-concepts#:~:text=A%20private%20letter%20ruling%2C%20or,taxpayers%20or%20by%20IRS%20personnel. (Last visited Jan. 21, 2022).
[7] State Board of Administration of Florida, *Florida Hurricane Catastrophe Fund Fiscal Year 2008-2009 Annual Report*, p. 16, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20100413_SBA_CATF_Annual_Report.pdf?ver=2016-06-08-121914-787 (last visited Feb. 26, 2021).
[8] S. 215.555(7)(c), F.S.
[9] *Id.*
[10] Chapter 99-305, Laws of Florida.
[11] S. 215.559, F.S.

Of the $10 million annually appropriated to the HLMP, $3 million is directed towards retrofitting public facilities for use as hurricane shelters. DEM must prioritize funds for projects included in the annual Shelter Retrofit Report and projects in regional planning council areas with shelter deficits.[12]

DEM's 2020 Shelter Retrofit Report indicates that significant success has been made toward reducing the deficit of safe[13] public hurricane evacuation shelter space (shelter space).[14] The combination of existing building surveys, retrofit projects, and the availability of retrofit and mitigation-related funds, as well as the application of enhanced hurricane resistance design and construction standards has increased the number of shelter spaces.[15] As of 2020, there are 1,060,767 shelter spaces.[16] Available shelter spaces were projected to increase to 1,120,174 by August 2021.[17]

The remaining $7 million of the $10 million appropriation must be used for programs that:

- Improve the wind resistance of residences and mobile homes, through loans, subsidies, grants, demonstration projects, and direct assistance;
- Educate persons concerning the Florida Building Code cooperative programs with local governments and the Federal Government; and
- Prevent or reduce losses or costs of rebuilding after a disaster.[18]

The $7 million is allocated to three programs. Forty percent ($2.8 million) is directed to the Mobile Home Tie-Down Program (MHTDP)[19], which is administered by Tallahassee Community College (TCC). The MHTDP is used to mitigate future losses for mobile homes and to provide tie-downs for mobile homes in communities throughout the state.[20]

Over the years, the MHTDP has been reviewed and audited. In 2016, the Department of Financial Services Bureau of Auditing (Bureau) audited the MHTDP and determined that a contractual agreement should exist between DEM and TCC because the allocated funds are classified as "grant and aid."[21] The Bureau recommended a written agreement that incorporates the relevant statutory requirements, a clear scope of work, deliverables, monitoring, and financial consequences for failure to perform the minimum level of service.[22] DEM and TCC subsequently executed a written agreement for the program that incorporated the Bureau's recommendations, including a scope of work.[23] The program's scope of work requires the mobile home tie-down improvements under this program to meet or exceed the

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[12] S. 215.559(1)(b), F.S.

[13] "'Safe' is defined as meeting the intent of American Red Cross (ARC) Hurricane Evacuation Shelter Selection Standards (June 2018)." Florida Division of Emergency Management, 2020 State Retrofit Report (Nov. 2020), https://portal.floridadisaster.org/shelters/External/Current/2020%20SRR/2020%20Shelter%20Retrofit%20Report.pdf (last visited Jan. 21, 2022).

[14] *Id*.

[15] *Id*.

[16] *Id.*

[17] *Id*. As of the date of this analysis, a 2021 State Retrofit Report has not been published by the Division. Therefore, confirmation of the available increase in shelter space is currently unavailable.

[18] S. 215.559(1)(a), F.S.

[19] S. 215.555(2)(a), F.S.

[20] Florida Division of Emergency Management, *Florida Hurricane Loss Mitigation Program 2020 Annual Report* (Jan. 1, 2021), https://portal.floridadisaster.org/mitigation/HLMP/Internet%20Documents/Reports/2020%20HLMP%20Annual%20Report.pdf (last visited Jan. 21, 2022).

[21] *May 10, 2016 Letter from Department of Financial Services Bureau of Auditing to Division of Emergency Management Director Bryan Koon*, https://www.myfloridacfo.com/division/aa/Aud_Act/docs/DEM%20Report%20dtd%205-10-2016_Redacted.pdf (last visited Jan. 21, 2022).

[22] *Id*.

[23] *Id*.

standards established in Rules 15C-1.0101 through 15C-1.0109, F.A.C.[24] However, the program is not intended to bring an existing mobile home up to building code standards.[25]

In Fiscal Year 2020-2021, nine counties (Brevard, Charlotte, Collier, Lake, Lee, Marion, Osceola, Pinellas, and Polk) benefitted from the Mobile Home Tie-Down Program. A total of 686 manufactured or mobile homes were retrofitted.[26] Currently, the program is not accepting new applications, as the waiting list exceeds 5 years; new applications will be accepted once the waiting list is reduced to 3 years.[27]

Ten percent ($700,000) of the $7 million allocation is directed to the Florida International University (FIU) center for hurricane research.[28] During Fiscal Year 2020-2021, FIU conducted research including the following:

- Quantification of Wind Driven Rain Intrusion Through Shuttered Sliding Glass Door Systems;
- Aerodynamic Loading of Residential Buildings Subject to Experimental Downbursts and Hurricanes;
- Codification Wind-induced Loads on Irregular Shape Buildings Phase II;
- Development of Integrated Storm Tide and Freshwater Flooding Model Phase 4;
- Improving Individual Preparedness for Hurricanes; Lessons to be Learned from Longitudinal Survey Data Collected from Florida; and
- Education and Outreach Programs to Convey the Benefits of Various Hurricane Loss Mitigation Devices and Techniques.[29]

The remaining 50 percent ($3.5 million) of the $7 million allocation is used to fund the Hurricane Loss Mitigation Program Retrofit Grant (Grant) for the purpose of improving community resiliency.[30] Funded activities include inspections, retrofits, and construction or modification of building components designed to increase a structure's ability to withstand hurricane conditions.[31]

Under this Grant, eligible applicants are nonprofit organizations, qualified for-profit organizations, and governmental entities.[32] Homeowners are not eligible, but may partner with an eligible local government.[33] In Fiscal Year 2020-2021, 13 recipients received the grant to conduct wind mitigation retrofits to homes. These recipients included:

- Calhoun County;
- Carrabelle;
- Centro Campesino;
- City of Bradenton;
- City of Deerfield Beach;
- City of Lauderdale Lakes;
- Franklin County;
- Gulf County;
- Memorial Health;
- Miami Dade Community Action & Human Services Department;
- North Lauderdale;

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[24] Department of Financial Services, *Original Contract - D9042 (executed Aug. 7, 2018)*, https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=310000&ContractId=D9042 (last visited Jan. 21, 2022).
[25] Tallahassee Community College, Mobile Home Tie-Down Program, https://www.tcc.fl.edu/about/college/administrative-services/sponsored-programs/mobile-home-tie-down-program/ (last visited Jan. 21, 2022).
[26] Florida Division of Emergency Management, *Florida Hurricane Loss Mitigation Program 2021 Annual Report* (Jan. 1, 2022). According to TCC, the number of mobile homes completed during the 2020-2021 fiscal year was significantly impacted by COVID-19.
[27] Tallahassee Community College, *supra* note 25.
[28] S. 215.559(3), F.S.
[29] Florida Division of Emergency Management, *supra* note 26.
[30] Florida Division of Emergency Management, *Hurricane Loss Mitigation Program*, https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last visited Jan. 21, 2022).
[31] *Id.*
[32] *Id.*
[33] *Id.*

- Pompano Beach; and
- St. Lucie Habitat for Humanity.[34]

Six additional projects were funded that did not involve residential wind retrofitting, including the following: Banyan Health, City of Edgewater, City of Flagler Beach, City of Panama City, DeSoto County Board of County Commissioners, and West Palm Beach Housing Authority.[35]

Current law requires DEM, with the exception of the hurricane research program conducted by FIU, to develop these programs in consultation with an advisory council (Council).[36] The Council also reviews and approves FIU's hurricane research work plan.[37] The Council must consist of one representative designated by each of the following:

- Chief Financial Officer;
- Florida Homebuilders Association;
- Florida Insurance Council;
- Federation of Manufactured Home Owners;
- Florida Association of Counties; and
- Florida Manufactured Housing Association.[38]

DEM is required to submit a full report and evaluation of these activities on January 1st each year.[39] The report must be submitted to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate.[40] The Office of Insurance Regulation (OIR) must review the report and make recommendations to the insurance industry as deemed appropriate by the OIR.[41] The recommendations may be used by insurers for potential discounts or rebates.[42]

Below are the Hurricane Loss Mitigation Program Activities for Fiscal Year 2020-2021:

Hurricane Loss Mitigation Program Activities for Fiscal Year 2020-2021[43]

Shelter Retrofit Program	$3,000,000
HLMP Retrofit Grant	$3,500,000
Manufactured Homes	$2,800,000
Hurricane Mitigation Research	$700,000
TOTAL	**$10,000,000**

The statute that created the HLMP, also created the Manufactured Housing and Mobile Home Mitigation and Enhancement Program (MHMHMEP) to mitigate or enhance manufactured and mobile homes in specified areas of the state.[44] However, the MHMHMEP does not share in the $10 million appropriated from the FHCF and is not currently funded. The MHMHMEP also references an obsolete rate standard for mobile home insurance policies issued by Citizens Property Insurance Corporation.[45]

Section 215.559, F.S., relating to the HLMP is scheduled to be repealed on June 30, 2022.[46]

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[34] Florida Division of Emergency Management, *supra* note 26.
[35] *Id.*
[36] S. 215.559(4), F.S.
[37] S. 215.559(3), F.S.
[38] S. 215.559(4), F.S.
[39] S. 215.559(6), F.S.
[40] *Id*.
[41] *Id*.
[42] *Id.*
[43] Florida Division of Emergency Management, *supra* note 26.
[44] S. 215.559(2)(b), F.S.
[45] S. 215.559(2)(b)3., F.S.
[46] S. 215.559(7), F.S.

Effect of the Bill

The bill establishes that the funds currently appropriated for the retrofitting of hurricane shelters may also be used for the construction of hurricane shelters. The bill transfers the MHMHMEP and the MHTDP, from Tallahassee Community College to Gulf Coast State College. Effective July 1, 2022, all powers, duties, functions, records, property, pending issues and unspent appropriations balances of the programs are transferred from Tallahassee Community College to Gulf Coast State College.

The bill saves the HLMP from repeal by extending the expiration date of the relevant statute to June 30, 2032.

In relation to the mobile home program, the bill also removes obsolete rate standard language regarding mobile home insurance policies issued by Citizens.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.559, F.S., related to Hurricane Loss Mitigation Program.

Section 2. Provides for the transfer of powers, records and unspent funding to Gulf Coast State College.

Section 3. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Annually, $10 million of investment income is transferred from the FHCF to DEM and is appropriated for the HLMP. This recurring appropriation would continue to be available for the program until June 30, 2032, and conforms to HB 5001, the proposed House of Representatives General Appropriations Act for Fiscal Year 2022-2023.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that research and program activities conducted through the HLMP strengthen structures, educate the public, and reduce property losses, the private sector will benefit. However, the impact is indeterminate.

D. FISCAL COMMENTS:

Current law specifies that the Legislature must appropriate no less than $10 million, but not more than 35 percent, from the investment income of the FHCF from the prior fiscal year for hurricane mitigation effort. Pursuant to the PLR, failure to spend FHCF funds on hurricane loss mitigation efforts could jeopardize the tax-exempt status of the FHCF.

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:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 2, 2022, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably as a committee substitute. The amendment made the following modifications to the bill:

- Established that the funds currently appropriated for the retrofitting of hurricane shelters may also be used for the construction of hurricane shelters.
- Transferred the MHMHMEP and the MHTDP from Tallahassee Community College to Gulf Coast State College.

On February 16, 2022, the Infrastructure & Tourism Appropriations Subcommittee considered the bill, adopted an amendment with an adhering amendment, and reported the bill favorably as a committee substitute. The amendments provided for the transfer of all powers, duties, functions, records, property, pending issues and unspent appropriations balances of the MHMHMEP and the MHTDP programs from Tallahassee Community College to Gulf Coast State College. The amendment further changed the bill's effective date to July 1, 2022.

The analysis is drafted to the committee substitute as passed by the Infrastructure & Tourism Appropriations Subcommittee.

A bill to be entitled

An act relating to the Hurricane Loss Mitigation Program; amending s. 215.559, F.S.; revising the use of certain funds from the Florida Hurricane Catastrophe Fund to include construction of certain facilities; revising the title of a certain annual report; revising provisions to require the Manufactured Housing and Mobile Home Mitigation and Enhancement Program to be operated by Gulf Coast State College; deleting construction related to Citizens Property Insurance Corporation coverage rates; delaying the future repeal of the Hurricane Loss Mitigation Program; directing the transfer of specified powers, duties, functions, records, property, issues, and funds relating to the Manufactured Housing and Mobile Home Mitigation and Enhancement Program from Tallahassee Community College to the Gulf Coast State College; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1), subsection (2), and subsection (7) of section 215.559, Florida Statutes, are amended to read:

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

215.559 Hurricane Loss Mitigation Program.—A Hurricane Loss Mitigation Program is established in the Division of Emergency Management.

(1) The Legislature shall annually appropriate $10 million of the moneys authorized for appropriation under s. 215.555(7)(c) from the Florida Hurricane Catastrophe Fund to the division for the purposes set forth in this section. Of the amount:

(b) Three million dollars in funds shall be used to construct or retrofit ~~existing~~ facilities used as public hurricane shelters. Each year the division shall prioritize the use of these funds for projects included in the annual report of the Shelter Development ~~Retrofit~~ Report prepared in accordance with s. 252.385(3). The division must give funding priority to projects in regional planning council regions that have shelter deficits and to projects that maximize the use of state funds.

(2)(a) Forty percent of the total appropriation in paragraph (1)(a) shall be used to inspect and improve tie-downs for mobile homes.

(b)1. The Manufactured Housing and Mobile Home Mitigation and Enhancement Program is established. The program shall require the mitigation of damage to or the enhancement of homes for the areas of concern raised by the Department of Highway Safety and Motor Vehicles in the 2004-2005 Hurricane Reports on the effects of the 2004 and 2005 hurricanes on manufactured and

mobile homes in this state. The mitigation or enhancement must include, but need not be limited to, problems associated with weakened trusses, studs, and other structural components caused by wood rot or termite damage; site-built additions; or tie-down systems and may also address any other issues deemed appropriate by the Gulf Coast State College ~~Tallahassee Community College~~, the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The program shall include an education and outreach component to ensure that owners of manufactured and mobile homes are aware of the benefits of participation.

2. The program shall be a grant program that ensures that entire manufactured home communities and mobile home parks may be improved wherever practicable. The moneys appropriated for this program shall be distributed directly to the Gulf Coast State College ~~Tallahassee Community College~~ for the uses set forth under this subsection.

3. Upon evidence of completion of the program, the Citizens Property Insurance Corporation shall grant, on a pro rata basis, actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles for the properties of owners of manufactured homes or mobile homes on which fixtures or construction techniques that have been demonstrated to reduce the amount of loss in a windstorm have

been installed or implemented. The discount on the premium must be applied to subsequent renewal premium amounts. Premiums of the Citizens Property Insurance Corporation must reflect the location of the home and the fact that the home has been installed in compliance with building codes adopted after Hurricane Andrew. ~~Rates resulting from the completion of the Manufactured Housing and Mobile Home Mitigation and Enhancement Program are not considered competitive rates for the purposes of s. 627.351(6)(d)1. and 2.~~

4. On or before January 1 of each year, the Gulf Coast State College ~~Tallahassee Community College~~ shall provide a report of activities under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must set forth the number of homes that have taken advantage of the program, the types of enhancements and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in availability of insurance products to owners of manufactured or mobile homes.

The Gulf Coast State College ~~Tallahassee Community College~~ shall develop the programs set forth in this subsection in consultation with the Federation of Manufactured Home Owners of Florida, Inc., the Florida Manufactured Housing Association, and the Department of Highway Safety and Motor Vehicles. The moneys

appropriated for the programs set forth in this subsection shall be distributed directly to the Gulf Coast State College ~~Tallahassee Community College~~ to be used as set forth in this subsection.

(7) This section is repealed June 30, 2032 ~~2022~~.

Section 2. Effective July 1, 2022, all powers, duties, functions, records, property, pending issues, and unexpended balances of appropriations, allocations, and other funds in Tallahassee Community College related to the programs authorized under s. 215.559(2), Florida Statutes, are transferred to the Gulf Coast State College.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 871 Department of Highway Safety and Motor Vehicles
SPONSOR(S): Infrastructure & Tourism Appropriations Subcommittee, Brannan
TIED BILLS: **IDEN./SIM. BILLS:** SB 914

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 0 N	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	14 Y, 0 N, As CS	Hicks	Davis
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

The bill addresses several matters involving the Department of Highway Safety and Motor Vehicles (DHSMV). The bill:

- Provides law enforcement agencies additional time to submit required data concerning violations of the Ban on Texting While Driving Law and provides DHSMV additional time to compile this information and submit an annual report.
- Requires any operator of a motor vehicle to provide proof of insurance when requested by a law enforcement officer.
- Extends the private rebuilt vehicle inspection program, currently only authorized in Miami-Dade County, to 11 additional counties.
- Provides that a charter bus is an "apportionable vehicle" to make Florida law consistent with the International Registration Plan.
- Prohibits persons with certain unpaid violations from obtaining a replacement motor vehicle registration or license plate to avoid a registration stop.
- Establishes timeframes within which various dealers and manufacturers of recreational vehicles and mobile homes must report to DHSMV changes in required insurance and surety bonds.
- Adds minimum insurance requirements for commercial motor vehicles carrying passengers, referring to requirements in federal regulations.

The bill will have an indeterminate fiscal impact on local and state government revenues and an insignificant impact on state government expenditures. It does not appear to impact local government expenditures. See Fiscal Analysis section.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Texting While Driving Report Due Date

Current Situation

Florida's Ban on Texting While Driving Law prohibits, with specified exceptions, a person from operating a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device[1] or while sending or reading data on such a device for the purpose of nonvoice interpersonal communication. This includes texting, e-mailing, and instant messaging.[2]

When a law enforcement officer issues a citation for a violation of this law, the officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain and report such information to the Department of Highway Safety and Motor Vehicles (DHSMV). DHSMV must annually, by February 1 of each year, report the data collected to the Governor, the President of the Senate, and the Speaker of the House of Representatives. This data must be reported at least by statewide totals for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for local law enforcement agencies must combine the data for the county sheriffs and the municipal law enforcement agencies.[3]

Effect of the Bill

The bill revises the deadline for DHSMV's annual report on violations of the Ban on Texting While Driving Law. It requires law enforcement agencies to provide the race and ethnicity of violators to DHSMV by April 1 of each year. On July, 1, 2023, and on July 1 of each year thereafter, DHSMV must report the data to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Proof of Motor Vehicle Insurance

Current Situation

Under Florida law, any person required to carry motor vehicle insurance must have proof of such insurance in his or her immediate possession while operating a motor vehicle.[4]

If it appears to a law enforcement officer or other person authorized to issue traffic citations that the vehicle operator is also the owner or registrant of the vehicle, the operator must show proper proof of insurance upon demand.[5]

Effect of the Bill

The bill requires any operator of a motor vehicle, regardless of whether the person is the owner of the vehicle, to show proof of insurance upon the demand of a law enforcement officer or other person authorized to issue traffic violations.

[1] For purposes of s. 316.305, F.S., the term "wireless communications device" means any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service and that allows text communications.
[2] S. 316.305(3), F.S.
[3] S. 316.305(5), F.S. A copy of the report for January 1, 2020, through December 31, 2020 is available at: https://www3.flhsmv.gov/pdf/cabinetreports/TextingWhileDrivingReport_2020.pdf (last visited Jan. 12, 2022).
[4] S. 316.646(1), F.S.
[5] S. 316.646(2), F.S.

Private Rebuilt Vehicle Inspection Program

Current Situation

A rebuilt vehicle inspection is an examination of a rebuilt vehicle, specified documents, photographs of damage, receipts and invoices of certain repairs made, and proof that notice of rebuilding of the vehicle has been reported to the National Motor Vehicle Title Information System.[6]

In 2013, the Legislature directed DHSMV to implement and evaluate a pilot program allowing rebuilt vehicle inspection services to be offered by the private sector. The Private Rebuilt Vehicle Inspection Program (PRVIP) was implemented in Miami-Dade County from October 1, 2013, through June 30, 2015, and was subsequently extended through June 30, 2018. The program expired on July 1, 2018, since no legislation was enacted to continue it. Consequently, all rebuilt vehicle inspections reverted to DHSMV, resulting in an increase in DHSMV-provided rebuilt vehicle inspection services for Fiscal Year 2018-2019.[7] In 2019, the pilot program was reenacted and amended.[8] The program still applies to only Miami-Dade County.[9]

A PRVIP participant must sign a memorandum of understanding with DHSMV allowing the participant to conduct rebuilt motor vehicle inspections and specifying the requirements for oversight, bonding and insurance, procedures, and forms, and requiring the electronic transmission of documents. The annual authorization period for PRVIP participation runs from October 1 through September 30 each year and requires participants to annually renew their authorizations. Currently, there are 14 authorized facilities operating under PRVIP.[10]

Under PRVIP, DHSMV must conduct an onsite facility inspection at least once per quarter and must immediately terminate any participant from the program who fails to meet the minimum eligibility requirements.[11]

In July 2021, DHSMV issued its report on the effectiveness of the PRVIP Program. Although the program was only authorized for Miami-Dade County, customers from other counties also utilize the PRVIPs. Therefore, to meet customer demand, DHSMV recommended that locations in additional counties be authorized in statute. In addition to Miami-Dade County, DHSMV has offices in Escambia, Bay, Leon, Marion, Duval, Orange, Hillsborough, Volusia, Palm Beach, Broward and Manatee counties and could provide required oversight to prospective PRVIPs in those counties.[12]

Effect of the Bill

The bill requires DHSMV, by October 1, 2022, to expand the PRVIP to Bay, Broward, Duval, Escambia, Hillsborough, Leon, Manatee, Marion, Orange, Palm Beach and Volusia counties.

The bill also removes an obsolete requirement that DHSMV, by July 1, 2021, submit a report on PRVIP.

Charter Buses/Apportionable Vehicles

Current Situation

The International Registration Plan (IRP) is a reciprocity agreement among states of the United States, the District of Columbia, and provinces of Canada which recognizes the registration of commercial

[6] S. 319.141(1)(b), F.S.
[7] Department of Highway Safety and Motor Vehicles (DHSMV), *Private Rebuilt Inspection Program*, July 1, 2021. p. 2. https://www.flhsmv.gov/pdf/cabinetreports/privaterebuiltreport.pdf (last visited Dec. 16, 2021).
[8] Chapter 2019-169, Laws of Florida.
[9] S. 319.141(2), F.S.
[10] DHSMV, *supra* note 7.
[11] S. 319.141(8), F.S.
[12] DHSMV *supra* note 7 at 4.

motor vehicles (CMVs) registered by other jurisdictions. The plan provides for payment of apportioned licensing fees based on the total distance that these vehicles are operated in all member jurisdictions.[13]

For purposes of motor vehicle licensing, Florida law defines the term "apportionable vehicle" as any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, which is used or intended for use in two or more IRP member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and meets certain weight and axle requirements.[14]

In 2016, the IRP removed the charter bus exemption from its definition of apportionable vehicle. Therefore, Florida statutes are inconsistent with the current IRP definitions.[15]

Effect of the Bill

The bill provides that charter buses are no longer exempted from the statutory definition of "apportionable vehicle," making Florida's statutory definition consistent with the IRP.

Motor Vehicle Registration Stop

Current Situation

Under Florida law, if the name of an applicant for a motor vehicle registration appears on a DHSMV list of persons with unpaid tolls,[16] unpaid parking fines,[17] unpaid red light camera violations,[18] or wrecker liens,[19] a license plate or revalidation sticker may not be issued until that person's name no longer appears on the list or until the person presents a receipt from the governmental entity or the clerk of court showing that the outstanding fines have been paid or liens have been satisfied. This applies only to the annual renewal of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a licensed motor vehicle dealer, except for the transfer of registrations which include the annual renewals.[20]

While current law prohibits individuals with the above stops from renewing their registration, the law lets them obtain a replacement license plate, allowing them to circumvent the collection process.[21]

According to DHSMV, between October 2019 and October 2021, 3,994 registrations had their license plates replaced via a "replace registration" transaction while an open stop existed. Of these, over 3,700 were for unpaid toll violations.[22]

Effect of the Bill

The bill provides that these prohibitions against renewing a motor vehicle registration apply both to an annual renewal of a registration and the replacement of the motor vehicle registration or license plate.

Garage Liability Insurance/Surety Bonds

Current Situation

[13] International Registration Plan, Inc., *Welcome to IRP, Inc.* https://www.irponline.org/ (last visited Nov. 3, 2021).
[14] S. 320.01(24), F.S.
[15] DHSMV, Agency Analysis of 2022 House Bill 871, p. 3. (Dec. 17, 2021).
[16] S. 316.1001(4), F.S.
[17] S. 316.1967(6), F.S.
[18] S. 318.15(3), F.S.
[19] S. 713.78(13), F.S.
[20] S. 320.03(8), F.S.
[21] Attachment to E-mail from Kevin Jacobs, Legislative Affairs Director, DHSMV, 2022 Legislative Concepts, p. 1. (Jan. 25, 2022).
[22] Email from Kevin Jacobs, Legislative Affairs Director, DHSMV, fyi – toll stop legislation part of HSMV bill (Jan. 10, 2022).

Florida law requires mobile home dealers, recreational vehicle dealers, mobile home manufacturers, and recreational vehicle manufacturers, distributors, or importers to provide certain surety bonds, cash bonds, or irrevocable letters of credit to DHSMV, which must be conditioned on the dealer, manufacturer, distributor, or importer's compliance with specified laws and certain provisions in contracts regarding the sale of mobile homes or recreational vehicles.[23]

An application for a license as a recreational vehicle dealer must contain a statement that the applicant is insured under a garage liability insurance[24] policy, which must include, at a minimum, $25,000 combined single limit liability coverage, including bodily injury and property damage protection, and $10,000 personal injury protection, if the applicant is to be licensed as a dealer in, or intends to sell, recreational vehicles.[25]

Current law does not provide a timeframe for mobile home dealers, recreational vehicle dealers, mobile home manufacturers, or recreational vehicle manufacturers, importers, or distributors to submit to DHSMV the required surety or cash bonds or irrevocable letters of credit. Further, there is no required timeframe for recreational vehicle dealers to submit to DHSMV the required proof of garage liability insurance. Thus, DHSMV often must contact these entities to obtain this information. Failure to have the required garage liability insurance or surety bond, cash bond, or letter of credit submitted violates Florida law and may expose consumers and other stakeholders to financial loss.[26]

In 2021, the Legislature codified insurance and surety bond requirements for motor vehicle dealers but did not include mobile home dealers, or recreational vehicle dealers, manufacturers, importers, and distributors.[27]

Effect of the Bill

The bill requires that, within 10 calendar days of any renewal or continuation of or material change in a surety bond, a cash bond, or irrevocable letter of credit or issuance of a new surety bond, mobile home dealers and mobile home and recreational vehicle manufacturers, distributors, and importers must deliver to DHSMV, in a DHSMV-prescribed manner, a copy of the renewed, continued, changed, or new surety bond, cash bond, or irrevocable letter of credit.

The bill requires recreational vehicle dealers and mobile home dealers who deal in recreational vehicles to carry garage liability insurance for the period of their DHSMV license and within 10 calendar days after any renewal, continuation of, or material change to such policy, or issuance of a new policy, to deliver to DHSMV, in a DHSMV-prescribed manner, the new policy.

According to DHSMV, this timeframe will help ensure that mobile home and recreational vehicle manufacturers, distributors, and importers submit and maintain any required garage liability insurance or surety bonds, cash bonds, or letters of credit in place at the time of an original application or renewal of a dealer license and when changes take place during the period of DHSMV licensure.[28]

Commercial Motor Vehicle – Liability Insurance

Current Situation

Under Florida law, commercial motor vehicles must be insured with the following minimum levels of combined bodily liability insurance and property damage liability insurance in addition to any other insurance requirements:

[23] Ss. 320.77(16), 320.771(16), and 320.8225(5), F.S.
[24] Garage liability insurance is specifically designed for automotive repair shops, dealerships, towing companies, and service s tations. This insurance includes general liability which covers bodily injury and property damage for others.
[25] S. 320.771(3)(j), F.S.
[26] DHSMV, *supra* note 15 at 4.
[27] Attachment to E-mail from Kevin Jacobs, Legislative Affairs Director, DHSMV, 2022 Legislative Concepts, p. 2. (Jan. 25, 2022).
[28] DSHMV, *supra* note 15 at 6.

- $50,000 per occurrence for a commercial motor vehicle with a gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds.
- $100,000 per occurrence for a commercial motor vehicle with a gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds.
- $300,000 per occurrence for a commercial motor vehicle with a gross vehicle weight of 44,000 pounds or more.
- All commercial motor vehicles subject to regulations of the United States Department of Transportation must be insured in an amount equivalent to the minimum levels of financial responsibility as set forth in those regulations.

A violation is a noncriminal traffic infraction, punishable as a nonmoving violation.[29]

Federal regulations separately provide the minimum required levels of financial responsibility for motor carriers carrying property and for motor carriers carrying passengers.[30] The minimum levels currently required by federal regulations for-hire motor carriers of passengers operating in interstate or foreign commerce are:[31]

Vehicle Seating Capacity	Minimum Limits
(1) Any vehicle with a seating capacity of 16 passengers or more, including the driver	$5,000,000
(2) Any vehicle with a seating capacity of 15 passengers or less, including the driver	$1,500,000

Current law does not incorporate these federal regulations; therefore; Florida law does not conform to federal regulations.

Effect of the Bill

The bill requires all commercial motor vehicles subject to the regulations of the United States Department of Transportation, 49 C.F.R., part 387, subpart B, relating to motor carriers of passengers, as these regulations may be amended, to be insured in an amount equivalent to the minimum levels of financial responsibility set forth in federal regulations. This will allow DHSMV to enforce federal insurance requirements on buses and other commercial motor vehicles carrying passengers.[32]

Effective Date

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

B. SECTION DIRECTORY:

Section 1: Amends s. 316.305, F.S., relating to wireless communications devices; prohibition.

Section 2: Amends s. 316.646, F.S., relating to security required; proof of security and display thereof.

Section 3: Amends s. 319.141, F.S., relating to the rebuilt motor vehicle inspection program.

Section 4: Amends s. 320.01, F.S., providing definitions.

[29] S. 627.7415, F.S.
[30] 49 C.FR. part 387, subpart A, provides minimum levels of financial responsibility for commercial motor carriers carrying property. Subpart B, provides minimum levels of financial responsibility for motor carriers carrying passengers.
[31] 80 FR 63709, Oct. 21, 2015, as amended at 83 FR 22876, May 17, 2018.
[32] DHSMV, *supra* note 15 at 6.

Section 5: Amends s. 320.03, F.S., relating to registration; duties of tax collectors; International Registration Plan.

Section 6: Amends s. 320.77, F.S., relating to license required of mobile home dealers.

Section 7: Amends s. 320.771, F.S., relating to license required of recreational vehicle dealers.

Section 8: Amends s. 320.8225, F.S., relating to mobile home and recreational vehicle manufacturer, distributor, and importer license.

Section 9: Amends s. 627.7415, F.S., relating to commercial motor vehicles, additional liability insurance coverage.

Section 10: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will have the following indeterminate impacts on state revenues:

   - Including charter buses in the definition of an apportionable vehicle may result in an indeterminate decrease in revenues to DHSMV, as registration fees for charter buses will be apportioned between the states within which these vehicles operate.

   - Prohibiting individuals who have motor vehicle registration stops from replacing their vehicle registration and license plate until satisfying the stop may result in increased payments of fees and fines resulting in an indeterminate increase in revenues to the state.

2. Expenditures:

   Expanding PRVIP could impact staffing and resources at regional offices where the program is implemented, but these needs would be determined based on the number of authorized PRVIP facilities in each region. This oversight can be accomplished using existing resources.[33]

   Programming would be required to prevent a license plate from being replaced when there is an existing toll stop; however, the programming costs can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Prohibiting a license plate from being replaced when there is an existing toll stop may result in an indeterminate increase in revenues to tax collectors.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Expanding the PRVIP to additional counties may have a positive impact on business opportunities for residents in those counties and simultaneously may have a negative impact on PRVIP operators in

[33] DHSMV *supra* note 15 at 4.

Miami-Dade County, as vehicles may be inspected at locations in counties closer to the registered owner's location.

D. FISCAL COMMENTS:

According to DHSMV, the bill will have a moderate impact on its technology resources and resources dedicated to its motorist modernization projects.[34] These costs are associated with training, updated procedures, and programming costs. However, these costs can be absorbed using existing resources.[35]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 16, 2022, the Infrastructure & Tourism Appropriations Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment removed a provision in the bill that would allow a surviving spouse to transfer a motor vehicle title into his or her name, at no charge, when only the deceased spouse's name is listed on the title.

This analysis is drafted to the committee substitute as approved by the Infrastructure & Tourism Appropriations Subcommittee.

[34] DSHMV, *supra* note 15 at 8.
[35] Email from Kevin Jacobs, Legislative Affairs Director, DHSMV, RE: HB 871 DHSMV Package (Jan. 3, 2022).

A bill to be entitled

An act relating to the Department of Highway Safety and Motor Vehicles; amending s. 316.305, F.S.; requiring law enforcement agencies to annually report race and ethnicity data of certain violators to the department; revising the date by which the department must begin annually reporting such data to the Governor and the Legislature; amending s. 316.646, F.S.; deleting a precondition to a requirement that the operator of a motor vehicle display proof of maintenance of security to a law enforcement officer or certain other persons; amending s. 319.141, F.S.; extending the date by which the department must implement a rebuilt motor vehicle inspection program; adding counties where the program must be implemented; deleting an obsolete provision; amending s. 320.01, F.S.; revising the definition of the term "apportionable vehicle"; amending s. 320.03, F.S.; revising applicability; amending s. 320.77, F.S.; requiring licensed mobile home dealers to deliver certain documents to the department within a certain timeframe; amending s. 320.771, F.S.; specifying the required term of a certain garage liability insurance policy; requiring licensed recreational vehicle dealers to deliver certain documents to the department

within a certain timeframe; amending s. 320.8225, F.S.; requiring licensed mobile home manufacturers and recreational vehicle manufacturers, distributors, and importers to submit certain documents to the department within a certain timeframe; amending s. 627.7415, F.S.; requiring that certain commercial motor vehicles meet certain federal financial responsibility requirements; providing an effective date.

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

Section 1. Subsection (5) of section 316.305, Florida Statutes, is amended to read:

316.305 Wireless communications devices; prohibition.—

(5) When a law enforcement officer issues a citation for a violation of this section, the law enforcement officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and report the information to the department by April 1 annually in a form and manner determined by the department. Beginning July 1, 2023 ~~February 1, 2020~~, the department shall annually report the data collected under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The data collected must be reported at least by statewide totals

for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for local law enforcement agencies shall combine the data for the county sheriffs and the municipal law enforcement agencies.

Section 2. Subsection (2) of section 316.646, Florida Statutes, is amended to read:

316.646 Security required; proof of security and display thereof.—

(2) ~~If, upon a comparison of the vehicle registration certificate or other evidence of registration or ownership with the operator's driver license or other evidence of personal identity, it appears to a law enforcement officer or other person authorized to issue traffic citations that the operator is also the owner or registrant of the vehicle,~~ Upon the demand of a ~~the~~ law enforcement officer or other person authorized to issue traffic citations, the operator shall display proper proof of maintenance of security as specified by subsection (1).

Section 3. Subsections (2) and (10) of section 319.141, Florida Statutes, are amended to read:

319.141 Rebuilt motor vehicle inspection program.—

(2) By October 1, 2022 ~~2019~~, the department shall implement a program in Bay, Broward, Duval, Escambia, Hillsborough, Leon, Manatee, Marion, Miami-Dade, Orange, Palm Beach, and Volusia Counties ~~County~~ for rebuilt inspection

services offered by private sector participants.

~~(10) On or before July 1, 2021, the department shall submit a written report to the President of the Senate and the Speaker of the House of Representatives evaluating the effectiveness of the program and whether to expand the program to other counties.~~

Section 4. Subsection (24) of section 320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(24) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, ~~buses used in transportation of chartered parties,~~ and government-owned vehicles, which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds;

(b) Is a power unit having three or more axles, regardless of weight; or

(c) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles, or combinations thereof, having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionally registered.

Section 5. Subsection (8) of section 320.03, Florida Statutes, is amended to read:

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

(8) If the applicant's name appears on the list referred to in s. 316.1001(4), s. 316.1967(6), s. 318.15(3), or s. 713.78(13), a license plate or revalidation sticker may not be issued until that person's name no longer appears on the list or until the person presents a receipt from the governmental entity or the clerk of court that provided the data showing that the fines outstanding have been paid. This subsection does not apply to the owner of a leased vehicle if the vehicle is registered in the name of the lessee of the vehicle. The tax collector and the clerk of the court are each entitled to receive monthly, as costs for implementing and administering this subsection, 10 percent of the civil penalties and fines recovered from such persons. As used in this subsection, the term "civil penalties and fines" does not include a wrecker operator's lien as described in s. 713.78(13). If the tax collector has private tag agents, such tag agents are entitled to receive a pro rata share of the amount paid to the tax collector, based upon the

percentage of license plates and revalidation stickers issued by the tag agent compared to the total issued within the county. The authority of any private agent to issue license plates shall be revoked, after notice and a hearing as provided in chapter 120, if he or she issues any license plate or revalidation sticker contrary to the provisions of this subsection. This section applies both ~~only~~ to the annual renewal ~~in the owner's birth month~~ of a motor vehicle registration and the replacement of the motor vehicle registration or license plate, but does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under this chapter, except for the transfer of registrations which includes the annual renewals. This section does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(8)(b).

Section 6. Paragraph (a) of subsection (16) of section 320.77, Florida Statutes, is amended to read:

320.77 License required of mobile home dealers.—

(16) SURETY BOND, CASH BOND, OR IRREVOCABLE LETTER OF CREDIT REQUIRED.—

(a) Before any license shall be issued or renewed, the applicant or licensee shall deliver to the department a good and sufficient surety bond, cash bond, or irrevocable letter of credit, executed by the applicant or licensee as principal. Within 10 calendar days after any renewal or continuation of or material change in such surety bond, cash bond, or irrevocable

letter of credit or issuance of a new surety bond, a licensee shall deliver to the department, in a manner prescribed by the department, a copy of the renewed, continued, changed, or new surety bond, cash bond, or irrevocable letter of credit. The bond or irrevocable letter of credit shall be in a form to be approved by the department and shall be conditioned upon the dealer's complying with the conditions of any written contract made by the dealer in connection with the sale, exchange, or improvement of any mobile home and his or her not violating any of the provisions of chapter 319 or this chapter in the conduct of the business for which the dealer is licensed. The bond or irrevocable letter of credit shall be to the department and in favor of any retail customer who shall suffer any loss as a result of any violation of the conditions contained in this section. The bond or irrevocable letter of credit shall be for the license period, and a new bond or irrevocable letter of credit or a proper continuation certificate shall be delivered to the department at the beginning of each license period. However, the aggregate liability of the surety in any one license year shall in no event exceed the sum of such bond, or, in the case of a letter of credit, the aggregate liability of the issuing bank shall not exceed the sum of the credit. The amount of the bond required shall be as follows:

1. A single dealer who buys, sells, or deals in mobile homes and who has four or fewer supplemental licenses shall

provide a surety bond, cash bond, or irrevocable letter of credit executed by the dealer applicant or licensee in the amount of $25,000.

2. A single dealer who buys, sells, or deals in mobile homes and who has more than four supplemental licenses shall provide a surety bond, cash bond, or irrevocable letter of credit executed by the dealer applicant or licensee in the amount of $50,000.

For the purposes of this paragraph, any person who buys, sells, or deals in both mobile homes and recreational vehicles shall provide the same surety bond required of dealers who buy, sell, or deal in mobile homes only.

Section 7. Paragraph (j) of subsection (3) and paragraph (a) of subsection (16) of section 320.771, Florida Statutes, are amended to read:

320.771 License required of recreational vehicle dealers.—

(3) APPLICATION.—The application for such license shall be in the form prescribed by the department and subject to such rules as may be prescribed by it. The application shall be verified by oath or affirmation and shall contain:

(j) Evidence ~~A statement~~ that the applicant is insured under a garage liability insurance policy, which shall include, at a minimum, $25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and

$10,000 personal injury protection, if the applicant is to be licensed as a dealer in, or intends to sell, recreational vehicles. Such policy must be for the license period. Within 10 calendar days after any renewal or continuation of or material change in such policy or issuance of a new policy, the licensee shall deliver to the department, in a manner prescribed by the department, a copy of such renewed, continued, changed, or new policy. However, a garage liability policy is not required for the licensure of a mobile home dealer who sells only park trailers.

The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

(16) BOND.—

(a) Before any license shall be issued or renewed, the applicant shall deliver to the department a good and sufficient surety bond, executed by the applicant as principal and by a surety company qualified to do business in the state as surety. Within 10 calendar days after any renewal or continuation of or material change in such surety bond or issuance of a new surety bond, a licensee shall deliver to the department, in a manner prescribed by the department, a copy of such renewed, continued,

changed, or new surety bond. The bond shall be in a form to be approved by the department and shall be conditioned upon the dealer's complying with the conditions of any written contract made by that dealer in connection with the sale, exchange, or improvement of any recreational vehicle and his or her not violating any of the provisions of chapter 319 or this chapter in the conduct of the business for which he or she is licensed. The bond shall be to the department and in favor of any retail customer who shall suffer any loss as a result of any violation of the conditions hereinabove contained. The bond shall be for the license period, and a new bond or a proper continuation certificate shall be delivered to the department at the beginning of each license period. However, the aggregate liability of the surety in any one license year shall in no event exceed the sum of such bond. The amount of the bond required shall be as follows:

1. A single dealer who buys, sells, or deals in recreational vehicles and has four or fewer supplemental licenses shall provide a surety bond in the amount of $10,000.

2. A single dealer who buys, sells, or deals in recreational vehicles and who has more than four supplemental licenses shall provide a surety bond in the amount of $20,000.

For the purposes of this paragraph, any person who buys, sells, or deals in both mobile homes and recreational vehicles shall

provide the same surety bond required of dealers who buy, sell, or deal in mobile homes only.

Section 8. Paragraphs (a) and (b) of subsection (5) of section 320.8225, Florida Statutes, are amended to read:

320.8225 Mobile home and recreational vehicle manufacturer, distributor, and importer license.—

(5) REQUIREMENT OF ASSURANCE.—

(a) Annually, prior to the receipt of a license to manufacture mobile homes, the applicant or licensee shall submit a surety bond, cash bond, or letter of credit from a financial institution, or a proper continuation certificate, sufficient to assure satisfaction of claims against the licensee for failure to comply with appropriate code standards, failure to provide warranty service, or violation of any provisions of this section. The amount of the surety bond, cash bond, or letter of credit must be $50,000. Only one surety bond, cash bond, or letter of credit shall be required for each manufacturer, regardless of the number of factory locations. The surety bond, cash bond, or letter of credit must be to the department, in favor of any retail customer who suffers a loss arising out of noncompliance with code standards or failure to honor or provide warranty service. The department may disapprove any bond or letter of credit that does not provide assurance as provided in this section. Within 10 calendar days after any renewal or continuation of or material change in such surety bond, cash

bond, or letter of credit or issuance of a new surety bond, cash bond, or letter of credit, a licensee shall deliver to the department, in a manner prescribed by the department, a copy of such renewed, continued, changed, or new surety bond, cash bond, or letter of credit.

(b) Annually, prior to the receipt of a license to manufacture, distribute, or import recreational vehicles, the applicant or licensee shall submit a surety bond, or a proper continuation certificate, sufficient to assure satisfaction of claims against the licensee for failure to comply with appropriate code standards, failure to provide warranty service, or violation of any provisions of this section. The amount of the surety bond must be $10,000 per year. The surety bond must be to the department, in favor of any retail customer who suffers loss arising out of noncompliance with code standards or failure to honor or provide warranty service. The department may disapprove any bond that does not provide assurance as provided in this section. Within 10 calendar days after any renewal or continuation of or material change in such surety bond or issuance of a new surety bond, a licensee shall deliver to the department, in a manner prescribed by the department, a copy of such renewed, continued, changed, or new surety bond.

Section 9. Subsection (4) of section 627.7415, Florida Statutes, is amended to read:

627.7415 Commercial motor vehicles; additional liability

insurance coverage.—Commercial motor vehicles, as defined in s. 207.002 or s. 320.01, operated upon the roads and highways of this state shall be insured with the following minimum levels of combined bodily liability insurance and property damage liability insurance in addition to any other insurance requirements:

(4) All commercial motor vehicles subject to regulations of the United States Department of Transportation, 49 C.F.R. part 387, subparts ~~subpart~~ A and B, and as may be hereinafter amended, shall be insured in an amount equivalent to the minimum levels of financial responsibility as set forth in such regulations.

A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 10. This act shall take effect July 1, 2022.

COMMERCE COMMITTEE

CS/HB 871 by Rep. Brannan
Department of Highway Safety and Motor Vehicles

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Rep. Brannan (Line 68):

- Clarifies that if the operator of a vehicle is not the registered owner of the vehicle, he or she may not be cited for failure to maintain the required insurance on the vehicle, but may still be cited for failure to display proof of insurance.
- Requires driver license and identification card numbers, beginning November 1, 2023, to have a minimum of four randomly generated digits. This applies to original, renewal, or replacement driver licenses or identification cards.

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 Brannan offered the following:

Amendment (with directory and title amendments)

Between lines 68 and 69, insert:

(3)(a) Any operator who is the owner or registrant of the vehicle he or she is operating and ~~person~~ who violates this section commits a nonmoving traffic infraction subject to the penalty provided in chapter 318 and shall be required to furnish proof of security as provided in this section. If any operator who is the owner or registrant of the vehicle he or she is operating and who is ~~person~~ charged with a violation of this section fails to furnish proof at or before the scheduled court appearance date that security was in effect at the time of the violation, the court shall, upon conviction, notify the department to suspend the registration and driver license of

such operator ~~person~~. If the court fails to order the suspension of such operator's ~~the person's~~ registration and driver license for a conviction of this section at the time of sentencing, the department shall, upon receiving notice of the conviction from the court, suspend such operator's ~~the person's~~ registration and driver license for the violation of this section. Such license and registration may be reinstated only as provided in s. 324.0221.

(b) Any operator who is not the owner or registrant of the vehicle he or she is operating and who violates this section commits a nonmoving traffic infraction subject to the penalty provided in chapter 318.

(4) Any operator ~~person~~ presenting proof of insurance as required in subsection (1) who knows that the insurance as represented by such proof of insurance is not currently in force is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Paragraph (a) of subsection (8) of section 322.051, Florida Statutes, is amended to read:

322.051 Identification cards.—

(8)(a) The department shall, upon receipt of the required fee, issue to each qualified applicant for an identification card a color photographic or digital image identification card bearing a fullface photograph or digital image of the identification cardholder. Notwithstanding chapter 761 or s.

761.05, the requirement for a fullface photograph or digital image of the identification cardholder may not be waived. A space shall be provided upon which the identification cardholder shall affix his or her usual signature, as required in s. 322.14, in the presence of an authorized agent of the department so as to ensure that such signature becomes a part of the identification card. Beginning November 1, 2023, each distinguishing number assigned to an original, renewal, or replacement identification card must have a minimum of four randomly generated digits.

Section 4. Paragraph (a) of subsection (1) of section 322.14, Florida Statutes, is amended to read:

322.14 Licenses issued to drivers.—

(1)(a) The department shall, upon successful completion of all required examinations and payment of the required fee, issue to every qualified applicant a printed driver license that must bear a color photograph or digital image of the licensee; the name of the state; a distinguishing number assigned to the licensee, which, beginning November 1, 2023, must have a minimum of four randomly generated digits on each original, renewal, or replacement driver license; and the licensee's full name, date of birth, and residence address; a brief description of the licensee, including, but not limited to, the licensee's gender and height; and the dates of issuance and expiration of the license. A space shall be provided upon which the licensee shall

affix his or her usual signature. A license is invalid until it has been signed by the licensee except that the signature of the licensee is not required if it appears thereon in facsimile or if the licensee is not present within the state at the time of issuance.

D I R E C T O R Y A M E N D M E N T

Remove lines 56-57 and insert:

Section 2. Subsections (2), (3), and (4) of section 316.646, Florida Statutes, are amended to read:

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

Remove line 12 and insert:

or certain other persons; removing a requirement for certain motor vehicle operators to subsequently furnish proof of security after a certain violation; amending ss. 322.051 and 322.14, F.S.; requiring that distinguishing numbers assigned to identification cards and driver licenses, respectively, have a specified minimum number of randomly generated digits beginning on a specified date; amending s. 319.141, F.S.;

CS/HB 915

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 915 Commercial Motor Vehicle Registration
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee, Melo and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1582

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N, As CS	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	14 Y, 0 N	Hicks	Davis
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

Under current law, each commercial motor vehicle (CMV) registered under the International Registration Plan (IRP) must pay a $28 fee annually for a new license plate along with a cab card denoting its declared vehicle weight.

Effective January 1, 2024, the bill requires vehicles registered under the IRP to be issued a license plate for a three-year period. At the end of the three-year period, the plate must be replaced upon renewal. Each license plate must include a validation sticker reflecting the month that the plate expires. Under the bill, an annually issued cab card, including payment of a $28 annual fee, is still required. The bill provides that the $28 annual fee must be deposited into the Highway Safety Operating Trust Fund and authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to replace a damaged or worn license plate at no cost to an applicant surrendering the current license plate.

The bill will likely have an insignificant positive impact on DHSMV expenditures due to the CMV license plate renewal cycle changing from an annual renewal to a three-year renewal cycle. There is no change in annual revenues. *See* Fiscal Analysis section.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The International Registration Plan (IRP) is a reciprocity agreement among states of the United States, the District of Columbia and provinces of Canada which recognizes the registration of commercial motor vehicles (CMVs) [1] registered by other jurisdictions. The plan provides for payment of apportioned licensing fees based on the total distance operated in all member jurisdictions.[2]

Current law requires the Department of Highway Safety and Motor Vehicles (DHSMV), upon receipt of an application and payment of the appropriate fees, to issue to a vehicle owner or lessee a certificate of registration and a license plate.[3] License plates are issued for a ten-year period and must be replaced upon renewal at the end of the ten-year period. The fee for license plate replacement is $28, $2.80 of which is paid each year before the plate is replaced, and such fees must be deposited into the Highway Safety Operating Trust Fund. A validation sticker must also be issued, reflecting the owner's birth month, license plate number, and the year of expiration, or the appropriate renewal period if the owner is not a natural person.[4]

CMVs registered in accordance with the IRP,[5] known as "apportioned vehicles,"[6] are issued an *annual* license plate, as well as a cab card denoting the declared gross vehicle weight for each apportioned jurisdiction in which the vehicle is authorized to operate.[7] The $28 license plate replacement fee is paid annually upon initial registration and subsequent renewal and includes issuance of a cab card.

Effect of the Bill

The bill removes the requirement that vehicles registered under the IRP must be issued an *annual* license plate and cab card effective December 31, 2023.

The bill provides that effective January 1, 2024, apportioned vehicles must be issued a license plate for a three-year period. The license plate must be replaced upon renewal at the end of the three-year period and, as under current law, each license plate must include a validation sticker reflecting the month that the license plate expires.

Under the bill, an annually issued cab card, including payment of a $28 annual fee, is still required. The $28 fee must be deposited into Highway Safety Operating Trust Fund.

Finally, the bill provides that if the license plate is damaged or worn, the license plate may be replaced at no charge by applying to DHSMV and surrendering the current license plate.

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

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[1] Section 320.01(25), F.S., defines the term "commercial motor vehicle' to mean any vehicle not owned or operated by a governmental entity, which uses special fuel or motor fuel on the public highways, and which has a gross vehicle weight of 26,001 pounds or more, or has three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,001 pounds gross vehicle weight.

[2] International Registration Plan, Inc., *Welcome to IRP, Inc.* https://www.irponline.org/ (last visited Nov. 3, 2021).

[3] Section 320.06(1)(a), F.S. *See* s. 320.0706, F.S., for license plate display requirements for commercial trucks with a gross vehicle weight of 26,001 pounds or more, and for dump trucks and truck tractors.

[4] Section 320.06(1)(b), F.S.

[5] Department of Highway Safety and Motor Vehicles, *Commercial Motor Vehicle Drivers*, *International Registration Plan*, available at https://www.flhsmv.gov/driver-licenses-id-cards/commercial-motor-vehicle-drivers/international-registration-plan/ (last visited Jan 28, 2022).

[6] Section 320.0715(1), F.S., requires all apportionable vehicles domiciled in this state to be registered in accordance with the International Registration Plan and to display license plates.

[7] Section 316.06(1)(b), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 320.06, F.S., relating to registration certificates, license plates, and validation stickers generally.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DHSMV will likely see an insignificant reduction in expenditures associated with changing the issuance of CMV license plates from an annual renewal to a three-year renewal cycle, effective January 1, 2024.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

This bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 3, 2022, the Tourism, Infrastructure & Energy Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute:

- Removed provisions providing that a motor carrier's requirement to add certain safety improvements to a vehicle may not be considered when evaluating an individual's status as an employee or independent contractor.
- Authorized CMVs registered under the IRP to replace their license plates once every three years.
- Authorized CMV license plates to be replaced free of charge if, prior to the end of the three-year replacement period, they become damaged or worn.

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 commercial motor vehicle registration; amending s. 320.06, F.S.; providing for future expiration of a provision relating to vehicles with apportioned registrations; providing, beginning on a specified date, license plate and cab card requirements for vehicles registered in accordance with the International Registration Plan; specifying the fee for an original or renewal cab card and the trust fund where the fee is deposited; providing for the replacement at no charge of damaged or worn license plates; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 320.06, Florida Statutes, is amended to read:

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

(1)

(b)1. Registration license plates bearing a graphic symbol and the alphanumeric system of identification shall be issued for a 10-year period. At the end of the 10-year period, upon renewal, the plate shall be replaced. The department shall extend the scheduled license plate replacement date from a 6-

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

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

2. A vehicle that has an apportioned registration shall be issued an annual license plate and a cab card that denote the declared gross vehicle weight for each apportioned jurisdiction

in which the vehicle is authorized to operate. This subparagraph expires December 31, 2023.

3. Beginning January 1, 2024, a vehicle registered in accordance with the International Registration Plan must be issued a license plate for a 3-year period. At the end of the 3-year period, upon renewal, the license plate must be replaced. Each license plate must include a validation sticker showing the month of expiration. A cab card denoting the declared gross vehicle weight for each apportioned jurisdiction must be issued annually. The fee for an original or a renewal cab card is $28, which must be deposited into the Highway Safety Operating Trust Fund. If the license plate is damaged or worn, it may be replaced at no charge by applying to the department and surrendering the current license plate.

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

Section 2. This act shall take effect July 1, 2022.

COMMERCE COMMITTEE

CS/HB 915 by Rep. Melo
Commercial Motor Vehicle Registration

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Rep. Melo (Line 52):

- Changes the start date of the three-year license plate replacement period from January 1, 2024, to July 1, 2024.

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 Melo offered the following:

Amendment

Remove lines 52-53 and insert:

expires June 30, 2024.

3. Beginning July 1, 2024, a vehicle registered in

HB 951

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 951 Domestic Surplus Lines Insurers
SPONSOR(S): Gregory
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N	Fortenberry	Luczynski
2) Ways & Means Committee	17 Y, 0 N	LaTorre	Aldridge
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

With certain exceptions, Florida law requires any person transacting insurance to have a certificate of authority issued by the Office of Insurance Regulation (OIR). There are risks for which insurance in the admitted market are not available because insurers are unable or unwilling to write policies for them. Therefore, states allow insurers that are not otherwise authorized to transact insurance to sell surplus lines insurance if they meet certain requirements.

Historically, surplus lines insurers generally are not permitted to write surplus lines insurance in their states of domicile. However, some states have enacted laws authorizing domestic surplus lines insurers (DSLI) in recent years. These are surplus lines insurers that offer surplus lines policies in their states of domicile. Prior to the creation of laws allowing DSLI, a surplus lines insurer seeking to transact surplus lines in its state of domicile had to form a second company domiciled in a different state which would then offer surplus lines policies in the insurer's original state of domicile. Over 20 states have authorized domestic surplus lines insurance.

The bill defines "domestic surplus lines insurer" as a nonadmitted insurer domiciled in this state that OIR has authorized to write surplus lines insurance. The bill creates a statutory framework to allow a DSLI to issue surplus lines policies in this state, by establishing certain requirements, which include:

- A nonadmitted insurer possessing a policyholder surplus of at least $15 million may be authorized to transact insurance as a DSLI under a resolution by its board and with approval of OIR.
- Such nonadmitted insurers are authorized to write surplus lines insurance in any jurisdiction, including this state, and that this authorization is not contingent upon holding a certificate of authority.
- Eligible surplus lines insurers may write any kind of insurance that unauthorized insurers not domiciled in this state are eligible to write.
- A DSLI may only write surplus lines insurance in Florida and may only sell policies through a surplus lines agent.
- Unless specifically exempt, a DSLI is subject to all financial and solvency requirements imposed on admitted domestic insurers under state law. However, a DSLI is exempt from the surplus requirements applied to admitted insurers.
- A policy issued by a DSLI is exempt from all statutory requirements relating to insurance rating, policy forms, premiums, cancellations, nonrenewals, and renewals, and from any other statutory requirements that do not apply to surplus lines policies issued by surplus lines insurers domiciled in another state.

The Revenue Estimating Conference has not estimated the potential revenue impacts of the bill. Staff estimates that the bill may have a positive/negative indeterminate impact on General Revenue and state trust fund revenue. The potential revenue impacts may be indirect. The impact may be positive if the bill leads to additional policies being written in the state, resulting in increased surplus lines tax collections. The impact may be negative if additional competition leads to lower premium rates overall, resulting in decreased surplus lines tax collections.

The bill is effective on July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

With certain exceptions, Florida law requires any person transacting insurance to have a certificate of authority issued by the Office of Insurance Regulation (OIR).[1] The term "admitted market" refers to insurers that have a certificate of authority issued by OIR.[2] Such insurers are also referred to as "authorized insurers."

Authorized insurers in Florida are subject to the provisions of the Florida Insurance Code[3] and regulation primarily by OIR.[4] OIR's regulatory authority over authorized insurers includes solvency and financial strength, insurance policy forms and rates, and market conduct of insurers.

Surplus Lines Insurance

There are risks for which insurance in the admitted market are not available because insurers are unable or unwilling to write policies for them. Therefore, states allow insurers that are not otherwise authorized to transact insurance to sell surplus lines insurance if they meet certain requirements. The three basic categories of risks typically written by surplus lines insurers are:

- Specialty risks that admitted insurers do not desire to write;
- Risks for which admitted carriers do not have approved policy forms or rates; and
- Risks where a policyholder needs higher coverage limits than those available on the admitted market.

The Florida Surplus Lines Service Office (FSLSO) administers surplus lines business in this state.[5] A certificate of authority is not required of an insurer with respect to lawfully written surplus lines policies.[6] Surplus lines insurers are still considered "unauthorized" insurers,[7] and may write only surplus lines policies if they are made "eligible" by OIR. Except as specifically stated, surplus lines insurers are not subject to regulation by OIR under ch. 627, F.S., which includes statutory provisions regarding rating standards and insurance policy forms.[8] Surplus lines insurers are subject to the Unfair Insurance Trade Practices Act.[9]

Surplus Lines Law[10]

Florida's Surplus Lines Law is designed to provide orderly access to unauthorized insurers who provide surplus lines policies. Four general requirements must be met for insurance to be exported (to place a policy in an unauthorized insurer under the Surplus Lines Law) to a surplus lines insurer:[11]

- The insurance must be eligible for export under s. 626.916, F.S. or 626.917, F.S.;
- The insurer must be an eligible surplus lines insurer under s. 626.917, F.S. or 626.918, F.S.;

[1] S. 624.401, F.S. In the Florida Insurance Code (FIC), a person also includes a business entity such as an insurer.
[2] S. 624.404, F.S.
[3] Section 624.404, F.S., provides that an insurer must be in compliance with the FIC to qualify for and hold authority to transact insurance in the state. The FIC is chapters 624-632, 634, 635, 636,641, 642, 648, and 651, F.S. S. 624.01, F.S.
[4] In general, OIR has regulatory authority over insurers and the Department of Financial Services (DFS) has regulatory authority over insurance agents and agencies.
[5] S. 626.921, F.S.
[6] S. 624.402, F.S.
[7] S. 624.09(2), F.S.
[8] S. 626.913(4), F.S.
[9] Ss. 626.951 – 626.99, F.S. Under s. 626.9521, F.S., no person may engage in this state in any unfair insurance trade practice. "Person" is defined by s. 626.9511(1), F.S., to mean any individual, corporation, association, partnership, or any entity involved in the business of insurance.
[10] Sections 626.913 – 626.937, F.S., constitute and may be referred as the "Surplus Lines Law."
[11] S. 626.915, F.S.

- The insurance must be placed through a licensed Florida Surplus Lines Agent; and
- All other applicable provisions of the Surplus Lines Law must be met.

Eligibility for Export to a Surplus Lines Insurer

Insurance coverage is eligible for export to a surplus lines insurer only if:

- The insurance cannot be obtained from an authorized insurer after the agent has made a diligent effort to place the insurance with an authorized insurer.[12] The surplus lines agent must verify that a diligent effort was made by requiring a properly documented statement of diligent effort from the agent.[13] A "diligent effort" means seeking coverage from, and having been rejected by, at least three authorized insurers currently writing the same type of coverage and documenting these rejections.[14] However, if a residential structure has a dwelling replacement cost of $700,000 or more, coverage need only be sought from one authorized insurer.[15]
- The premium rate for the surplus lines coverage may not be lower than the rate currently used by a majority of authorized insurers for the same coverage on a similar risk.[16]
- The surplus lines coverage may not be more favorable to the insured than under similar contracts currently used by the majority of authorized insurers writing similar coverage on similar risks.[17]
- The surplus lines policy must not provide a deductible that is generally unavailable from authorized insurers, except as applicable to extended coverage for fire or windstorm insurance.[18]

Requirements for Eligibility of Surplus Lines Insurers

An unauthorized insurer may only become an eligible surplus lines insurer if it meets the following requirements:[19]

- The insurer must currently be an authorized insurer in its state or country of domicile as to the kinds of insurance it would transact in Florida. In general, the insurer must have transacted such insurance for 3 years in its state of domicile.[20] However, OIR may waive this requirement if the insurer has capital and surplus of at least $25 million and either is offering a product not readily available in Florida or has operated successfully for at least the immediately preceding year.[21]
- OIR receives an authenticated copy of its current annual financial statement.[22]
- The insurer must maintain surplus as to policyholders of not less than $15 million,[23] with the exception of:
    - Insurance exchanges created by the laws of a state, if they meet the state's capital and surplus requirements or maintain a capital and surplus of at least $50 million;[24] and
    - A surplus lines insurer that is a member of an insurance holding company that includes a member which is a Florida domestic insurer, may instead meet the surplus and capital requirements applicable to authorized insurers under s. 624.408, F.S., and must comply with ch. 625, F.S., regarding accounting, investments, and deposits by insurers.[25]

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[12] S. 626.916(1)(a), F.S.
[13] *Id.*
[14] S. 626.914(4), F.S.
[15] *Id.*
[16] S. 626.916(1)(b), F.S.
[17] S. 626.916(1)(c), F.S.
[18] S. 626.916(1)(d), F.S.
[19] S. 626.918, F.S.
[20] *Id.* Alternatively, the insurer may be a wholly owned subsidiary of such an insurer.
[21] *Id.*
[22] S. 626.918(2)(b), F.S.
[23] S. 626.918(2)(c), F.S. An alien insurer (insurer domiciled in a foreign country) must also have and maintain a trust fund in the United States under terms approved by OIR, in an account of at least $5.4 million.
[24] S. 626.918(2)(c)1.c., F.S.
[25] S. 626.918(2)(c)1.d., F.S.

- The insurer must have a good reputation regarding service to its policyholders and payment of losses and claims.[26]
- The management, officers, and directors of the insurer must meet the requirements of competence and trustworthiness required by s. 624.404(3), F.S.[27]

The Surplus Lines Law specifies that OIR does not have any duty to determine the actual financial condition or claims practices of any unauthorized insurer.[28] OIR, when determining whether a surplus lines insurer is eligible bases that decision on the insurer appearing to be financially sound and having satisfactory claims practices, and not having any credible evidence to the contrary.[29]

Requirement to Place Surplus Lines Insurance Through a Licensed Florida Surplus Lines Agent

A Florida-licensed surplus lines insurance agent must place surplus lines insurance policies.[30] A Florida-licensed general lines agent may obtain licensure as a surplus lines agent if such an agent has at least 1 year of experience working for a licensed surplus lines agent or successfully completes at least 60 class hours in surplus and excess lines and passes a licensure exam.[31] This licensure is solely for the purpose of placing property, marine, casualty, or surety coverages originated by general lines agents with surplus lines insurers.[32]

Nonresidents licensed in their home state as resident general lines and surplus lines agents may obtain licensure as nonresident surplus lines agents if their home states have similar licensure requirements as Florida and provide reciprocity regarding residents of Florida obtaining licensure as nonresident surplus lines agents in those states.[33]

Mandatory Disclosures

Surplus lines agents must disclose in writing that surplus lines insurance carriers do not have the protection of the Florida Insurance Guaranty Association Act[34] and that surplus lines rates and policy forms are not subject to regulation by any Florida agency.[35] When a policy is exported to surplus lines, the insured must also sign or provide documented knowledge of the following disclosure:

> You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty [Association] Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.[36]

The Florida Surplus Lines Service Office (FSLSO)

The FSLSO is a self-regulating, nonprofit association designed to act as a "self-regulating organization" to permit better access by consumers to approved surplus lines insurers.[37] The FSLSO's responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida and of the eligible surplus lines insurers.[38] All Florida-licensed surplus lines agents are deemed members of the FSLSO and must register with it.[39]

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[26] S. 626.918(2)(d), F.S.
[27] S. 626.918(2)(e), F.S.
[28] S. 626.918(4), F.S.
[29] *Id.*
[30] *See* s. 926.927, F.S.
[31] *Id.*
[32] *Id.*
[33] S. 626.9272, F.S.
[34] Ss. 631.50– 631.70, F.S., are known as the Florida Insurance Guaranty Association Act, and establish the framework for the Florida Insurance Guaranty Association.
[35] S. 626.924, F.S.
[36] S. 626.916(1)(e), F.S.
[37] S. 626.921, F.S.
[38] *See id.*
[39] S. 626.921(2), F.S.

The FSLSO must conduct the following activities:

- Receive, record and review all surplus lines insurance policies;
- Maintain records of the policies reported to the FSLSO and prepare reports as required by the Financial Services Commission;[40]
- Prepare and deliver to each surplus lines agent quarterly reports of each agent's business;
- Collect and remit surplus lines tax to the Department of Financial Services;
- Reconcile the policies provided by non-admitted insurers with the policies reports to the FSLSO by agents; and
- Other activities specified by statute.[41]

Domestic Surplus Lines Insurance

Historically, surplus lines insurers generally are not permitted to write surplus lines insurance in their states of domicile. However, some states have enacted laws authorizing domestic surplus lines insurers (DSLI) in recent years. These are surplus lines insurers that offer surplus lines policies in their states of domicile.

Prior to the creation of laws allowing DSLI, a surplus lines insurer seeking to transact surplus lines in its state of domicile had to form a second company domiciled in a different state which would then offer surplus lines policies in the original insurer's state of domicile. Over 20 states have authorized DSLI.[42] A review of the state laws authorizing DSLI show that laws authorizing the formation of domestic surplus lines insurance often have certain requirements in common:

- The DSLI must meet a policyholder surplus requirement, usually $15 million or $20 million;
- The DSLI must be an eligible surplus lines insurer in at least one jurisdiction other than its state of domicile;
- The board of directors of the DSLI must pass a resolution seeking to be a DSLI; and
- The insurance commissioner of the DSLI must make it eligible in its state of domicile.

Certain commonalities are also present regarding how state and federal insurance laws generally applicable to authorized insurers apply to DSLI:

- DSLI are subject to the state's solvency requirements for authorized domestic insurers, unless a DSLI is specifically exempted;
- DSLI are exempt from requirements relating to rates, forms, and policy cancellations;
- Policies written by DSLI must be placed on the surplus lines market in accordance with the requirements of the state's surplus lines law; and
- Policies written by DSLI are not covered by any of the state's guaranty associations.

The number of DSLIs has increased from 15 in 2011, to over 70, with the majority domiciled in Illinois or Delaware.[43]

Federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA)

Pursuant to the NRRA, the surplus lines insurance and surplus lines brokers are subject only to the statutory and regulatory requirements of the insured's home state.[44] The NRRA provides that only the home state of an insured may require any premium tax payment for surplus lines insurance.[45] States

[40] The Financial Services Commission consists of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. S. 20.121, F.S.
[41] *See generally* s. 626.921(3), F.S.
[42] *See e.g.,* Arizona (s. 20-407.01, Az. S.), Texas (s. 981.071-981.074, Tex. Ins. Code), and Vermont (s. 8 V.S.A. s. 5023a).
[43] John N. Emmanuel and Zachary N. Lerner, *Locke Lord Excess and Surplus Lines Laws Manual,* p. 1.6 (2021), https://surplusmanual.lockelord.com/ (last visited Feb. 02, 2022).
[44] 15 U.S.C. § 8202.
[45] 15 U.S.C. § 8201(a).

are authorized to establish procedures to allocate tax revenues properly to other states for multi-state risks and an insured's home state may require surplus lines brokers and insureds to file annual tax allocation reports detailing the portion of the policy premium attributable to the exposure located each in state.

States must participate in the National Association of Insurance Commissioners' (NAIC) database or an equivalent uniform national database for the licensure of surplus lines brokers, and a state that does not participate is prohibited from collecting fees related to licensing surplus lines brokers.[46] Unless a state adopts requirements that comply with the NRRA's requirements regarding allocation of nonadmitted premium taxes that include alternative nationwide uniform eligibility requirements, the eligibility requirements for a state's surplus lines insurers must conform to the NAIC's Non-Admitted Insurance Model Act.[47] The NRRA also prohibits state laws from requiring a due diligence search to determine if the insurance can be obtained from an admitted insurer before placing a risk for an exempt commercial purchaser[48] on the surplus lines market if certain disclosures are made.[49]

Florida Insurance Guaranty Association (FIGA)

FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer."[50] It issues guaranty fund payments and provides related services for all lines of property and casualty insurance[51] with certain exceptions.[52] FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are less than $300,000.[53] For policies providing homeowners insurance, FIGA provides for up to an additional $200,000 for the portion of a covered claim, which relates to damage to structure and contents.[54]

Florida Life and Health Insurance Guaranty Association (FLAHIGA)

FLAHIGA exists to "protect policyholders, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against the future of an insurer issuing such policies or contracts to perform its contractual obligations due to its impairment or insolvency."[55] The maximum obligation of FLAHIGA to provide payment for any covered claim or policy is the following:

- For life insurance, $100,000 in net cash surrender and net cash withdrawal values.
- For deferred annuity contracts, $250,000 in net cash surrender and net cash withdrawal values.
- For basic hospital expense health insurance policies, basic medical-surgical health insurance policies, or major medical expense health insurance policies, but not including long-term care policies, $500,000.
- For all other benefits, including in long-term care policies, $300,000, including cash values.[56]

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)

FWCIGA "provides a mechanism for the payment of covered claims" under ch. 440, F.S., to avoid delay

[46] 15 U.S.C. § 8203.
[47] 15 U.S.C. § 8204.
[48] 15 U.S.C. § 8206(5) defines a commercial purchaser as a person purchasing commercial insurance if such person has a qualified risk manager to negotiate insurance coverage, has paid nationwide property and casualty insurance premiums in excess of $100,000 in the preceding 12 months, and meets one of five specified requirements regarding net worth, annual revenues, number of employees, not-for-profit annual budgeted expenditures, or status as a municipality.
[49] 15 U.S.C. § 8205.
[50] S. 631.51, F.S.
[51] S. 631.57(3)(a), F.S. As established in s. 632.52, F.S., FIGA covers "all kinds of direct insurance" with certain exceptions, such as life, annuity, health, disability, workers' compensation, and surplus lines insurance.
[52] *Id.*
[53] S. 631.57(1), F.S.
[54] *Id.*
[55] S. 631.712, F.S.
[56] S. 631.717(12), F.S.

and financial loss to claimants due to the insolvency of a workers' compensation insurer.[57] FWCIGA services workers' compensation claims against insolvent workers' compensation insurers[58] and self-insurance funds.[59] For purposes of FWCIGA, "covered claim" includes unpaid claims under any employer liability coverage of a workers' compensation policy limited to the lesser of $300,000 or the limits of the policy.[60]

Effect of the Bill

The bill defines "domestic surplus lines insurer" as a nonadmitted insurer domiciled in this state that OIR has authorized to write surplus lines insurance. The bill creates a statutory framework to allow a DSLI to issue surplus lines policies in this state, in addition to issuing policies in other jurisdictions, by establishing the following:

- The term "nonadmitted insurer" has the same meaning as provided in the NRRA.
- A nonadmitted insurer possessing a policyholder surplus of at least $15 million may be authorized to transact insurance as a DSLI under a resolution by its board and with approval of OIR.
- Such nonadmitted insurers are authorized to write surplus lines insurance in any jurisdiction, including this state, and that this authorization is not contingent upon holding a certificate of authority.
- A DSLI shall be deemed an eligible surplus lines insurer and be included in the list of eligible surplus lines insurers required under current statutes.
- Eligible surplus lines insurers may write any kind of insurance that unauthorized insurers not domiciled in this state are eligible to write.
- A DSLI is an unauthorized insurer for the purposes of writing surplus lines insurance under the Surplus Lines Law.
- A DSLI is a nonadmitted insurer for the purposes of the federal NRRA.
- A DSLI may only write surplus lines insurance in Florida and may only sell policies through a surplus lines agent.
- Unless specifically exempt, a DSLI is subject to all financial and solvency requirements imposed on admitted domestic insurers under state law. However, a DSLI is exempt from the surplus requirements applied to admitted insurers.[61]
- A policy issued by a DSLI is exempt from all statutory requirements relating to insurance rating, policy forms, premiums, cancellations, nonrenewals, and renewals, and from any other statutory requirements that do not apply to surplus lines policies issued by surplus lines insurers domiciled in another state.
- A policy issued by a DSLI is subject to taxes assessed on surplus lines policies issued by nonadmitted insurers, including surplus lines premium taxes, but it is not subject to other taxes levied upon domestic or foreign admitted insurers.
- A policy issued by a DSLI is not subject to the protections or requirements of FIGA, FLAHIGA, or FWCIGA.

The bill also contains technical amendments to several statutes to conform cross-references to this new statutory framework.

[57] S. 631.902, F.S.

[58] "Insurer means an insurance carrier or self-insurance fund authorized to insure under ch. 440, F.S. For the purposes of this act, 'insurer' does not include a qualified local government self-insurance fund, as defined in s. 624.4622 or an individual self-insurer as defined in s. 440.385." S. 631.904(5), F.S.

[59] "'Self-insurance fund' means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this act, the term "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, or an individual self-insurer as defined in s. 440.385." S. 631.904(6), F.S.

[60] S. 631.904(2), F.S.

[61] These requirements are set forth in s. 624.408, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.914, F.S., relating to definitions.

Section 2. Creates s. 626.91805, F.S., relating to domestic surplus lines insurers.

Section 3. Amends s. 458.320, F.S., relating to financial responsibility.

Section 4. Amends s. 459.0085, F.S., relating to financial responsibility.

Section 5. Amends s. 464.0123, F.S., relating to autonomous practice by an advanced practice registered nurse.

Section 6. Amends s. 629.401, F.S., relating to insurance exchange.

Section 7. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has not estimated the potential revenue impacts of the bill. Staff estimates that the bill may have a positive/negative indeterminate impact on General Revenue and state trust fund revenue. The potential revenue impacts may be indirect. The impact may be positive if the bill leads to additional policies being written in the state, resulting in increased surplus lines tax collections. The impact may be negative if additional competition leads to lower premium rates overall, resulting in decreased surplus lines tax collections.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that consumers have additional options for coverage from surplus lines carriers which results in more competitive insurance rates, the bill may have a positive indeterminate impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. 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 domestic surplus lines insurers; amending s. 626.914, F.S.; revising the definition of the term "eligible surplus lines insurer" to include domestic surplus lines insurers; defining the term "domestic surplus line insurer"; creating s. 626.91805, F.S.; defining the term "nonadmitted insurer"; authorizing specified nonadmitted insurers to transact insurance as domestic surplus lines insurers under certain circumstances; authorizing such insurers to write surplus lines insurance in any jurisdiction; providing that such authorization is not contingent on the existence of a certificate of authority; requiring domestic surplus lines insurers to be deemed eligible surplus lines insurers and to be included in the list of eligible surplus lines insurers; authorizing such insurers to write certain kinds of insurance; requiring domestic surplus lines insurers to be considered unauthorized insurers for specified purposes; requiring domestic surplus lines insurers to be considered nonadmitted insurers for specified purposes; authorizing domestic surplus lines insurers to write only surplus lines insurance; limiting the circumstances under which such insurers may write surplus lines insurance; providing

applicability of specified financial and solvency requirements to domestic surplus lines insurers; providing an exception; providing an exemption from a specified law for domestic surplus lines insurers; providing exemptions from specified requirements for surplus lines insurance policies issued by such insurers; providing that such policies are subject to specified taxes but are not subject to certain other taxes; providing that such policies are not subject to the protections and requirements of specified acts; amending ss. 458.320, 459.0085, and 464.0123, F.S.; conforming cross-references; amending s. 629.401, F.S.; specifying cross-references; providing an effective date.

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

Section 1. Section 626.914, Florida Statutes, is amended to read:

626.914 Definitions.—As used in this Surplus Lines Law, the term:

(1) ~~(4)~~ "Diligent effort" means seeking coverage from and having been rejected by at least three authorized insurers currently writing this type of coverage and documenting these rejections. However, if the residential structure has a dwelling

replacement cost of $700,000 or more, the term means seeking coverage from and having been rejected by at least one authorized insurer currently writing this type of coverage and documenting this rejection.

(2) "Domestic surplus lines insurer" means a nonadmitted insurer domiciled in this state that has been authorized by the office to write surplus lines insurance.

(3) ~~(2)~~ "Eligible surplus lines insurer" means:

(a) An unauthorized insurer that ~~which~~ has been made eligible by the office to issue insurance coverage under this Surplus Lines Law; or

(b) A domestic surplus lines insurer.

(4) ~~(3)~~ "Export" ~~"To export"~~ means to place, in an unauthorized insurer under this Surplus Lines Law, insurance covering a subject of insurance resident, located, or to be performed in this state.

(5) ~~(1)~~ "Surplus lines agent" means an individual licensed as provided in this part to handle the placement of insurance coverages with unauthorized insurers and to place such coverages with authorized insurers as to which the licensee is not licensed as an agent.

Section 2. Section 626.91805, Florida Statutes, is created to read:

626.91805 Domestic surplus lines insurers.—

(1) As used in this section, the term "nonadmitted

insurer" has the same meaning as provided in the federal Nonadmitted and Reinsurance Reform Act of 2010.

(2) Notwithstanding any other law, a nonadmitted insurer possessing a policyholder surplus of at least $15 million may, under a resolution by its board of directors and with the written approval of the office, be authorized to transact insurance as a domestic surplus lines insurer. Such insurers are authorized to write surplus lines insurance in any jurisdiction, including this state, and such authorization is not contingent on the company's holding of an existing certificate of authority.

(3) Notwithstanding s. 626.918(2), a domestic surplus lines insurer shall be deemed an eligible surplus lines insurer and shall be included in the list of eligible surplus lines insurers required by s. 626.918(3). Eligible surplus lines insurers listed in s. 626.918(3) may write any kind of insurance that an unauthorized insurer not domiciled in this state is eligible to write.

(4) For purposes of writing surplus lines insurance pursuant to the Surplus Lines Law, a domestic surplus lines insurer shall be considered an unauthorized insurer.

(5) For purposes of the federal Nonadmitted and Reinsurance Reform Act of 2010, a domestic surplus lines insurer shall be considered a nonadmitted insurer.

(6) A domestic surplus lines insurer may write only

surplus lines insurance in this state and only if procured from a surplus lines agent pursuant to the Surplus Lines Law.

(7) All financial and solvency requirements imposed by this state's laws on admitted domestic insurers apply to domestic surplus lines insurers unless domestic surplus lines insurers are otherwise specifically exempted.

(8) A domestic surplus lines insurer is exempt from s. 624.408.

(9) A surplus lines insurance policy issued by a domestic surplus lines insurer is exempt from all statutory requirements relating to insurance rating and rating plans; policy forms; premiums charged to insureds; policy cancellation, nonrenewal, and renewal; and other statutory requirements in the same manner and to the same extent as surplus lines policies issued by a surplus lines insurer domiciled in another state.

(10) Notwithstanding any other law, a policy issued by a domestic surplus lines insurer is subject to taxes assessed upon surplus lines policies issued by nonadmitted insurers, including surplus lines premium taxes, but is not subject to other taxes levied upon admitted insurers, whether domestic or foreign.

(11) A policy issued by a domestic surplus lines insurer is not subject to the protections or requirements of the Florida Insurance Guaranty Association Act, the Florida Life and Health Insurance Guaranty Association Act, or the Florida Workers' Compensation Insurance Guaranty Association Act.

Section 3. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 458.320, Florida Statutes, are amended to read:

458.320 Financial responsibility.—

(1) As a condition of licensing and maintaining an active license, and prior to the issuance or renewal of an active license or reactivation of an inactive license for the practice of medicine, an applicant must by one of the following methods demonstrate to the satisfaction of the board and the department financial responsibility to pay claims and costs ancillary thereto arising out of the rendering of, or the failure to render, medical care or services:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined under s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

(2) Physicians who perform surgery in an ambulatory surgical center licensed under chapter 395 and, as a continuing

condition of hospital staff privileges, physicians who have staff privileges must also establish financial responsibility by one of the following methods:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $250,000 per claim, with a minimum annual aggregate of not less than $750,000 from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined under s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), through a plan of self-insurance as provided in s. 627.357, or through a plan of self-insurance which meets the conditions specified for satisfying financial responsibility in s. 766.110. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

This subsection shall be inclusive of the coverage in subsection (1).

Section 4. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 459.0085, Florida Statutes, are amended to read:

459.0085 Financial responsibility.—

(1) As a condition of licensing and maintaining an active license, and prior to the issuance or renewal of an active

license or reactivation of an inactive license for the practice of osteopathic medicine, an applicant must by one of the following methods demonstrate to the satisfaction of the board and the department financial responsibility to pay claims and costs ancillary thereto arising out of the rendering of, or the failure to render, medical care or services:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined under s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

(2) Osteopathic physicians who perform surgery in an ambulatory surgical center licensed under chapter 395 and, as a continuing condition of hospital staff privileges, osteopathic physicians who have staff privileges must also establish financial responsibility by one of the following methods:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $250,000 per claim, with a minimum annual aggregate of not less than $750,000 from an

authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined under s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), through a plan of self-insurance as provided in s. 627.357, or through a plan of self-insurance that meets the conditions specified for satisfying financial responsibility in s. 766.110. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

This subsection shall be inclusive of the coverage in subsection (1).

Section 5. Paragraph (a) of subsection (2) of section 464.0123, Florida Statutes, is amended to read:

464.0123 Autonomous practice by an advanced practice registered nurse.—

(2) FINANCIAL RESPONSIBILITY.—

(a) An advanced practice registered nurse registered under this section must, by one of the following methods, demonstrate to the satisfaction of the board and the department financial responsibility to pay claims and costs ancillary thereto arising out of the rendering of, or the failure to render, nursing care, treatment, or services:

1. Obtaining and maintaining professional liability

coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an authorized insurer as defined in s. 624.09, from a surplus lines insurer as defined in s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined in s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357; or

2. Obtaining and maintaining an unexpired, irrevocable letter of credit, established pursuant to chapter 675, in an amount of not less than $100,000 per claim, with a minimum aggregate availability of credit of not less than $300,000. The letter of credit must be payable to the advanced practice registered nurse as beneficiary upon presentment of a final judgment indicating liability and awarding damages to be paid by the advanced practice registered nurse or upon presentment of a settlement agreement signed by all parties to such agreement when such final judgment or settlement is a result of a claim arising out of the rendering of, or the failure to render, nursing care and services.

Section 6. Paragraph (b) of subsection (6) of section 629.401, Florida Statutes, is amended to read:

629.401 Insurance exchange.—

(6)

(b) In addition to the insurance laws specified in paragraph (a), the office shall regulate the exchange pursuant

to the following powers, rights, and duties:

1. General examination powers.—The office shall examine the affairs, transactions, accounts, records, and assets of any security fund, exchange, members, and associate brokers as often as it deems advisable. The examination may be conducted by the accredited examiners of the office at the offices of the entity or person being examined. The office shall examine in like manner each prospective member or associate broker applying for membership in an exchange.

2. Office approval and applications of underwriting members.—No underwriting member shall commence operation without the approval of the office. Before commencing operation, an underwriting member shall provide a written application containing:

a. Name, type, and purpose of the underwriting member.

b. Name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of the underwriting member.

c. Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the underwriting member, or the formation or financing thereof, accompanied by a copy of each such agreement or understanding.

d. Full disclosure of the terms of all understandings and agreements existing or proposed for management or exclusive

agency contracts.

3. Investigation of underwriting member applications.—In connection with any proposal to establish an underwriting member, the office shall make an investigation of:

a. The character, reputation, financial standing, and motives of the organizers, incorporators, or subscribers organizing the proposed underwriting member.

b. The character, financial responsibility, insurance experience, and business qualifications of its proposed officers.

c. The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, or owners.

4. Notice of management changes.—An underwriting member shall promptly give the office written notice of any change among the directors or principal officers of the underwriting member within 30 days after such change. The office shall investigate the new directors or principal officers of the underwriting member. The office's investigation shall include an investigation of the character, financial responsibility, insurance experience, and business qualifications of any new directors or principal officers. As a result of the investigation, the office may require the underwriting member to replace any new directors or principal officers.

5. Alternate financial statement.—In lieu of any financial

examination, the office may accept an audited financial statement.

6. Correction and reconstruction of records.—If the office finds any accounts or records to be inadequate, or inadequately kept or posted, it may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person or entity being examined if such person or entity has failed to maintain, complete, or correct such records or accounts after the office has given him or her or it notice and reasonable opportunity to do so.

7. Obstruction of examinations.—Any person or entity who or which willfully obstructs the office or its examiner in an examination is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

8. Filing of annual statement.—Each underwriting member shall file with the office a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed on or before March 1 of each year, or within such extension of time as the office for good cause grants, and shall be for the preceding calendar year. The statement shall contain information generally included in insurer financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally utilized by insurers for financial statements, sworn to by at least two executive officers of the underwriting member. The

form of the financial statements shall be the approved form of the National Association of Insurance Commissioners or its successor organization. The commission may by rule require each insurer to submit any part of the information contained in the financial statement in a computer-readable form compatible with the office's electronic data processing system. In addition to information furnished in connection with its annual statement, an underwriting member must furnish to the office as soon as reasonably possible such information about its transactions or affairs as the office requests in writing. All information furnished pursuant to the office's request must be verified by the oath of two executive officers of the underwriting member.

9. Record maintenance.—Each underwriting member shall have and maintain its principal place of business in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for or suitable to the kind or kinds of insurance transacted.

10. Examination of agents.—If the department has reason to believe that any agent, as defined in s. 626.015 or s. 626.914(5) ~~s. 626.914~~, has violated or is violating any provision of the insurance law, or upon receipt of a written complaint signed by any interested person indicating that any such violation may exist, the department shall conduct such examination as it deems necessary of the accounts, records,

documents, and transactions pertaining to or affecting the insurance affairs of such agent.

11. Written reports of office.—The office or its examiner shall make a full and true written report of any examination. The report shall contain only information obtained from examination of the records, accounts, files, and documents of or relative to the person or entity examined or from testimony of individuals under oath, together with relevant conclusions and recommendations of the examiner based thereon. The office shall furnish a copy of the report to the person or entity examined not less than 30 days prior to filing the report in its office. If such person or entity so requests in writing within such 30-day period, the office shall grant a hearing with respect to the report and shall not file the report until after the hearing and after such modifications have been made therein as the office deems proper.

12. Admissibility of reports.—The report of an examination when filed shall be admissible in evidence in any action or proceeding brought by the office against the person or entity examined, or against his or her or its officers, employees, or agents. The office or its examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the office.

13. Publication of reports.—After an examination report has been filed, the office may publish the results of any such examination in one or more newspapers published in this state whenever it deems it to be in the public interest.

14. Consideration of examination reports by entity examined.—After the examination report of an underwriting member has been filed, an affidavit shall be filed with the office, not more than 30 days after the report has been filed, on a form furnished by the office and signed by the person or a representative of any entity examined, stating that the report has been read and that the recommendations made in the report will be considered within a reasonable time.

15. Examination costs.—Each person or entity examined by the office shall pay to the office the expenses incurred in such examination.

16. Exchange costs.—An exchange shall reimburse the office for any expenses incurred by it relating to the regulation of the exchange and its members, except as specified in subparagraph 15.

17. Powers of examiners.—Any examiner appointed by the office, as to the subject of any examination, investigation, or hearing being conducted by him or her, may administer oaths, examine and cross-examine witnesses, and receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by

subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which the examiner deems relevant to the inquiry. If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he or she may be lawfully interrogated, the Circuit Court of Leon County or the circuit court of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such person resides, on the office's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof. Subpoenas shall be served, and proof of such service made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

18. False testimony.—Any person willfully testifying falsely under oath as to any matter material to any examination, investigation, or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

19. Self-incrimination.—

a. If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the office or its examiner, on the ground that the testimony or

evidence required of the person may tend to incriminate him or her or subject him or her to a penalty or forfeiture, and the person notwithstanding is directed to give such testimony or produce such evidence, he or she shall, if so directed by the office and the Department of Legal Affairs, nonetheless comply with such direction; but the person shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have so testified or produced evidence, and no testimony so given or evidence so produced shall be received against him or her upon any criminal action, investigation, or proceeding; except that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning such perjury, nor shall he or she be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance law.

b. Any such individual may execute, acknowledge, and file with the office a statement expressly waiving such immunity or privilege in respect to any transaction, matter, or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction,

matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and if such testimony or evidence is so received or produced, such individual shall not be entitled to any immunity or privileges on account of any testimony so given or evidence so produced.

20. Penalty for failure to testify.—Any person who refuses or fails, without lawful cause, to testify relative to the affairs of any member, associate broker, or other person when subpoenaed and requested by the office to so testify, as provided in subparagraph 17., shall, in addition to the penalty provided in subparagraph 17., be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

21. Name selection.—No underwriting member shall be formed or authorized to transact insurance in this state under a name which is the same as that of any authorized insurer or is so nearly similar thereto as to cause or tend to cause confusion or under a name which would tend to mislead as to the type of organization of the insurer. Before incorporating under or using any name, the underwriting syndicate or proposed underwriting syndicate shall submit its name or proposed name to the office for the approval of the office.

22. Capitalization.—An underwriting member approved on or after July 2, 1987, shall provide an initial paid-in capital and surplus of $3 million and thereafter shall maintain a minimum

policyholder surplus of $2 million in order to be permitted to write insurance. Underwriting members approved prior to July 2, 1987, shall maintain a minimum policyholder surplus of $1 million. After June 29, 1988, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of $1.5 million to write insurance. After June 29, 1989, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of $1.75 million to write insurance. After December 30, 1989, all underwriting members, regardless of the date they were approved, must maintain a minimum policyholder surplus of $2 million to write insurance. Except for that portion of the paid-in capital and surplus which shall be maintained in a security fund of an exchange, the paid-in capital and surplus shall be invested by an underwriting member in a manner consistent with ss. 625.301-625.340. The portion of the paid-in capital and surplus in any security fund of an exchange shall be invested in a manner limited to investments for life insurance companies under the Florida insurance laws.

23. Limitations on coverage written.—

a. Limit of risk.—No underwriting member shall expose itself to any loss on any one risk in an amount exceeding 10 percent of its surplus to policyholders. Any risk or portion of any risk which shall have been reinsured in an assuming reinsurer authorized or approved to do such business in this

state shall be deducted in determining the limitation of risk prescribed in this section.

b. Restrictions on premiums written.—If the office has reason to believe that the underwriting member's ratio of actual or projected annual gross written premiums to policyholder surplus exceeds 8 to 1 or the underwriting member's ratio of actual or projected annual net premiums to policyholder surplus exceeds 4 to 1, the office may establish maximum gross or net annual premiums to be written by the underwriting member consistent with maintaining the ratios specified in this sub-subparagraph.

(I) Projected annual net or gross premiums shall be based on the actual writings to date for the underwriting member's current calendar year, its writings for the previous calendar year, or both. Ratios shall be computed on an annualized basis.

(II) For purposes of this sub-subparagraph, the term "gross written premiums" means direct premiums written and reinsurance assumed.

c. Surplus as to policyholders.—For the purpose of determining the limitation on coverage written, surplus as to policyholders shall be deemed to include any voluntary reserves, or any part thereof, which are not required by or pursuant to law and shall be determined from the last sworn statement of such underwriting member with the office, or by the last report or examination filed by the office, whichever is more recent at

the time of assumption of such risk.

24. Unearned premium reserves.—An underwriting member must at all times maintain an unearned premium reserve equal to 50 percent of the net written premiums of the subscribers on policies having 1 year or less to run, and pro rata on those for longer periods, except that all premiums on any marine or transportation insurance trip risk shall be deemed unearned until the trip is terminated. For the purpose of this subparagraph, the term "net written premiums" means the premium payments made by subscribers plus the premiums due from subscribers, after deducting the amounts specifically provided in the subscribers' agreements for expenses, including reinsurance costs and fees paid to the attorney in fact, provided that the power of attorney agreement contains an explicit provision requiring the attorney in fact to refund any unearned subscribers fees on a pro-rata basis for canceled policies. If there is no such provision, the unearned premium reserve shall be calculated without any adjustment for fees paid to the attorney in fact. If the unearned premium reserves at any time do not amount to $100,000, there shall be maintained on deposit at the exchange at all times additional funds in cash or eligible securities which, together with the unearned premium reserves, equal $100,000. In calculating the foregoing reserves, the amount of the attorney's bond, as filed with the office and as required by s. 629.121, shall be included in such reserves.

If at any time the unearned premium reserves are less than the foregoing requirements, the subscribers, or the attorney in fact, shall advance funds to make up the deficiency. Such advances shall only be repaid out of the surplus of the exchange and only after receiving written approval from the office.

25. Loss reserves.—All underwriting members of an exchange shall maintain loss reserves, including a reserve for incurred but not reported claims. The reserves shall be subject to review by the office, and, if loss experience shows that an underwriting member's loss reserves are inadequate, the office shall require the underwriting member to maintain loss reserves in such additional amount as is needed to make them adequate.

26. Distribution of profits.—An underwriting member shall not distribute any profits in the form of cash or other assets to owners except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and realized capital gains. In any one year such payments to owners shall not exceed 30 percent of such surplus as of December 31 of the immediately preceding year, unless otherwise approved by the office. No distribution of profits shall be made that would render an underwriting member either impaired or insolvent.

27. Stock dividends.—A stock dividend may be paid by an underwriting member out of any available surplus funds in excess of the aggregate amount of surplus advanced to the underwriting

member under subparagraph 29.

28. Dividends from earned surplus.—A dividend otherwise lawful may be payable out of an underwriting member's earned surplus even though the total surplus of the underwriting member is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

29. Borrowing of money by underwriting members.—

a. An underwriting member may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the underwriting member's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding 15 percent simple interest per annum. The interest shall or shall not constitute a liability of the underwriting member as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan. The use of any surplus note and any repayments thereof shall be subject to the approval of the office.

b. Money so borrowed, together with any interest thereon if so stipulated in the agreement, shall not form a part of the underwriting member's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, nor

be the basis of any setoff; but until repayment, financial statements filed or published by an underwriting member shall show as a footnote thereto the amount thereof then unpaid, together with any interest thereon accrued but unpaid.

30. Liquidation, rehabilitation, and restrictions.—The office, upon a showing that a member or associate broker of an exchange has met one or more of the grounds contained in part I of chapter 631, may restrict sales by type of risk, policy or contract limits, premium levels, or policy or contract provisions; increase surplus or capital requirements of underwriting members; issue cease and desist orders; suspend or restrict a member's or associate broker's right to transact business; place an underwriting member under conservatorship or rehabilitation; or seek an order of liquidation as authorized by part I of chapter 631.

31. Prohibited conduct.—The following acts by a member, associate broker, or affiliated person shall constitute prohibited conduct:

a. Fraud.

b. Fraudulent or dishonest acts committed by a member or associate broker prior to admission to an exchange, if the facts and circumstances were not disclosed to the office upon application to become a member or associate broker.

c. Conduct detrimental to the welfare of an exchange.

d. Unethical or improper practices or conduct,

inconsistent with just and equitable principles of trade as set forth in, but not limited to, ss. 626.951-626.9641 and 626.973.

e. Failure to use due diligence to ascertain the insurance needs of a client or a principal.

f. Misstatements made under oath or upon an application for membership on an exchange.

g. Failure to testify or produce documents when requested by the office.

h. Willful violation of any law of this state.

i. Failure of an officer or principal to testify under oath concerning a member, associate broker, or other person's affairs as they relate to the operation of an exchange.

j. Violation of the constitution and bylaws of the exchange.

32. Penalties for participating in prohibited conduct.—

a. The office may order the suspension of further transaction of business on the exchange of any member or associate broker found to have engaged in prohibited conduct. In addition, any member or associate broker found to have engaged in prohibited conduct may be subject to reprimand, censure, and/or a fine not exceeding $25,000 imposed by the office.

b. Any member which has an affiliated person who is found to have engaged in prohibited conduct shall be subject to involuntary withdrawal or in addition thereto may be subject to suspension, reprimand, censure, and/or a fine not exceeding

$25,000.

33. Reduction of penalties.—Any suspension, reprimand, censure, or fine may be remitted or reduced by the office on such terms and conditions as are deemed fair and equitable.

34. Other offenses.—Any member or associate broker that is suspended shall be deprived, during the period of suspension, of all rights and privileges of a member or of an associate broker and may be proceeded against by the office for any offense committed either before or after the date of suspension.

35. Reinstatement.—Any member or associate broker that is suspended may be reinstated at any time on such terms and conditions as the office may specify.

36. Remittance of fines.—Fines imposed under this section shall be remitted to the office and shall be paid into the Insurance Regulatory Trust Fund.

37. Failure to pay fines.—When a member or associate broker has failed to pay a fine for 15 days after it becomes payable, such member or associate broker shall be suspended, unless the office has granted an extension of time to pay such fine.

38. Changes in ownership or assets.—In the event of a major change in the ownership or a major change in the assets of an underwriting member, the underwriting member shall report such change in writing to the office within 30 days of the effective date thereof. The report shall set forth the details

of the change. Any change in ownership or assets of more than 5 percent shall be considered a major change.

39. Retaliation.—

a. When by or pursuant to the laws of any other state or foreign country any taxes, licenses, or other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon an exchange or upon the agents or representatives of such exchange which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of such fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar exchanges or upon the agents or representatives of such exchanges of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the office upon the exchanges, or upon the agents or representatives of such exchanges, of such other state or country doing business or seeking to do business in this state.

b. Any tax, license, or other obligation imposed by any city, county, or other political subdivision or agency of a

state, jurisdiction, or foreign country on an exchange, or on the agents or representatives on an exchange, shall be deemed to be imposed by such state, jurisdiction, or foreign country within the meaning of sub-subparagraph a.

40. Agents.—

a. Agents as defined in ss. 626.015 and 626.914(5) ~~626.914~~ who are broker members or associate broker members of an exchange shall be allowed only to place on an exchange the same kind or kinds of business that the agent is licensed to place pursuant to Florida law. Direct Florida business as defined in s. 626.916 or s. 626.917 shall be written through a broker member who is a surplus lines agent as defined in s. 626.914. The activities of each broker member or associate broker with regard to an exchange shall be subject to all applicable provisions of the insurance laws of this state, and all such activities shall constitute transactions under his or her license as an insurance agent for purposes of the Florida insurance law.

b. Premium payments and other requirements.—If an underwriting member has assumed the risk as to a surplus lines coverage and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the underwriting member and the insured, the underwriting member shall be deemed to have received the premium due to it for such

coverage; and the underwriting member shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the underwriting member with respect to such insurance or for any other cause.

41. Improperly issued contracts, riders, and endorsements.—

a. Any insurance policy, rider, or endorsement issued by an underwriting member and otherwise valid which contains any condition or provision not in compliance with the requirements of this section shall not be thereby rendered invalid, except as provided in s. 627.415, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this section. In the event an underwriting member issues or delivers any policy for an amount which exceeds any limitations otherwise provided in this section, the underwriting member shall be liable to the insured or his or her beneficiary for the full amount stated in the policy in addition to any other penalties that may be imposed.

b. Any insurance contract delivered or issued for delivery in this state governing a subject or subjects of insurance resident, located, or to be performed in this state which, pursuant to the provisions of this section, the underwriting

member may not lawfully insure under such a contract shall be cancelable at any time by the underwriting member, any provision of the contract to the contrary notwithstanding; and the underwriting member shall promptly cancel the contract in accordance with the request of the office therefor. No such illegality or cancellation shall be deemed to relieve the underwriting syndicate of any liability incurred by it under the contract while in force or to prohibit the underwriting syndicate from retaining the pro rata earned premium thereon. This provision does not relieve the underwriting syndicate from any penalty otherwise incurred by the underwriting syndicate.

42. Satisfaction of judgments.—

a. Every judgment or decree for the recovery of money heretofore or hereafter entered in any court of competent jurisdiction against any underwriting member shall be fully satisfied within 60 days from and after the entry thereof or, in the case of an appeal from such judgment or decree, within 60 days from and after the affirmance of the judgment or decree by the appellate court.

b. If the judgment or decree is not satisfied as required under sub-subparagraph a., and proof of such failure to satisfy is made by filing with the office a certified transcript of the docket of the judgment or the decree together with a certificate by the clerk of the court wherein the judgment or decree remains unsatisfied, in whole or in part, after the time provided in

sub-subparagraph a., the office shall forthwith prohibit the underwriting member from transacting business. The office shall not permit such underwriting member to write any new business until the judgment or decree is wholly paid and satisfied and proof thereof is filed with the office under the official certificate of the clerk of the court wherein the judgment was recovered, showing that the judgment or decree is satisfied of record, and until the expenses and fees incurred in the case are also paid by the underwriting syndicate.

43. Tender and exchange offers.—No person shall conclude a tender offer or an exchange offer or otherwise acquire 5 percent or more of the outstanding voting securities of an underwriting member or controlling company or purchase 5 percent or more of the ownership of an underwriting member or controlling company unless such person has filed with, and obtained the approval of, the office and sent to such underwriting member a statement setting forth:

a. The identity of, and background information on, each person by whom, or on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by or on behalf of a corporation, association, or trust, the identity of and background information on each director, officer, trustee, or other natural person performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust.

b. The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

c. Any plans or proposals which such person may have to liquidate such member, to sell its assets, or to merge or consolidate it.

d. The percentage of ownership which such person proposes to acquire and the terms of the offer or exchange, as the case may be.

e. Information as to any contracts, arrangements, or understandings with any party with respect to any securities of such member or controlling company, including, but not limited to, information relating to the transfer of any securities, option arrangements, or puts or calls or the giving or withholding of proxies, naming the party with whom such contract, arrangements, or understandings have been entered and giving the details thereof.

f. The office may disapprove any acquisition subject to the provisions of this subparagraph by any person or any affiliated person of such person who:

(I) Willfully violates this subparagraph;

(II) In violation of an order of the office issued pursuant to sub-subparagraph j., fails to divest himself or herself of any stock obtained in violation of this subparagraph, or fails to divest himself or herself of any direct or indirect control of such stock, within 25 days after such order; or

(III) In violation of an order issued by the office pursuant to sub-subparagraph j., acquires additional stock of the underwriting member or controlling company, or direct or indirect control of such stock, without complying with this subparagraph.

g. The person or persons filing the statement required by this subparagraph have the burden of proof. The office shall approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed statement if no proceeding is conducted, that:

(I) Upon completion of the acquisition, the underwriting member will be able to satisfy the requirements for the approval to write the line or lines of insurance for which it is presently approved;

(II) The financial condition of the acquiring person or persons will not jeopardize the financial stability of the underwriting member or prejudice the interests of its policyholders or the public;

(III) Any plan or proposal which the acquiring person has, or acquiring persons have, made:

(A) To liquidate the insurer, sell its assets, or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; or

(B) To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major

change in its business or corporate structure or management which would have an effect upon the underwriting member

is fair and free of prejudice to the policyholders of the underwriting member or to the public;

(IV) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the underwriting member indicate that the acquisition is in the best interest of the policyholders of the underwriting member and in the public interest;

(V) The natural persons for whom background information is required to be furnished pursuant to this subparagraph have such backgrounds as to indicate that it is in the best interests of the policyholders of the underwriting member, and in the public interest, to permit such persons to exercise control over such underwriting member;

(VI) The officers and directors to be employed after the acquisition have sufficient insurance experience and ability to assure reasonable promise of successful operation;

(VII) The management of the underwriting member after the acquisition will be competent and trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the underwriting member not hazardous to the insurance-buying public;

(VIII) The management of the underwriting member after the

acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or underwriting member or otherwise acted in bad faith with respect thereto;

(IX) The acquisition is not likely to be hazardous or prejudicial to the underwriting member's policyholders or the public; and

(X) The effect of the acquisition of control would not substantially lessen competition in insurance in this state or would not tend to create a monopoly therein.

h. No vote by the stockholder of record, or by any other person, of any security acquired in contravention of the provisions of this subparagraph is valid. Any acquisition of any security contrary to the provisions of this subparagraph is void. Upon the petition of the underwriting member or controlling company, the circuit court for the county in which the principal office of such underwriting member is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce the provisions of this subparagraph. There shall be a private right of action in favor of the underwriting member or controlling company to enforce the provisions of this subparagraph. No demand upon the office that it perform its functions shall be

required as a prerequisite to any suit by the underwriting member or controlling company against any other person, and in no case shall the office be deemed a necessary party to any action by such underwriting member or controlling company to enforce the provisions of this subparagraph. Any person who makes or proposes an acquisition requiring the filing of a statement pursuant to this subparagraph, or who files such a statement, shall be deemed to have thereby designated the Chief Financial Officer as such person's agent for service of process under this subparagraph and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the office and to the jurisdiction of the circuit court.

i. Any approval by the office under this subparagraph does not constitute a recommendation by the office for an acquisition, tender offer, or exchange offer. It is unlawful for a person to represent that the office's approval constitutes a recommendation. A person who violates the provisions of this sub-subparagraph is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this sub-subparagraph is 5 years.

j. Upon notification to the office by the underwriting member or a controlling company that any person or any affiliated person of such person has acquired 5 percent or more of the outstanding voting securities of the underwriting member

or controlling company without complying with the provisions of this subparagraph, the office shall order that the person and any affiliated person of such person cease acquisition of any further securities of the underwriting member or controlling company; however, the person or any affiliated person of such person may request a proceeding, which proceeding shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with any affiliated person of such person, has acquired 5 percent or more of the outstanding voting securities of an underwriting member or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this sub-subparagraph that the person or affiliated person has acquired voting securities of an underwriting member or controlling company in violation of this subparagraph, the office may order the person and affiliated person to divest themselves of any voting securities so acquired.

k.(I) The office shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of any underwriting member or controlling company:

(A) The control of which is acquired in violation of this subparagraph;

(B) That is controlled, directly or indirectly, by any person or any affiliated person of such person who, in violation

of this subparagraph, has obtained control of an underwriting member or controlling company; or

(C) That is controlled, directly or indirectly, by any person who, directly or indirectly, controls any other person who, in violation of this subparagraph, acquires control of an underwriting member or controlling company.

(II) If any underwriting member is subject to suspension or revocation pursuant to sub-sub-subparagraph (I), the underwriting member shall be deemed to be in such condition, or to be using or to have been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, or stockholders or to the public.

1.(I) For the purpose of this sub-sub-subparagraph, the term "affiliated person" of another person means:

(A) The spouse of such other person;

(B) The parents of such other person and their lineal descendants and the parents of such other person's spouse and their lineal descendants;

(C) Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;

(D) Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;

(E) Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person; or any officer, director, partner, copartner, or employee of such other person;

(F) If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;

(G) If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

(H) Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of an underwriting member or controlling company.

(II) For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more underwriting members.

m. The commission may adopt, amend, or repeal rules that are necessary to implement the provisions of this subparagraph, pursuant to chapter 120.

44. Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to sub-subparagraph 43.a. shall include, but shall not be limited to:

a. Such person's occupations, positions of employment, and offices held during the past 10 years.

b. The principal business and address of any business, corporation, or other organization in which each such office was held or in which such occupation or position of employment was carried on.

c. Whether, at any time during such 10-year period, such person was convicted of any crime other than a traffic violation.

d. Whether, during such 10-year period, such person has been the subject of any proceeding for the revocation of any license and, if so, the nature of such proceeding and the disposition thereof.

e. Whether, during such 10-year period, such person has been the subject of any proceeding under the federal Bankruptcy Act or whether, during such 10-year period, any corporation, partnership, firm, trust, or association in which such person was a director, officer, trustee, partner, or other official has been subject to any such proceeding, either during the time in which such person was a director, officer, trustee, partner, or other official, or within 12 months thereafter.

f. Whether, during such 10-year period, such person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or

from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details of any such event.

45. Security fund.—All underwriting members shall be members of the security fund of any exchange.

46. Underwriting member defined.—Whenever the term "underwriting member" is used in this subsection, it shall be construed to mean "underwriting syndicate."

47. Offsets.—Any action, requirement, or constraint imposed by the office shall reduce or offset similar actions, requirements, or constraints of any exchange.

48. Restriction on member ownership.—

a. Investments existing prior to July 2, 1987.—The investment in any member by brokers, agents, and intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall in each case be limited in the aggregate to less than 20 percent of the total investment in such member, broker, agent, or intermediary, as the case may be. After December 31, 1987, the aggregate percent of the total investment in such member by any broker, agent, or intermediary and the aggregate percent of the total investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall not exceed 15 percent. After June 30, 1988, such aggregate percent shall not exceed 10 percent and after December 31, 1988,

such aggregate percent shall not exceed 5 percent.

b. Investments arising on or after July 2, 1987.—The investment in any underwriting member by brokers, agents, or intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any underwriting member, directly or indirectly, shall in each case be limited in the aggregate to less than 5 percent of the total investment in such underwriting member, broker, agent, or intermediary.

49. "Underwriting manager" defined.—"Underwriting manager" as used in this subparagraph includes any person, partnership, corporation, or organization providing any of the following services to underwriting members of the exchange:

a. Office management and allied services, including correspondence and secretarial services.

b. Accounting services, including bookkeeping and financial report preparation.

c. Investment and banking consultations and services.

d. Underwriting functions and services including the acceptance, rejection, placement, and marketing of risk.

50. Prohibition of underwriting manager investment.—Any direct or indirect investment in any underwriting manager by a broker member or any affiliated person of a broker member or any direct or indirect investment in a broker member by an underwriting manager or any affiliated person of an underwriting

manager is prohibited. "Affiliated person" for purposes of this subparagraph is defined in subparagraph 43.

51. An underwriting member may not accept reinsurance on an assumed basis from an affiliate or a controlling company, nor may a broker member or management company place reinsurance from an affiliate or controlling company of theirs with an underwriting member. "Affiliate and controlling company" for purposes of this subparagraph is defined in subparagraph 43.

52. Premium defined.—"Premium" is the consideration for insurance, by whatever name called. Any "assessment" or any "membership," "policy," "survey," "inspection," "service" fee or charge or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

53. Rules.—The commission shall adopt rules necessary for or as an aid to the effectuation of any provision of this section.

Section 7. This act shall take effect July 1, 2022.

COMMERCE COMMITTEE

HB 951 by Rep. Gregory
Domestic Surplus Lines Insurers

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Gregory (line 55): The amendment:

- Clarifies that a domestic surplus lines insurer is not considered an authorized insurer as that term is defined in the Insurance Code, but is authorized to write surplus lines insurance in any jurisdiction including Florida.
- Establishes that a domestic surplus lines insurer must maintain a surplus of at least $15 million at all times.
- Clarifies that a domestic surplus lines insurer may not hold a certificate of authority authorizing it to operate as an admitted insurer.
- Establishes that a domestic surplus lines insurer may not issue a homeowners policy covering residential property located in Florida if such policy was non-renewed or cancelled by an admitted insurer's affiliate within twelve months following the effective date of the non-renewal or cancellation.
- Establishes that a domestic surplus lines insurer may not issue a policy designed to satisfy motor vehicle financial responsibility or worker's compensation coverage.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 55-229 and insert:

(2) "Domestic surplus lines insurer" means a nonadmitted insurer domiciled in this state that has been deemed eligible and authorized by the office to write surplus lines insurance. A domestic surplus lines insurer is not an "authorized insurer" as defined in s. 624.09(1), but is authorized to write surplus lines insurance in any jurisdiction, including this state, and such authorization is not contingent on the company's holding of an existing certificate of authority.

(3)~~(2)~~ "Eligible surplus lines insurer" means:

(a) An unauthorized insurer that ~~which~~ has been made eligible by the office to issue insurance coverage under this Surplus Lines Law; or

(b) A domestic surplus lines insurer.

(4)~~(3)~~ "Export" ~~"To export"~~ means to place, in an unauthorized insurer under this Surplus Lines Law, insurance covering a subject of insurance resident, located, or to be performed in this state.

(5)~~(1)~~ "Surplus lines agent" means an individual licensed as provided in this part to handle the placement of insurance coverages with unauthorized insurers and to place such coverages with authorized insurers as to which the licensee is not licensed as an agent.

Section 2. Section 626.91805, Florida Statutes, is created to read:

626.91805 Domestic surplus lines insurers.—

(1) As used in this section, the term "nonadmitted insurer" has the same meaning as provided in the federal Nonadmitted and Reinsurance Reform Act of 2010.

(2) Notwithstanding any other law, a nonadmitted insurer possessing a policyholder surplus of at least $15 million may, under a resolution by its board of directors and with the written approval of the office, be eligible to transact insurance as a domestic surplus lines insurer. A domestic

surplus lines insurer must maintain surplus of at least $15 million at all times.

(3) Notwithstanding s. 626.918(2), a domestic surplus lines insurer shall be deemed an eligible surplus lines insurer and shall be included in the list of eligible surplus lines insurers required by s. 626.918(3). Eligible surplus lines insurers listed in s. 626.918(3) may write any kind of insurance that an unauthorized insurer not domiciled in this state is eligible to write.

(4) For purposes of writing surplus lines insurance pursuant to the Surplus Lines Law, a domestic surplus lines insurer shall be considered an unauthorized insurer.

(5) For purposes of the federal Nonadmitted and Reinsurance Reform Act of 2010, a domestic surplus lines insurer shall be considered a nonadmitted insurer.

(6) A domestic surplus lines insurer may write only surplus lines insurance in this state and only if procured from a surplus lines agent pursuant to the Surplus Lines Law. Such insurer is also prohibited from simultaneously holding any certificate of authority authorizing it to operate as an admitted insurer.

(7) A domestic surplus lines insurer is authorized to write surplus lines insurance in any other jurisdiction if the domestic surplus lines insurer complies with any requirements of that jurisdiction.

(8) All requirements imposed by the Florida Insurance Code on admitted domestic insurers apply to domestic surplus lines insurers unless domestic surplus lines insurers are otherwise specifically exempted in this section.

(9) A domestic surplus lines insurer is exempt from s. 624.408.

(10) A surplus lines insurance policy issued by a domestic surplus lines insurer is exempt from all statutory requirements relating to insurance rating and rating plans; policy forms; premiums charged to insureds; policy cancellation, nonrenewal, and renewal; and other statutory requirements in the same manner and to the same extent as surplus lines policies issued by a surplus lines insurer domiciled in another state.

(11) Notwithstanding any other law, a policy issued by a domestic surplus lines insurer is subject to taxes assessed upon surplus lines policies issued by nonadmitted insurers, including surplus lines premium taxes, but is not subject to other taxes levied upon admitted insurers, whether domestic or foreign.

(12) A policy issued by a domestic surplus lines insurer is not subject to the protections or requirements of the Florida Insurance Guaranty Association Act, the Florida Life and Health Insurance Guaranty Association Act, the Florida Workers' Compensation Insurance Guaranty Association Act, or the Florida Hurricane Catastrophe Fund.

(13) A domestic surplus lines insurer may not issue a homeowners policy covering personal residential property located in Florida if such policy was non-renewed or cancelled by an admitted carrier "affiliate" as that term is defined in s. 624.10 within 12 months following the effective date of the non-renewal or cancellation. This restriction shall not apply to non-renewals or cancellations provided at the insured's request. A domestic surplus lines insurer may not issue a policy designed to satisfy the motor vehicle financial responsibility requirements of this state under chapter 324, the Workers' Compensation Law under chapter 440, or any other law of this state mandating insurance coverage by an admitted insurer.

Section 3. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 458.320, Florida Statutes, are amended to read:

458.320 Financial responsibility.—

(1) As a condition of licensing and maintaining an active license, and prior to the issuance or renewal of an active license or reactivation of an inactive license for the practice of medicine, an applicant must by one of the following methods demonstrate to the satisfaction of the board and the department financial responsibility to pay claims and costs ancillary thereto arising out of the rendering of, or the failure to render, medical care or services:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined under s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

(2) Physicians who perform surgery in an ambulatory surgical center licensed under chapter 395 and, as a continuing condition of hospital staff privileges, physicians who have staff privileges must also establish financial responsibility by one of the following methods:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $250,000 per claim, with a minimum annual aggregate of not less than $750,000 from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined under s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), through a plan of self-insurance as provided in s. 627.357, or through a plan of self-insurance which meets the conditions

specified for satisfying financial responsibility in s. 766.110. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

This subsection shall be inclusive of the coverage in subsection (1).

Section 4. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 459.0085, Florida Statutes, are amended to read:

459.0085 Financial responsibility.—

(1) As a condition of licensing and maintaining an active license, and prior to the issuance or renewal of an active license or reactivation of an inactive license for the practice of osteopathic medicine, an applicant must by one of the following methods demonstrate to the satisfaction of the board and the department financial responsibility to pay claims and costs ancillary thereto arising out of the rendering of, or the failure to render, medical care or services:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined under s. 627.942, from the Joint

Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

(2) Osteopathic physicians who perform surgery in an ambulatory surgical center licensed under chapter 395 and, as a continuing condition of hospital staff privileges, osteopathic physicians who have staff privileges must also establish financial responsibility by one of the following methods:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $250,000 per claim, with a minimum annual aggregate of not less than $750,000 from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined under s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), through a plan of self-insurance as provided in s. 627.357, or through a plan of self-insurance that meets the conditions specified for satisfying financial responsibility in s. 766.110. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

This subsection shall be inclusive of the coverage in subsection (1).

Section 5. Paragraph (a) of subsection (2) of section 464.0123, Florida Statutes, is amended to read:

464.0123 Autonomous practice by an advanced practice registered nurse.—

(2) FINANCIAL RESPONSIBILITY.—

(a) An advanced practice registered nurse registered under this section must, by one of the following methods, demonstrate to the satisfaction of the board and the department financial responsibility to pay claims and costs ancillary thereto arising out of the rendering of, or the failure to render, nursing care, treatment, or services:

1. Obtaining and maintaining professional liability coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an authorized insurer as defined in s. 624.09, from a surplus lines insurer as defined in s. 626.914(3) ~~s. 626.914(2)~~, from a risk

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

Remove lines 6-35 and insert:

"domestic surplus lines insurer"; clarifying that domestic surplus lines insurers are not "authorized insurers"; creating s. 626.91805, F.S.; defining the term "nonadmitted insurer";

authorizing specified nonadmitted insurers to transact insurance as domestic surplus lines insurers under certain circumstances; authorizing such insurers to write surplus lines insurance in any jurisdiction; requiring such insurers to maintain a minimum surplus amount; requiring domestic surplus lines insurers to be deemed eligible surplus lines insurers and to be included in the list of eligible surplus lines insurers; authorizing such insurers to write certain kinds of insurance; requiring domestic surplus lines insurers to be considered unauthorized insurers for specified purposes; requiring domestic surplus lines insurers to be considered nonadmitted insurers for specified purposes; authorizing domestic surplus lines insurers to write only surplus lines insurance; limiting the circumstances under which such insurers may write surplus lines insurance; prohibiting such insurers from holding any certificate of authority to operate as an admitted insurer; providing applicability of specified provisions of the Florida Insurance Code to domestic surplus lines insurers; providing an exception; providing an exemption from a specified law for domestic surplus lines insurers; providing exemptions from specified requirements for surplus lines insurance policies issued by such insurers; providing that such policies are subject to specified taxes but are not subject to certain other taxes; providing that such policies are not subject to the protections and requirements of specified acts or funds; specifying domestic surplus lines

insurers may not write homeowners policies, motor vehicle coverage, or workers compensation coverage under certain circumstances;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1095 Telephone Solicitation
SPONSOR(S): Civil Justice & Property Rights Subcommittee, Regulatory Reform Subcommittee, Beltran
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Chapter 501, part IV, the Florida Telemarketing Act (FTA), regulates telemarketers and requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services (DACS) before operating in Florida. Florida law also prohibits telephonic sales calls that use an automated system for the selection **or** dialing of telephone numbers or the playing of a recorded message (robocall) when a connection is completed without the prior express written consent of the called party, with some exceptions.

Florida prohibits unsolicited telephonic sales calls and text messages from telemarketers. Residents who do not wish to receive unsolicited telephonic sales calls may have their residential, mobile, or paging device telephone number included on the Do Not Call List.

The bill:

- Revises the prohibition on telephonic sales calls that use an automated system to specifically include an automated system for the selection **and** dialing of telephone numbers.
- Clarifies that "the transmission of a text message" is allowed when the called party has given prior express written consent.
- Revises the definition of "unsolicited telephonic sales call" to mean a telephonic sales call other than a call made within 120 days after an express request of the called party, a call made to a caller who has previously given prior express consent, or a call made for certain polling purposes.
- Clarifies and limits calls or messages made solely in response to an inquiry initiated by the called party to **three such calls** or messages in response to each inquiry.
- Clarifies that in order for a prevailing party to be awarded attorney fees and costs from a non-prevailing party in civil litigation cases, such litigation must result **from a violation**, instead of a **transaction involving** a violation.
- Prohibits a telephone solicitor from causing any unsolicited telephonic sales call to be initiated by the use of any automated system.
- Prohibits a telephone solicitor from causing any other person other than the caller to initiate a sales call.

The bill provides that it applies retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021. However, the amendments made to s. 501.059(11), F.S., relating to attorney fees are not retroactive.

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

Florida Telemarketing Act

Chapter 501, part IV, the Florida Telemarketing Act (FTA), requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services (DACS) before operating in Florida. Certain exempt entities must have a valid affidavit of exemption on file prior to operating in Florida. There are approximately 28 exemptions, including: soliciting for religious, charitable, political or educational purposes; research companies; newspapers; book and video clubs; cable television; and persons or companies with whom the consumer has a prior business relationship.[1]

The FTA generally requires businesses that solicit the sale of consumer goods or services to:

- Be licensed;[2]
- Post a form of security;[3]
- License all of their salespeople;[4] and
- Provide DACS with a list of all telephone numbers used to make sales calls.[5]

An application for licensure as a telemarketer must include several pieces of information, including the applicant's identifying information, prior experience in the field, criminal and administrative history (especially relating to fraud, theft, or unfair and deceptive trade practices), phone numbers from which the telemarketer will make sales calls, and parent or affiliate entity under which it will transact business, if applicable.[6]

Additionally, an applicant for licensure as a telemarketer must submit:

- A script that will be used by its salespersons during calls, or other related literature;
- The identity, address, date of birth, and alias of each of the applicant's principal officers, directors, trustees, shareholders, owners, partners, office managers, and salespersons who are employed by or affiliated with the applicant; and
- A $1,500 licensing fee.[7]

In Florida, it is unlawful for telemarketers to:

- Accept novelty payments.[8]
- Employ or be affiliated with an unlicensed salesperson.
- Be employed by or affiliated with an unlicensed commercial telephone seller.
- Operate without a license.
- Make calls before 8 a.m. or after 8 p.m. local time at the called person's time zone.
- Fail to provide the call recipient with their name and telephone number.[9]

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[1] S. 501.604, F.S.
[2] S. 501.605, F.S.
[3] S. 501.611, F.S., requires a $50,000 bond, irrevocable letter of credit issued for the applicant, or a certificate of deposit in favor of the Department for payment on findings of fraud, misrepresentation, breach of contract, or other violation by the applicant.
[4] S. 501.607, F.S.
[5] S. 501.605, F.S.
[6] S. 501.605(2), F.S.
[7] S. 501.605(5)(b), F.S.
[8] S. 501.603(8), F.S., defines a "novelty payment" as a payment method that does not have systematic monitoring and includes remotely created checks, remotely created payment orders, cash-to-cash money transfers (such as Western Union) and cash reload mechanisms (such as MoneyPak or ReloadIt). Novelty payment methods are not systematically monitored, have little to no consumer protection in the case of fraud or theft, and are used frequently in scams and other fraudulent activity.
[9] S. 501.616, F.S.

Violations of the FTA are punishable by a civil fine of up to $10,000 per violation,[10] the imposition of criminal penalties, and up to a third degree felony. Repeat violations are enhanced to a second degree felony.[11] DACS and the office of the state attorney have investigative authority, including the power to subpoena witnesses if a violation occurs.[12] Reasonable attorney fees and costs may be awarded to the prevailing party in a civil action as part of a judgment or administrative order.[13]

Telephone Solicitations

Do Not Call List

Section 501.059, F.S., governs telephone solicitations. The law includes the Florida Do Not Call Act, also known as the "Do Not Call" list (DNC list), which prohibits unsolicited telephonic sales calls and text messages from telemarketers.[14] Residents who do not wish to receive unsolicited telephonic sales calls may have their residential, mobile, or paging device telephone number included on the DNC list. DACS maintains the DNC list, it is free to register, and a registered number remains on the DNC list indefinitely.[15]

An "unsolicited telephonic sales call" is defined as a telephonic sales call other than a call made:

- In response to an express request of the person called;
- Primarily in connection with an existing debt or contract, if payment or performance of such debt or contract has not been completed at the time of such call;
- To a person with whom the telephone solicitor has a prior or existing business relationship; or
- By a newspaper publisher or his or her agent or employee in connection with his or her business.[16]

Telephone solicitors[17] are prohibited from making telephonic sales calls[18] to consumers who register for the DNC list. A "telephonic sales call" means a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.[19]

In addition to those consumers who are registered for the DNC list, a telephone solicitor may not call or text a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted. Businesses and charities are required to maintain a list of consumers who have made a do-not-call registration request. It is a violation of the Florida Do Not Call Act to call a consumer who has requested placement on the company's do-not-call list.[20]

When a telephone number is made available through a caller ID service during a telephonic sales call, the solicitor must ensure that the number is capable of receiving phone calls, and that the dialing of the

[10] S. 501.619, F.S.
[11] S. 501.623, F.S.
[12] S. 501.617, F.S.
[13] S. 501.621, F.S.
[14] *See* s. 501.059, F.S.
[15] Department of Agriculture and Consumer Services, *Florida Do Not Call*, https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call (last visited Feb. 7, 2022).
[16] S. 501.059(1)(k), F.S.
[17] S. 501.059(1)(i), F.S., defines "telephone solicitor" as "a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices."
[18] S. 501.059(1)(j), F.S., defines "telephonic sales call" as a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.
[19] S. 501.059(1)(j), F.S.
[20] S. 501.059(5), F.S.

number will connect the call recipient with the telephone solicitor or the seller on behalf of which the phone call was placed.[21]

Anyone who receives an unsolicited sales call can report the call to DACS using the online Do Not Call Complaint Form.[22]

Prior Express Written Consent

The law governing telephone solicitations also prohibits automated telephonic sales calls without the prior express written consent of the called party.[23]

"Prior express written consent" is defined as a written agreement that:

- Bears the signature of the called party;
- Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail; and
- Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered.[24]

Prior express written consent must include a clear and conspicuous disclosure informing the called party that:

- By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and
- He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.[25]

There is a rebuttable presumption that a telephonic sales call made to any Florida area code is a call made to a Florida resident or to a person in Florida at the time of the call.[26]

Violations

A telephone solicitor who violates the provisions of Florida's "Do Not Call" program is subject to an injunction and a civil penalty[27] with a maximum fine of $10,000 per violation, or an administrative fine[28] with a maximum of $1,000 per violation. Additionally, a telephone solicitor may be subject to responsibility for the consumer's attorney fees and costs.[29]

A party who was called in violation of the Do Not Call Act may bring an action for an injunction and actual damages or $500, whichever is greater.[30]

Courts that find that a defendant willfully or knowingly violated these provisions are authorized to, increase the amount of the award to not more than three times the amount of damages.[31]

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[21] S. 501.059(8)(b), F.S.
[22] DACS, *Florida Do Not Call*, https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call (last visited Feb. 7, 2022).
[23] S. 501.059(8)(a), F.S.
[24] S. 501.059(1)(g), F.S.
[25] S. 501.059(1)(g)4., F.S.
[26] S. 501.059(8)(d), F.S.
[27] S. 501.059(9)(a), F.S.
[28] S. 501.059(9)(b), F.S.
[29] S. 501.059(11), F.S.
[30] S. 501.059(10)(a), F.S.
[31] S. 501.059(10)(b), F.S.

Federal Telephone Consumer Protection Act (TCPA) History

In an effort to address a growing number of telephone marketing calls, Congress enacted the Telephone Consumer Protection Act (TCPA) in 1991. The TCPA restricts the making of telemarketing calls and the use of automatic telephone dialing systems and artificial or prerecorded voice messages. The rules apply to common carriers as well as to other marketers. In 1992, the Commission adopted rules to implement the TCPA, including the requirement that entities making telephone solicitations institute procedures for maintaining company-specific do-not-call lists.[32]

In July 2015, the Federal Communications Commission (FCC) established rules indicating that telephone carriers can block unwanted calls at the request of consumers.[33] Following the FCC's ruling, the National Association of Attorneys General (NAAG) called upon the major telephone carriers to do more to provide these services to consumers.[34] Currently there are a number of call-blocking applications that provide some relief from unwanted and spam calls.[35]

On November 16, 2017, the FCC adopted new rules to allow voice service providers to proactively block certain types of robocalls that are likely to be fraudulent because they come from certain types of phone numbers, including those that do not or cannot make outgoing calls.[36] For example, perpetrators have used IRS phone numbers that do not dial out to impersonate the tax agency, informing the people who answer that they are calling to collect money owed to the U.S. government. Such calls appear legitimate to the person who receives them and may often result in fraud or identity theft. Service providers can now block such calls, as well as calls from invalid or illegitimate numbers.[37]

The FCC requires telemarketers to transmit caller identification information, including the number and name of the caller. The telephone number provided must permit any individual to make a do-not-call request during regular business hours. It also provides that any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information. However, tax-exempt nonprofit organizations are exempt from compliance with these rules.[38]

With regard to telephone carriers, the FCC allows carriers to offer their customers external call-blocking applications on their landlines and allows carriers to directly block certain illegal robocalls. In December 2019, Congress enacted the "TRACED Act" to aid enforcement efforts between law enforcement agencies and the private sector on traceback issues, and required the FCC to issue rules "for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls."[39] In July of 2020, the FCC designated the US Telecom-led Industry Traceback Group (ITG) as the Official Consortium for coordinating industry-led efforts to trace back the origin of suspected unlawful robocalls.[40]

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[32] Federal Communications Commission, *FCC Actions on Robocalls, Telemarketing*, https://www.fcc.gov/general/telemarketing-and-robocalls (last visited Feb. 7, 2022).

[33] Declaratory Ruling and Order, In the Matter of Rules and Regulations Implementing the Telecommunications Consumer Protection Act of 1991, 30 FCC Rcd. 7961 (July 10, 2015).

[34] National Association of Attorneys General, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, https://www.naag.org/consumer-protection/attorney-general-journal/do-not-call-the-history-of-do-not-call-and-how-telemarketing-has-evolved/ (last visited Feb. 7, 2022).

[35] CTIA, *The Wireless Association, How to Stop Robocalls*, https://www.ctia.org/consumer-tips/robocalls (last visited Feb. 7, 2022).

[36] 32 FCC Rcd 9706 (11).

[37] FCC, *Stop Unwanted Calls and Texts*, https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited Feb. 7, 2022).

[38] 47 C.F.R. s. 64.1601.

[39] Pallone-Thune Telephone Robocall Abuse *Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019)*.

[40] USTelecom The Broadband Association, *FCC Names USTelecom's Industry Traceback Group as Official Robocall Traceback Consortium*, https://www.ustelecom.org/fcc-names-ustelecoms-industry-traceback-group-as-official-robocall-traceback-consortium/ (last visited Feb. 7, 2022).

According to the ITG's first annual report, over 100 companies participated in over 1,000 ITG traceback investigations in 2019, identifying more than 10 million illegal robocalls and resulting in more than 20 subpoenas and/or civil investigative demands from federal and state enforcement agencies.[41]

The ITG reported in a letter to the FCC on November 13, 2020, that about 100 providers had failed to cooperate with the ITG, including approximately 30 based in the United States.[42] The ITG encouraged the FCC to bring aggressive enforcement against robocallers and voice service providers that routinely refuse to participate in the traceback process.[43]

In its Fourth Report and Order on Advanced Methods to Target and Eliminate Unlawful Robocalls released on December 30, 2020, the FCC required "all voice service providers to respond to traceback requests from the FCC, civil and criminal law enforcement and the Consortium."[44]

The TRACED Act requires the FCC to issue an annual public notice seeking applicants to serve as the registered consortium.[45] On August 25, 2021, the FCC selected the Traceback Group to continue as the registered consortium.[46]

National Do Not Call Registry

Although individual states were first to address consumers' requests to stop unwanted telemarketing calls,[47] the federal government soon followed with a National Do Not Call Registry in 2003.[48] In July 2003, the federal government issued a report and order establishing the National Do Not Call registry. The national registry covers all telemarketers (with the exception of certain nonprofit organizations), and applies to both interstate and intrastate calls. The registry is administered by the FTC. To reduce the number of hang-up and dead air calls consumers experience, the Commission's telemarketing rules also contain restrictions on the use of autodialers and requirements for transmitting caller ID information.

As the National Do Not Call Registry has gained popularity, some states have decided to forgo the expense of maintaining their own lists. Currently, only 12 states maintain their own Do Not Call lists: Colorado, Florida, Indiana, Louisiana, Massachusetts, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Texas and Wyoming.[49]

Constitutionality of Do Not Call Registries

Do Not Call registries have been subject to numerous state and federal lawsuits challenging their constitutionality. Such lawsuits have been unsuccessful, and the National Registry has been upheld as constitutional. The courts have found the Do Not Call Registry is a reasonable restriction on commercial speech and that the FTC is authorized to promulgate rules for the registry. The Tenth Circuit Court of Appeals stated, "the do-not-call registry prohibits only telemarketing calls aimed at consumers who have affirmatively indicated that they do not want to receive such calls and for whom such calls would constitute and invasion of privacy." Thus, the government has a role in restricting the

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[41] InsideArm, *The Latest Developments in the World of Call Delivery*, https://www.insidearm.com/news/00047073-latest-developments-world-call-delivery/ (last visited Feb. 7, 2022).
[42] USTelecom, Enforcement Bureau Requests Information on the Status of Private-Led Traceback Efforts of Suspected Unlawful Robocalls, EB Docket No. 20-195, Nov. 13, 2020, https://docs.fcc.gov/public/attachments/DOC-368957A2.pdf (last visited Feb. 7, 2022).
[43] InsideArm, *The Latest Developments in the World of Call Delivery*, https://www.insidearm.com/news/00047073-latest-developments-world-call-delivery/ (last visited Feb. 7, 2022).
[44] FCC, *Fourth Report and Order (*Dec. 29, 2020) https://docs.fcc.gov/public/attachments/FCC-20-187A1.pdf (last visited Feb. 7, 2022).
[45] TRACED Act, s. 13(d)(2).
[46] FCC, *Report and Order DA 21-1047* (Aug. 25, 2021) https://www.fcc.gov/document/fcc-retains-industry-traceback-group-robocall-consortium (last visited Feb. 7, 2022).
[47] At least 28 states, starting with Florida in 1987, have implemented Do Not Call registries.
[48] Federal Trade Commission, *National Do Not Call Registry*, https://www.donotcall.gov/ (last visited Feb. 7, 2022).
[49] Contact Compliance Center Corporation, *State Do Not Call Lists*, https://www.dnc.com/faq/state-do-not-call-lists?page=1 (last visited Feb. 7, 2022).

ability of a telemarketer to reach a household via telephone, and because the government has left the ultimate decision of whether or not to be placed on the registry up to the individual, the government has not restricted the First Amendment rights of the solicitor.[50]

Claims of preemption have also been unsuccessful. The TCPA's non-preemption clause,[51] often referred to as the savings clause, has been relied upon by courts to uphold states' Do Not Call Registries. The clause states that "[n]othing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulation." The clause indicates specific types of actions that a state may prohibit or place more restrictive regulations on, such as sending unsolicited advertisements via fax, using of automatic dialing systems and prerecorded messages, and making telephone solicitations.[52]

The TPCA is silent on a state's ability to place regulations that are more stringent than the TCPA requirements for interstate calls.[53] However, at least one federal court of appeals has held that state regulations and prohibitions of telemarketing that cross state boundaries are valid.[54]

Caller ID and "Spoofing"

"Spoofing" is the practice of altering or manipulating the caller ID information that is received in conjunction with an incoming telephone call. In the past, caller ID services were not common and spoofing required special equipment or a relatively high degree of technical sophistication. However, advances in technology, such as the proliferation of cellular phones, cell phone applications, and the widespread availability of Voice over Internet Protocol (VoIP) allows anyone to inexpensively spoof his or her caller ID using the services of a third-party spoofing provider.[55] For example, one such spoofing provider allows a consumer to download an app on his or her smartphone, purchase credits towards call time, and simply input the number that he or she wants displayed on the receiving end in order to place an untraceable, spoofed call.[56]

In response to the growing practice of spoofing, Congress amended the TCPA to add the Truth in Caller ID Act of 2009. Under the Act and FCC rules, a person or entity is prohibited from transmitting false or misleading caller ID information "with the intent to defraud, cause harm, or wrongly obtain anything of value," with a penalty of up to $10,000 for each violation.[57] However, spoofing is not illegal when no harm is intended or caused, or if the caller has legitimate reasons to hide his or her information. Examples may include law enforcement agencies working on a case, a victim of domestic abuse, or a doctor who wishes to discuss private medical matters with a patient.[58]

In 2008, Florida passed its own anti-spoofing legislation, The Florida Caller ID Anti-Spoofing Act (2008).[59] The Act prohibits **any person** from:

- Making a call with knowledge that false information was entered into a telephone caller ID system with the intent to deceive, defraud, or mislead the call's recipient; and
- Entering false information into a telephone caller ID system "with the intent to deceive, defraud, or mislead" the call's recipient.

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[50] *Mainstream Marketing Services Inc v. Federal Trade Commission*, 358 F.3d 1228 (10th Cir. 2004).
[51] 47 U.S.C. s. 227(f)(1).
[52] National Association of Attorneys General, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, NAGTRI Journal, Vol. 1 No. 4.
[53] 47 U.S.C. s. 227 (f)(1).
[54] *See Patriotic Veterans, Inc. v. Indiana*, 736 F.3d 1041 at 1044-45 (7th Cir. 2013) and *Patriotic Veterans, Inc. v. State of Indiana*, No. 16-2059 (7th Cir. 2017)("Preventing automated messages to persons who don't want their peace and quiet disturbed is a valid time, place, and manner restriction.").
[55] *See* FCC 11-100, *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, (June 22, 2011), at 9116, https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-100A1_Rcd.pdf (last visited Feb. 7, 2022).
[56] Business Insider, *It's Surprisingly Easy for a Hacker to Call Anyone From Your Personal Phone Number* (March 1, 2016), http://www.businessinsider.com/phone-number-spoofing-2016-2 (last visited Feb. 7, 2022).
[57] 47 U.S.C. s. 227(e).
[58] FCC, *Caller ID Spoofing*, https://www.fcc.gov/consumers/guides/spoofing-and-caller-id (last visited Feb. 7, 2022).
[59] S. 817.487, F.S. (2008).

However, a U.S. District Court in Miami found that Florida's Caller ID Anti-Spoofing Act (2008) violated the Commerce Clause of the United State Constitution because it had the effect of controlling spoofing practices that took place entirely outside the state.[60] Similarly, in 2011, a federal court in Mississippi struck down Mississippi's anti-spoofing law, which was substantially similar to Florida's.[61]

Spam Robocalls

According to the American Association of Retired Persons (AARP), robocalls have become an epidemic. YouMail, a company that provides call-blocking and call-management services, estimates that there were 58.5 billion robocalls in the U.S. in 2019 and that 44% of them were placed by scammers.[62]

A February 2021 survey found that 46% of Americans reported receiving spam phone calls on their cell phone every day, and another 24% receiving them multiple times per week.[63]

Scammers often use caller ID spoofing to mask their true location and make it appear the call is from a legitimate or local number to raise the odds of getting an answer. What follows is a robotic voice on the other end claiming to represent a utility, a name-brand company, or a government agency (such as the Social Security Administration or the Internal Revenue Service). It might offer a free cruise, inexpensive health insurance, or a low-interest loan. Answering or engaging with the call may lead to a live scammer, who realizes he or she has found a "live" number, and thus may call repeatedly.[64]

Many robocalls are legal. The FCC allows such robocalls for informational or noncommercial purposes, such as polling, political campaigning and outreach by nonprofit groups.

Advances in technology have magnified fundamental flaws in the American phone system, enabling unrelenting robocalls from untraceable origins. As a result, it is incredibly profitable to use spam calls to drive business regardless of whether the caller is perpetuating a scam or is a legitimate business using telemarketing to increase sales.[65]

Consent and Revocation

The TCPA prohibits a telemarketer from using an automatic telephone dialing system (ATDS) to place a call or send a text message to a cell phone without the recipient's "**prior express consent**."[66] The type of consent depends on the nature of the call or text. Consent generally can be revoked by any reasonable method. However, some courts recently have considered whether revocation may be restricted in circumstances where the consent is included on a bilateral agreement.[67]

There are two types of prior consent provided for under the TCPA:

- Prior express consent is required to place autodialed, non-solicitation calls or texts to a cell phone.

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[60] *TelTech Systems, Inc. v. McCollum*, No. 08-61664-CIV-MARTINEZ-BROWN (S.D. Fla. Filed Oct. 16, 2008).
[61] *TelTech Systems, Inc. v. Barbour*, 866 F. Supp. 2d 571 (S.D. Miss. 2011), *aff'd sub nom Teltech Systems, Inc. v. Bryant*, 702 F.2d 232 (5th Cir. 2012).
[62] AARP, *Robocalls*, https://www.aarp.org/money/scams-fraud/info-2019/robocalls.html?CMP=KNC-DSO-Adobe-Google-FRD-Ongoing-Robocalls-NonBrand-Exact-Robocalls&gclid=EAIaIQobChMIlvmq_4Sr7wIVFYvICh2RAwjqEAAYAiAAEgJD4vD_BwE&gclsrc=aw.ds (last visited Feb. 7, 2022).
[63] Simon van Zuylen-Wood, *How Robo-Callers Outwitted the Government and Completely Wrecked the Do Not Call List* (Jan. 11, 2018), https://www.washingtonpost.com/lifestyle/magazine/how-robo-call-moguls-outwitted-the-government-and-completely-wrecked-the-do-not-call-list/2018/01/09/52c769b6-df7a-11e7-bbd0-9dfb2e37492a_story.html?utm_term=.8a6e6ea55f32 (Last visited Feb. 7, 2022).
[64] AARP, *supra* note 62.
[65] AARP, *supra* note 62.
[66] 47 U.S.C. s. 227(b)(1)(A)(iii).
[67] The National Law Review, *Consent and Revocation Under the TCPA*, https://www.natlawreview.com/print/article/consent-and-revocation-under-tcpa (last visited Feb. 7, 2022).

- Prior express written consent is a heightened form of consent, must be evidenced by a written agreement signed by the call recipient, and is required to place autodialed telemarketing or advertising calls or texts to a cell phone. The written agreement must include a clear and conspicuous disclosure informing the consumer signing that:
    - By signing the agreement, the consumer is authorizing autodialed telemarketing or advertising calls or texts; and
    - The consumer is not required to sign the agreement as a condition of purchasing any property, goods, or services.[68]

Prior express consent can be written or verbal. Voluntarily providing one's cellular number also constitutes prior express consent where:

- The individual gives "prior express consent" to be called or texted at the number provided;
- The individual has provided his or her number to the party calling or texting; and
- There is some relation between the communications and the reason for which an individual provided his or her number.[69]

Prior express written consent is required for calls or texts to cell phones that introduce an advertisement,[70] or constitute "telemarketing"[71] and are sent using an ATDS. The TCPA's advertising prong merely requires introducing, at the most basic level, the commercial availability of a service. In similar fashion, telemarketing occurs when the context of a text or call indicates that it was initiated and transmitted to a person for promoting property, goods, or services. Neither the TCPA nor its implementing regulations requires an explicit mention of a good, product, or service where the implication of an improper purpose is clear from the context.[72]

Revocation of consent is controlled by the consenting party, and may be communicated orally or in writing by any reasonable means. However, where consent is contractually provided, as is the case in credit agreements, the parties can bargain to require mutuality or particular revocation methods. Recently, a number of courts have addressed whether a consumer may unilaterally revoke consent when it is a term in a bargained-for contract.[73]

In 2017, the federal Second Circuit Court of Appeal held that a consumer may not unilaterally revoke consent in a bargained-for, bilateral contract.[74] The court based its decision on "black-letter" contract law, referring to a fundamental aspect of contractual relationships that one party may not alter or revoke a term of a bilateral agreement without the other party's consent. The court found that a consumer, having consented to be contacted via an auto-dialer, could not unilaterally revoke consent without the caller's permission. Notably, the court distinguished case law from the Third and Eleventh Circuit Courts of Appeal, where consumers retained their ability to revoke consent because it was given in credit applications, rather than as part of a bilateral contract.[75]

In 2018, a United States District Court in Florida also held that consent provided by contract cannot be unilaterally revoked.[76] The court noted that no provision in the TCPA indicates that contractually-granted consent can be unilaterally revoked where it would contradict black-letter contract law. The court held that a consumer who has consented to auto-dialed communication in a contract for services cannot later revoke such consent.[77]

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[68] *Id*.
[69] Federal Communications Commission, Rules & Regulations Implementing the TCP Act of 1991 et al., 30 FCC Rcd at 7991–92.
[70] 47 C.F.R. s. 64.1200(f)(1), defines an "advertisement" as "any material advertising the commercial availability or quality of any property, goods, or services," and "telemarketing" is defined as "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person."
[71] 47 C.F.R. s. 64.1200(f)(12).
[72] The National Law Review, *supra* note 67.
[73] *Id*.
[74] *Reyes v. Lincoln Auto. Fin. Servs*., 861 F.3d 51, 53 (2d Cir. 2017).
[75] The National Law Review, *supra* note 67.
[76] *Medley v. Dish Network, LLC*, Case No. 8:16-cv-2534-T-36TBM, 2018 WL 4092120, at *10 (M.D. Fla. Aug. 27, 2018).
[77] The National Law Review, *supra* note 67.

However, other courts have disagreed, rejecting the argument that consent is irrevocable. In 2018, a United States District Court in Tennessee adopted the general rule that consumer consent may be revoked at any time by "any reasonable means."[78] The court held that consumers retain the ability to revoke their prior consent despite having a bilateral agreement with the caller. Other courts have also allowed for revocation of consent by any means in the absence of a contractual restriction on the means by which a consumer may revoke consent.[79]

In December 2020, the U.S. Supreme Court heard oral arguments in a landmark case regarding whether consumers can sue a company for using an ATDS to text or call the consumers at a phone number saved in the company's system. At issue was the meaning of the TCPA's prohibition on using an ATDS to transmit communications to cell phones. The question before the Supreme Court was "whether the definition of ATDS in the TCPA encompasses any device that can 'store' and 'automatically dial' telephone numbers, even if the device does not use a random or sequential number generator."[80]

On April 1, 2021, the Court ruled that to qualify as an ATDS under the TCPA, a device must have the capacity to either store a telephone number using a random or sequential number generator or produce a telephone number using a random or sequential number generator. The Court concluded that merely having the capacity to store numbers and dial them automatically is not enough to make a device qualify as an ATDS.[81]

Specifically, related to consent, the TCPA rules require telemarketers to:

- Obtain prior express written consent from consumers before robocalling them;
- No longer be able to use an "established business relationship" to bypass the consent requirement; and
- Require an automated, interactive "opt-out" mechanism to be used during each robocall so consumers can immediately tell the telemarketer to stop calling.[82]

The TCPA includes a private right of action.[83] A caller who places a call to a cell phone without consent using an ATDS is subject to $500 in damages per call. The damages amount is $1,500 per call if the court finds that the defendant willfully or knowingly committed the violation.[84]

Specifically, related to consent, the Florida telephone solicitation law:[85]

- Prohibits robocalls without the prior express written consent of the called party.
- When the called party has given such consent, only allows robocalls in certain circumstances through the use of an "automated system for the selection **or** dialing of telephone numbers or the playing of a recorded message" when a connection is completed to a number called.

[78] *Ammons v. Ally Fin., Inc*., Case No. 3:17-cv-00505, 2018 WL 3134619, at *15 (M.D. Tenn. June 27, 2018).
[79] *Few v. Receivables Performance Mgmt*., Case No. 1:17-CV-2038-KOB, 2018 WL 5923765 at *1 (N.D. Ala. Nov. 13, 2018).
[80] *Facebook, Inc., Petitioner vs. Noah Duguid*, et al., U.S., No. 19-511.
[81] *Id*.
[82] FCC, *supra* note 32.
[83] 47 U.S.C. s. 227(b)(3).
[84] *Id*. at s. 227(b)(3)(B)-(C).
[85] S. 501.059(8), F.S.

Effect of Proposed Changes

The bill defines an "automated system" as a computerized, mechanical, or other technological system or device that creates a phone number, stores or selects any phone number from any database or list, **and** then causes that number to be called.

The bill specifies that an automated system includes any system which operates by "click to call" or where the caller or other person selects numbers off of a list to call. An automated system does not include a situation where a user selects numbers from a contact list or phone log.

The bill defines a "caller" as a natural person who causes a call to be made and who is ready to speak to the caller at the time the call is made.

The bill clarifies that "consumer goods or services" include services that are related to personal, family, or household purposes.

The bill revises the definition of "prior written consent" as it is relates to the type of automated calling system that is utilized. As such, the bill clarifies that prior written consent means a written agreement that:

- Bears the signature of the called party,
- Clearly authorizes the person making or allowing placement of a sales call or text using an **automated system for the selection and dialing** of the number or the transmission of a text message;
- Includes a number to which the signatory authorizes a sales call to be delivered; and
- Includes certain clear and conspicuous disclosures to the called party.

The bill provides that a signature line with a specified notice to the consumer is presumptively satisfactory under the requirements established for prior written consent. The notice must be within two inches of the signature line and must include in at least 12-point bold font, the following language:

> By signing below, you authorize [NAME] to place a telephonic sales call to you at [TELEPHONE PHONE NUMBER] by way of telephone calls, text messages, or voicemail transmissions using an automated system for the **selection and/or dialing** of telephone numbers or the playing of a recorded message when a connection is completed to your phone number. YOU ARE NOT REQUIRED TO PROVIDE SUCH AUTHORIZATION AS A CONDITION OF PURCHASING ANY PROPERTY, GOODS, OR SERVICES.

The bill revises the definition of a "signature" to include agreements obtained via a compliant email, website form, text message, telephone keystroke, or voice recording.

The bill also revises the definition of "unsolicited telephonic sales call" to exclude a telephonic sales call made within 120 days after an express request of the called party and limits the number of calls and

messages **to three calls or messages** in response to each response to an inquiry initiated by a called party.

The bill adds a definition of "selection," to mean to store or randomly produce telephone numbers to be called and to create a list of called parties without manual intervention. The bill clarifies that the use of an automated telephone dialing system includes the transmission of live messages or text messages.

Further, the bill provides that in order for a prevailing party to be awarded attorney fees and costs in civil litigation cases, the subject litigation must result from a violation, rather than from a transaction involving a violation.

The bill prohibits a telephone solicitor from causing any unsolicited telephonic sales call to be initiated by the use of any automated system. The bill further prohibits a telephone solicitor from causing any person other than the caller to initiate a sales call.

The bill provides that it is remedial in nature and applies retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021. However, the bill specifies that the provisions under s. 501.059(11), F.S., relating to attorney fees, are not retroactive and only apply prospectively.

B. SECTION DIRECTORY:

Section 1: Amends s. 501.059, F.S., relating to telephone solicitation.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on legitimate telemarketers to the extent they do not currently engage in business practices consistent with the requirements in the bill.

The bill may protect consumers from unwanted and fraudulent telephone solicitations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2022, the Regulatory Reform Subcommittee adopted one strike-all amendment, and one amendment to the strike-all amendment, and reported the bill favorably as a committee substitute. The committee substitute:

- Provides that the bill is remedial in nature and applies retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021.

On February 7, 2022, the Civil Justice and Property Rights Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Provided definitions for the terms “automated system,” “caller,” and “selection” and amended the definition for “signature” to include agreements obtained via a compliant email, text message, telephone keypress, or voice recording.
- Provided that a designated signature line with a specific notice is presumptively satisfactory to meet the requirements of prior express written consent.
- Amended the exceptions to an unsolicited telephonic sales call to include a call to a person who has provided prior express written consent, and to include calls for the purpose of polling or soliciting ideas and opinions when such polling is done by text message.
- Provided that the bill does not prohibit the use of an automated system for the selection and dialing of phone numbers with live messages or live text messages so long as the call or message is made in response to an inquiry initiated by the called party. Only three such calls or messages may be made in response to each inquiry.
- Prohibited a telephone solicitor from causing any unsolicited telephonic sales call to be initiated by the use of any automated system.
- Prohibited a telephone solicitor from initiating any calls by anyone other than the caller.
- Clarified that the bill is remedial in nature and applies retroactively to July 1, 2021; but, specified that the amendments made to section 501.059, F.S., relating to attorney fees are prospective only.

This analysis is drafted to the committee substitute as passed by the Civil Justice and Property Rights Subcommittee.

A bill to be entitled

An act relating to telephone solicitation; amending s. 501.059, F.S.; providing and revising definitions; conforming provisions; authorizing the use of automated systems with live messages or text messages in response to certain inquiries; providing a limitation; prohibiting certain telephonic sales calls; revising provisions for the award of attorney fees and costs; providing retroactive applicability; providing an effective date.

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

Section 1. Subsections (9) through (13) of section 501.059, Florida Statutes, are renumbered as subsections (10) through (14), respectively, subsections (1) and (2), paragraph (a) of subsection (8), and paragraphs (a), (d), and (e) of present subsection (11) are amended, paragraph (e) is added to subsection (8), and a new subsection (9) is added to that section, to read:

501.059 Telephone solicitation.—

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

(a) "Automated system" means a computerized, mechanical, or other technological system or device that creates a telephone number, stores or selects any telephone number from any database

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

or list, and then causes that telephone number to be called. The term includes any system which the caller or any other person operates by click-to-call or which the caller or any other person selects telephone numbers from a list to call. The term does not include a user selecting telephone numbers from a contact list or telephone log on a cellular, handheld, or landline device.

(b) ~~(a)~~ "Called party" means a person who is the regular user of the telephone number that receives a telephonic sales call.

(c) "Caller" means a natural person who causes a call to be made and who is ready to speak to the called party at the time the call is made.

(d) ~~(b)~~ "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods or services.

(e) ~~(c)~~ "Consumer goods or services" means real property or tangible or intangible personal property or services that are ~~is~~ normally used for personal, family, or household purposes. The term includes, ~~including,~~ but is not limited to, any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed, as well as cemetery lots and timeshare estates, and any related services ~~related to such property~~.

(f) ~~(d)~~ "Department" means the Department of Agriculture and Consumer Services.

(g) ~~(e)~~ "Doing business in this state" means businesses that conduct telephonic sales calls from a location in Florida or from other states or nations to consumers located in Florida.

(h) ~~(f)~~ "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods or services.

(i) ~~(g)~~ "Prior express written consent" means a written agreement that:

1. Bears the signature of the called party;

2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, the transmission of a text message, or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and

4. Includes a clear and conspicuous disclosure informing the called party that:

a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the

selection and ~~or~~ dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called, the transmission of a text message, or the transmission of a prerecorded voicemail; and

b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

For purposes of subparagraph 4., a designated signature line with the following notice in at least 12-point bold font within 2 inches of the signature is presumptively satisfactory in form:

> By signing below, you authorize [NAME] to place a telephonic sales call to you at [TELEPHONE NUMBER] by way of telephone calls, text messages, or voicemail transmissions using an automated system for the selection and/or dialing of telephone numbers or the playing of a recorded message when a connection is completed to your telephone number. YOU ARE NOT REQUIRED TO PROVIDE SUCH AUTHORIZATION AS A CONDITION OF PURCHASING ANY PROPERTY, GOODS, OR SERVICES.

(j) "Selection" means to store or randomly produce telephone numbers to be called and to create a list of called

parties without manual intervention.

(k) ~~(h)~~ "Signature" includes an electronic or digital signature, including agreements obtained through a compliant e-mail, website form, text message, telephone keypress, or voice recording, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(l) ~~(i)~~ "Telephone solicitor" means a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.

(m) ~~(j)~~ "Telephonic sales call" means a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale or acquisition of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale or acquisition of consumer goods or services or an extension of credit for such purposes.

(n) ~~(k)~~ "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

1. Within 120 days after ~~In response to~~ an express request of the ~~person~~ called party;

2. Primarily in connection with an existing debt or contract, if payment or performance of such debt or contract has not been completed at the time of such call;

3. To a person with whom the telephone solicitor has a prior or existing business relationship; ~~or~~

4. By a newspaper publisher or his or her agent or employee in connection with his or her business;

5. To a person who has provided prior express written consent to be contacted; or

6. For the purpose of polling or soliciting the expression of ideas, opinions, or votes, including when such polling or soliciting is made by text message.

(o) ~~(l)~~ "Voicemail transmission" means technologies that deliver a voice message directly to a voicemail application, service, or device.

(2) Any telephone solicitor who makes an unsolicited telephonic sales call to a called party ~~residential, mobile, or telephonic paging device telephone number~~ shall identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the called party ~~person who is the object of the telephone solicitation~~.

(8)(a) A telephone solicitor ~~person~~ may not make or knowingly allow an unsolicited ~~a~~ telephonic sales call to be made if such call involves an automated system for the selection

and ~~or~~ dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called, the transmission of a text message, or the transmission of a prerecorded voicemail ~~without the prior express written consent of the called party~~.

(e) This subsection does not prohibit the use of an automated system for the selection and dialing of telephone numbers with live messages or text messages if the call or message is made solely in response to an inquiry initiated by the called party. However, only three such calls or messages may be made in response to each inquiry.

(9)(a) A telephone solicitor may not cause any unsolicited telephonic sales call to be initiated by use of any automated system.

(b) A telephone solicitor may not cause any telephonic sales call to be initiated by any person other than the caller.

(12)~~(11)~~(a) In any civil litigation resulting from a ~~transaction involving a~~ violation of this section, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive his or her reasonable attorney ~~attorney's~~ fees and costs from the nonprevailing party.

(d) Any award of attorney ~~attorney's~~ fees or costs shall become a part of the judgment and subject to execution as the law allows.

(e) In any civil litigation initiated by the department or the Department of Legal Affairs, the court may award to the prevailing party reasonable attorney ~~attorney's~~ fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

Section 2. The amendments made by this act are remedial in nature and apply retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021, except that the amendments made by this act to s. 501.059(12), Florida Statutes, relating to attorney fees and costs, do not apply retroactively.

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

COMMERCE COMMITTEE

HB 1095 by Rep. Beltran
Telephone Solicitation

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Rep. Beltran (strike-all):

- Defines “express request” and revises the definition for “automated system.”
- Clarifies that the definition for “telephonic sales call” includes a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a “lease” of any consumer goods or services.
- Further clarifies the notice required to be given prior to obtaining express written consent.
- Makes attorney fees and costs optional rather than mandatory.
- Provides that the provisions of this section of law, if held invalid, are severable.
- Prohibits action for damages if the caller confirms in writing to the called party within 30 days after receiving a called party’s request to remove their number from the telephone solicitor’s lists, that the number was removed.
- Specifies that a called party is not required to provide an express request or prior express written consent as a condition of purchasing any property, goods, or services.
- Specifies that the limit to make only three calls or messages applies to each express request or prior express written consent, unless such request or consent indicates a different number of calls or messages or a specific time period.
- Makes other clarifying and technical changes.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (9) through (13) of section 501.059, Florida Statutes, are renumbered as subsections (10) through (14), respectively, subsections (1) and (2), paragraph (a) of subsection (8), present subsection (10), and paragraphs (a), (c), (d), and (e) of present subsection (11) are amended, paragraphs (e) and (f) are added to subsection (8), and new subsections (9) and (15) are added to that section, to read:

501.059 Telephone solicitation.—

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

(a) "Automated system" means a computerized, mechanical, or other technological system or device that creates a telephone

number, or stores or selects any telephone number from any database or list, and then causes that telephone number to be called. The term also includes any system which the live caller, or any other person, operates by click-to-call. The term does not include a live caller manually selecting and calling telephone numbers using only a contact list or telephone log.

(b) ~~(a)~~ "Called party" means a person who is the regular user of the telephone number that receives a telephonic sales call.

(c) "Live caller" means a natural person who causes a call to be made and who is ready to speak to the called party at the time the call is made.

(d) ~~(b)~~ "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods or services.

(e) ~~(c)~~ "Consumer goods or services" means real property or tangible or intangible personal property or services that are ~~is~~ normally used for personal, family, or household purposes. The term includes, ~~including,~~ but is not limited to, any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed, as well as cemetery lots and timeshare estates, and any related services ~~related to such property~~.

(f) ~~(d)~~ "Department" means the Department of Agriculture and Consumer Services.

(g) ~~(e)~~ "Doing business in this state" means businesses

that conduct telephonic sales calls from a location in Florida or from other states or nations to consumers located in Florida.

(h) "Express request" means a prior oral or written request, invitation, consent or permission from a called party made directly or indirectly to the live caller or telephone solicitor, for calls or text messages regarding the live caller's or telephone solicitor's goods, services or products.

(i) ~~(f)~~ "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods or services.

(j) ~~(g)~~ "Prior express written consent" means a written agreement that:

1. Bears the signature of the called party;

2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, the transmission of a text message, or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and

4. Includes a clear and conspicuous disclosure informing the called party that:

a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection and ~~or~~ dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called, the transmission of a text message, or the transmission of a prerecorded voicemail; and

b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

For purposes of subparagraph 4., a designated signature line with the following notice placed directly above the designated signature line that is prominent and robust in at least 12-point bold font, is presumptively compliant:

> By signing below, you authorize [NAME] to place a telephonic sales call to you at [TELEPHONE NUMBER] by way of telephone calls, text messages, or voicemail transmissions using an automated system for the selection and/or dialing of telephone numbers or the playing of a recorded message when a connection is completed to your telephone number. YOU ARE NOT REQUIRED TO PROVIDE SUCH

AUTHORIZATION AS A CONDITION OF PURCHASING ANY PROPERTY, GOODS, OR SERVICES.

(k) ~~(h)~~ "Signature" includes an electronic or digital signature, including agreements obtained through a compliant e-mail, website form, text message, telephone keypress, or voice recording, or any ~~to the extent that~~ such form of signature that is recognized as a valid signature under applicable federal law or state contract law.

(l) ~~(i)~~ "Telephone solicitor" means a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated systems, automated dialing or recorded message devices.

(m) ~~(j)~~ "Telephonic sales call" means a telephone call, text message, or voicemail transmission, including, but not limited to, calls made by the use of automated systems, or automated dialing or recorded message devices, to a consumer for the purpose of soliciting a sale, lease, or acquisition of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale, lease, or acquisition of consumer goods or services or an extension of credit for such purposes.

(n)~~(k)~~ "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

1. Within 120 days after ~~In response to~~ an express request of the ~~person~~ called party;

2. Primarily in connection with an existing debt or contract, if payment or performance of such debt or contract has not been completed at the time of such call;

3. To a person with whom the telephone solicitor has a prior or existing business relationship; ~~or~~

4. By a newspaper publisher or his or her agent or employee in connection with his or her business;

5. To a person who has provided prior express written consent to be contacted; or

6. For the purpose of polling or soliciting the expression of ideas, opinions, or votes, including when such polling or soliciting is made by text message.

(o)~~(l)~~ "Voicemail transmission" means technologies that deliver a voice message directly to a voicemail application, service, or device.

(2) Any telephone solicitor who makes an unsolicited telephonic sales call to a called party ~~residential, mobile, or telephonic paging device telephone number~~ shall identify himself or herself by his or her true first and last names and the business on whose behalf he or she is soliciting immediately upon making contact by telephone with the called party ~~person~~

~~who is the object of the telephone solicitation~~.

(8)(a) A telephone solicitor or live caller ~~person~~ may not make or knowingly allow an unsolicited ~~a~~ telephonic sales call to be made if such call involves an automated system for the selection and ~~or~~ dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called, the transmission of a text message, or the transmission of a prerecorded voicemail ~~without the prior express written consent of the called party~~.

(e) This subsection does not prohibit the use of an automated system for the selection and dialing of telephone numbers with a live caller or text messages if the call or message is made solely in response to an express request initiated by the called party, or prior express written consent by the called party, and the live caller or telephone solicitor maintains evidence of the called party's express request or prior express written consent. However, only three such calls or messages may be made in response to each express request or prior express written consent, unless such express request or prior express written consent specifically indicates a different number of calls or messages that are authorized or a specific time period that such calls or messages are authorized to be made.

(f) A merchant, telephone solicitor, live caller, or other person may not require any consumer or called party to provide

an express request or prior express written consent as a condition of any transaction.

(9)(a) A telephone solicitor may not cause any unsolicited telephonic sales call to be initiated by use of any automated system.

(b) A telephone solicitor may not cause any telephonic sales call to be initiated by any person or device other than a live caller.

(12) ~~(11)~~(a) In any civil litigation resulting from a ~~transaction involving a~~ violation of this section, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, may ~~shall~~ receive his or her reasonable attorney ~~attorney's~~ fees and costs from the nonprevailing party.

(c) The trial judge may ~~shall~~ award the prevailing party the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(d) Any award of attorney ~~attorney's~~ fees or costs shall become a part of the judgment and subject to execution as the law allows.

(e) In any civil litigation initiated by the department or the Department of Legal Affairs, the court may award to the prevailing party reasonable attorney ~~attorney's~~ fees and costs if the court finds that there was a complete absence of a

justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

(15) If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Section 2. The amendments made by this act are remedial in nature and apply retroactively to July 1, 2021, and to any proceeding pending or commenced on or after July 1, 2021, except that the amendments made by this act to s. 501.059 (8)(e) and (9) relating to violations, and (12), relating to attorney fees and costs, do not apply retroactively.

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

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

Remove everything before the enacting clause and insert:
An act relating to telephone solicitation; amending s. 501.059, F.S.; providing and revising definitions; conforming provisions; authorizing the use of automated systems with live messages or text messages in response to certain inquiries; providing a

limitation; providing an exception to the limitation of such calls or messages under certain circumstances; authorizing the purchase of any property, goods, or services without the express request or prior written consent of a called party; prohibiting certain telephonic sales calls; prohibiting any action for damages if a called party provides an express request or prior written consent to remove his or her number from specified lists; authorizing such requests to be made at certain times; revising provisions for the award of attorney fees and costs; providing severability; providing retroactive applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1121 Pub. Rec./Crash Reports and Traffic Citations
SPONSOR(S): Government Operations Subcommittee, Tourism, Infrastructure & Energy Subcommittee, Brannan
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1614

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N, As CS	Johnson	Keating
2) Government Operations Subcommittee	16 Y, 0 N, As CS	Roth	Toliver
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

Under current law, motor vehicle crash reports held by agencies that regularly receive or prepare motor vehicle crash reports are exempt from disclosure as public records for 60 days after the reports have been filed. The law provides a list of entities that may receive crash reports during that 60-day period. Under current law, traffic citations are considered public records.

The bill revises the public record exemption for written crash reports to:

- Provide that personal information contained in a crash report remains exempt from disclosure after the 60-day exemption period for the entire report has expired.
- Provide that the exemption applies to crash reports held by any agency subject to the public record law.
- Revise the list of entities to which the reports may be made available.
- Require certain entities to enter into memoranda of understanding in order to obtain such information.
- Revise conditions required to access the reports.
- Exempt certain computerized crash report data.
- Authorize the agency to provide a redacted crash report to the media.

The bill also creates a public record exemption for certain driver information contained in a traffic citation and authorizes the release of this information as provided in the federal Driver Privacy Protection Act.

The bill provides that these public record exemptions are subject to repeal under the Open Government Sunset Review Act unless the Legislature reviews and reenacts the exemptions by October 2, 2027.

The bill provides a public necessity statement for each exemption as required by the Florida Constitution.

The bill has an effective date of March 1, 2023.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for exemption from public records requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.[1]

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act[2] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."[3] An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[4]

Pursuant to s. 119.15(3), F.S., a new public records exemption or substantial amendment of an existing public records exemption is repealed on October 2 of the fifth year following enactment, unless the Legislature reenacts the exemption.

Federal Driver Privacy Protection Act

Motorist personal information, when held by the Department of Highway Safety and Motor Vehicles (DHSMV) in motor vehicle records, is confidential pursuant to the federal Driver Privacy Protection Act (DPPA).[5] Personal information covered by the DPPA includes: social security number, driver license or identification card number, name, address, telephone number and a person's medical or disability information.[6]

Under DPPA, personal information in motor vehicle and driver license records may be released for the following purposes:[7]

[1] Art. I, s. 24(c), FLA. CONST.
[2] S. 119.15, F.S.
[3] Section 119.15(6)(b), F.S.
[4] *Id.*
[5] 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), F.S.
[6] Department of Highway Safety and Motor Vehicles (DHSMV), *Privacy Statement Driver Privacy Protection Act*, available at https://www.flhsmv.gov/privacy-statement/driver-privacy-protection-act/ (last visited on Jan. 28, 2022).
[7] 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), F.S. ; Florida Department of Highway Safety and Motor Vehicles forms HSMV 90511 (Revised 11/19) available at https://www.flhsmv.gov/pdf/forms/90511.pdf (last visited Jan. 28, 2022) and HSMV 90510 (Revised 03/19) available at https://www.flhsmv.gov/pdf/forms/90510.pdf (last visited Jan. 28, 2022).

- For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency in carrying out its functions;
- For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities; and removal of non-owner records from the original owner records of motor vehicle manufacturers;
- For use in the normal course of business by a legitimate business or its agents, employees, or contractors, to verify the accuracy of personal information submitted by the individual, and if such information is incorrect, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;
- For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a court;
- For use in research activities and producing statistical reports;
- For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting;
- For use in providing notice to the owners of towed or impounded vehicles;
- For use by any licensed private investigative agency or licensed security service for any purpose permitted by DPPA;
- For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license;
- For use in connection with the operation of private toll facilities;
- For any other use in response to requests for individual motor vehicle records if the state has obtained the express consent of the person to whom such personal information pertains;
- For bulk distribution for surveys, marketing, or solicitations if the state has obtained the express consent of the person to whom such personal information pertains;
- For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains; and
- For any other use specifically authorized under the law of the state that holds the record, if such use is related to the operation of a motor vehicle or public safety.

Information that is not covered by DPPA is non-personal information. Under Florida law, such non-personal information contained in motor vehicle and driver license records, such as vehicular crash records, driving violations, and driver status information is considered public information.[8]

Motor Vehicle Crash Reports in Florida

Florida law requires written reports of motor vehicle crashes, which must contain the following information:

- The date, time, and location of the crash.
- A description of the vehicles involved.
- The names and addresses of the parties involved, including all drivers and passengers, and the identification of the vehicle in which each was a driver or a passenger.
- The names and addresses of witnesses.
- The name, badge number, and law enforcement agency of the officer investigating the crash.
- The names of the insurance companies for the respective parties involved in the crash.[9]

An investigating law enforcement agency must submit a written crash report to DHSMV within 10 days after completing the investigation of a traffic crash that results in death or personal injury, involves a

[8] DHSMV, *supra* note 6.
[9] Ss. 316.066(1)(b) and (c), F.S.

violation of leaving the scene or driving under the influence, renders a vehicle inoperable to a degree that a wrecker must remove it from the scene, or involves a commercial motor vehicle.[10] Approximately 94 percent of crash reports are submitted by law enforcement agencies to DHSMV electronically, while about six percent of reports are submitted to DHSMV on paper and must be scanned and converted into an electronic format.[11]

Crash reports contain various personal information about the parties to a crash, witnesses, and others whose property is damaged in a crash, including names, addresses, telephone numbers, dates of birth, driver license numbers, and certain insurance information.[12]

In 2001, the Legislature limited access to crash reports during the 60-day period after a crash report is filed.[13] During that 60-day period, crash reports may only be released to parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and television stations, and certain newspapers.[14]

Additionally, any local, state, or federal agency authorized by law to have access to crash reports must be granted such access in the furtherance of its statutory duties.[15]

To access a crash report within the 60-day time frame, a person must demonstrate his or her qualifications to access that information and file a written sworn statement with the state or local agency in possession of the information stating that information from the report will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt.[16]

According to the public necessity statement supporting this exemption, the 60-day exemption was created to protect the public from unscrupulous individuals who promote the filing of fraudulent insurance claims by obtaining such information immediately after a crash and exploiting the individual at a time of emotional distress.[17]

The Florida Highway Patrol (FHP)[18] routinely receives public records requests for its crash reports. In addition, DHSMV routinely makes crash reports available to the public through the Florida Crash Portal.[19] The portal comprises crash reports transmitted by FHP, county sheriff offices, local police departments, and other law enforcement agencies throughout the state. Crash reports provided by DHSMV are subject to a statutory fee of $10 per report.[20]

To facilitate releasing crash reports to authorized persons within the 60-day exemption period, DHSMV has prescribed a Sworn Statement to Obtain Traffic Crash Report Information (DHSMV Form 94010).[21] In lieu of the printed form, users of the Florida Crash Portal may electronically submit the sworn statement when obtaining a crash report through the portal.[22]

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[10] S. 316.066(1)(a), F.S.
[11] Department of Highway Safety and Motor Vehicle (DHSMV), Agency Analysis of 2022 Senate Bill 1614 p.2 (Jan 14, 2022).
[12] *See, e.g.,* DHSMV, *Uniform Traffic Crash Report Manual (90010S)* (Rev. Feb. 5, 2019), *available at* https://www.flhsmv.gov/pdf/courts/crash/CrashManualComplete.pdf. (last visited Jan. 28, 2022).
[13] Ch. 2001-163, Laws of Fla.
[14] S. 316.066(2)(b), F.S.
[15] S. 316.066(2)(c),F.S.
[16] S. 316.066(2)(d), F.S.
[17] Ch. 2001-163, Laws of Fla.
[18] The Florida Highway Patrol is a division of DHSMV.
[19] DHSMV, *Florida Crash Portal, at* https://www.flhsmv.gov/traffic-crash-reports (last visited Jan. 28, 2022).
[20] S. 321.23(2)(a), F.S.; DHSMV, Agency Analysis of 2022 Senate Bill 1614. P.3.
[21] *See* DHSMV, *Sworn Statement to Obtain Traffic Crash Report Information (HSMV Form 94010)*, *available at* https://www.flhsmv.gov/pdf/forms/94010.pdf. (last visited Jan. 28, 2022).
[22] DHSMV, Agency Analysis of 2022 Senate Bill 1614. P.3.

In addition to providing crash reports in their original format, crash reports transmitted to the Florida Crash Portal are maintained in a computerized database. The database contains all of the original report elements except for the law enforcement officer's narrative description of the crash and any crash diagrams.[23]

In 2021, 671,993 crash reports were completed in Florida, which included information on 1,839,532 individuals (drivers, passengers, witnesses, and pedestrians).[24]

Uniform Traffic Citations

Under Florida law, DHSMV has the duty of prescribing and providing to every traffic enforcement agency in the state prenumbered traffic citation books.[25] In lieu of using printed citation books, traffic enforcement agencies may produce uniform traffic citations by electronic means.[26] FHP is among the agencies who routinely prepare citations electronically.[27]

Traffic citations contain various personal information about drivers who are issued citations, including their names, dates of birth, addresses, telephone numbers, and driver license numbers.[28]

Traffic enforcement agencies, including FHP, submit traffic citations to the clerks of court. The clerks routinely provide searchable traffic court dockets on their Internet websites, which typically allow for viewing and downloading of unredacted copies of uniform traffic citations.[29]

Electronic citation data is also transmitted to the clerks through the Comprehensive Case Information System maintained by the Florida Association of Court Clerks and Comptrollers, Inc.[30] Uniform traffic citation, arrest, disposition, and criminal financial obligation files are electronically transmitted by the clerks to DHSMV through the Traffic Citation Accounting and Transmission System. These files are used by DHSMV to post court dispositions to the driver history records of individual drivers.[31]

Under current law, all traffic citations, including all personal identifying information on the citations, is a public record and can be freely distributed.

In 2021, 2,428,821 traffic citations were issued in Florida.[32]

Effect of the Bill

Motor Vehicle Crash Reports

The bill provides that crash reports that reveal personal information[33] concerning the parties involved in a crash, and that are held by an agency,[34] are confidential and exempt[35] from public record laws for a

[23] *Id*.
[24] E-mail from Kevin Jacobs, DSHMV Legislative Affairs Director, RE. 1125 Question. (Jan. 14, 2022)
[25] S 316.650(1)(a), Fla. Stat.
[26] S 316.650(1)(c), Fla. Stat.
[27] DHSMV, Agency Analysis of 2022 Senate Bill 1614 p.3 (Jan 14, 2022).
[28] *See, e.g.,* DHSMV, *Uniform Traffic Citation Procedures Manual* (Rev. Nov. 2019), *available at* https://www.flhsmv.gov/pdf/courts/utc/UTCCombinedManual.pdf. (last visited Jan. 28, 2022).
[29] DHSMV, Agency Analysis of 2022 Senate Bill 1614 p.3 (Jan 14, 2022).
[30] *See* s 28.2405, F.S.
[31] DHSMV, Agency Analysis of 2022 Senate Bill 1614 p.3 (Jan 14, 2022).
[32] E-mail from Kevin Jacobs, DSHMV Legislative Affairs Director, RE. 1125 Question. (Jan 14, 2022)
[33] The bill defines "personal information" as defined in 18 U.S.C. s. 2725(3), to mean, information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.
[34] The bill defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. *See* s. 119.011, F.S.
[35] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances.

period of 60 days after the report is filed. However, an agency is authorized to make the crash reports available immediately to the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers, underwriters, victim services programs, any federal, state, or local governmental agency or any private person or entity acting on behalf of such agency.

Crash reports held by an agency that do not contain the home or employment street addresses, driver license or identification card numbers, dates of birth, and home and employment telephone numbers of the parties involved in the crash may also be made immediately available to radio and television stations licensed by the Federal Communications Commission (FCC)[36] and newspapers qualified to publish legal notices.[37] In addition, a crash report may be made available to any third party acting on behalf of a person or entity authorized to access a crash report as long as the third party only discloses the crash report to the person on whose behalf the third party has sought the report.

The bill authorizes, pursuant to a memorandum of understanding (MOU), an agency to provide data derived from crash reports to a third party solely for the purpose of identifying vehicles involved in crashes if such data does not reveal the identity, home or employment telephone number, or home or employment address, or other personal information of the parties involved in the crash.

The bill removes the 60-day requirement from the date the report is filed in which individuals must present photographic identification, proof of status, or other identification that demonstrates his or her qualifications and a written sworn statement to access a crash report. The bill provides that in lieu of a written sworn statement, an agency may provide crash reports to third-party vendors under contract with an insurer by electronic means pursuant to an MOU.

The bill provides that after 60 days from when the crash report is filed, a crash report held by an agency may be made available to any person or entity eligible to access crash reports within the 60 days as well as any person or entity with any of the permissible uses or who abides by the resale and redisclosure requirements in the DPPA.[38]

The bill provides that if crash reports are created by or submitted to an agency electronically as data elements within a computerized database, or if personal information from a crash report is entered into a computerized database, such crash data held by an agency is confidential and exempt from public record requirements. However, 60 days after the date the crash report is filed, an agency may provide crash data derived from the crash report which includes personal information, pursuant to an MOU, to eligible entities or to any person or entity with any of the permissible uses or who abides by the resale and redisclosure requirements in the DPPA.

These exemptions stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature, pursuant to the Open Government Sunset Review Act.

The bill removes obsolete statutory language prohibiting some free newspapers from receiving certain crash report information. This language was repealed on October 2, 2019, under the Open Government Sunset Review Act since this part of the public records exemption was not saved from repeal through reenactment by the Legislature.

The bill revises current penalty provisions and provides that use of confidential and exempt information in violation of an MOU is a third-degree felony. In addition, the bill creates penalties for a person who

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See WFTV, Inc. v. Sch. Bd. of Seminole, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 04-09 (2004).

[36] The Federal Communications Commission regulates interstate and international communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the Commission is the federal agency responsible for implementing and enforcing America's communications law and regulations. Federal Communications Commission, *About the FCC*, available at https://www.fcc.gov/about/overview (last visited Feb. 9, 2022).

[37] *See* ss. 50.011 and 50.031, F.S., for qualifications to publish legal notices.

[38] *See* 18 U.S.C. s. 2721(b) and (c).

obtains a crash report, or crash data, and who knowingly discloses or knowingly uses personal information revealed in the report for a purpose not permitted by DPPA. The person is liable to the individual to whom the information pertains, who may bring a civil action in any court of competent jurisdiction. The court may award:

- Actual damages, but not less than liquidated damages in the amount of $2,500.
- Punitive damages upon proof of willful or reckless disregard of the law.
- Reasonable attorney fees and other litigation costs reasonably incurred.
- Such other preliminary and equitable relief as the court determines to be appropriate.

However, these penalties do not apply to radio and television stations licensed by the FCC and newspapers qualified to publish legal notices.

The bill provides a public necessity statement as required by art. I, s. 24(c) of the Florida Constitution. The statement provides that:

- Crash reports reveal significant personal information concerning parties, passengers, and witnesses to a crash.
- Use of the Internet and related technologies allows those with malicious purposes to exploit the use of personal information, such as a party's, passenger's, or witness' date of birth, driver license number, and address, threatening privacy and security.
- Increasing use of information technology for the preparation, submission, and management of crash reports has led agencies to hold vast repositories of computerized crash report data, which includes such personal information.
- Personal information, when held by DHSMV in motor vehicle records, is confidential pursuant to the federal DPPA and s. 119.0712(2), F.S.
- Restrictions on disclosure of motorist personal information have not applied to personal information contained in crash reports.
- When crash reports and computerized crash report data are made available to the public, because they comprise much of the same personal information contained in driver license and motor vehicle records, the protections afforded by the federal DPPA are undermined, eroding the privacy and safety of motorists.

Uniform Traffic Citations

The bill provides that driver information contained in a traffic citation is exempt from public record laws. The bill defines the term "driver information" to mean a driver's date of birth, driver license or identification card number, address (excluding the five-digit zip code), telephone number, motor vehicle license plate number, and trailer tag number. The term does not include the driver's name.

An agency may release driver information in accordance with any of the permissible uses listed in DPPA in the same manner applicable to the release of personal information contained in a motor vehicle record pursuant to s. 119.0712(2)(b), F.S.

This exemption applies retroactively to records already held by an agency. This exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2027, unless reviewed and saved from repeal by the Legislature.

The bill provides a public necessity statement as required by art. I, s. 24(c) of the Florida Constitution. The statement provides that:

- Uniform traffic citations reveal significant personal information about drivers issued a citation.
- Use of the Internet and related technologies allows those with malicious purpose to exploit the use of personal information, such as a motorist's date of birth, driver license number, and address, threatening motorist's privacy and security.
- A driver's personal information, when held by DHSMV in driver license and motor vehicle records, is confidential pursuant to DPPA and s. 119.0712(2), F.S.

- Restrictions on disclosure of motorist personal information have not applied to driver information contained in uniform traffic citations.
- When driver information contained in uniform traffic citations is made available to the public, the protections are afforded by federal DPPA are undermined, eroding the privacy and safety of motorists.

Effective Date

The bill has an effective date of March 1, 2023.

B. SECTION DIRECTORY:

Section 1 Amends s. 316.066, F.S., relating to written reports of crashes.

Section 2 Amends s. 316.650, F.S., relating to traffic citations.

Section 3 Provides statements of public necessity as required by the Florida Constitution.

Section 4 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. Under current law, DSHMV-provided crash reports are subject to a statutory fee of $10 per report.[39] It is not known how many crash reports subject to the statutory fee would be exempt from disclosure as public records under the bill.

2. Expenditures:

   The bill may have an insignificant negative fiscal impact on various state agencies because state agency staff responsible for complying with public record requests may require training related to the newly created public record exemption. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of each state agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an insignificant negative fiscal impact on local government agencies because agency staff responsible for complying with public record request may require training related to the newly created public record exemption. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of each agency.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[39] S. 321.23(2)(a), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the 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:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill includes a public necessity statement for each newly created exemption in the bill.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill provides a public record exemption for the personal information of parties included in motor vehicle crash reports to protect these individuals from misuse of their personal information. This information includes an individual's photograph, social security number, driver license or identification card number, name, home or employment address (excluding the five-digit zip code), home or employment telephone number, and medical or disability information. However, names of persons from the crash report are available to the media in a redacted crash report. As such, the bill does not appear to be broader than necessary to accomplish the stated purpose of the law.

Further, the bill provides a public record exemption for specified driver information in traffic citations to protect drivers from misuse of their personal information. This information includes a driver's date of birth, driver license or identification card number, address (excluding the five-digit zip code), telephone number, motor vehicle license plate number, and trailer tag number. The term does not include the driver's name. As such, the bill does not appear to be broader than necessary to accomplish the stated purpose of the law.

B. RULE-MAKING AUTHORITY:

This bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2022, the Tourism, Infrastructure & Energy Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Defined the term personal information as it relates to motor vehicle crash reports.
- Added passengers and witnesses as persons whose personal information is protected from disclosure in a crash report.
- Provided that personal information revealed in crash reports remains confidential and exempt from disclosure after the 60-day exemption period for the entire crash report.

- Clarified current practice with respect to third parties acting on behalf of entities authorized to access crash report data.
- Clarified that crash reports may not be disclosed for commercial solicitation.
- Required agencies, upon request, to provide a crash report summary to news media, subject to any other public records exemption.
- Corrected an incorrect Open Government Sunset Review date.
- Revised statements of public necessity to conform to the amendment.

On February 8, 2022, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Specified the persons or entities to which an agency is immediately authorized to make crash reports available.
- Removed the requirement for an agency to provide certain media with a summary of a crash report in lieu of providing certain media with a redacted crash report.
- Authorized an agency to provide certain data to a third party, pursuant to an MOU.
- Removed the 60-day requirement for individuals to demonstrate their qualifications to access a crash report or file a sworn statement with a local agency.
- Authorized an agency to provide crash reports to third-party vendors under contract with an insurer by electronic means, pursuant to an MOU.
- Authorized an agency to provide crash reports after 60 days to any person or entity authorized by DPPA.
- Authorized an agency to provide crash reports from a computerized data base to certain persons or entities, pursuant to an MOU.
- Provided additional penalties, but specified that the penalties do not apply to certain media.
- Added identification card to the definition of “driver information” for traffic citations.
- Changed the effective date from July 1, 2022, to March 1, 2023.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 316.066, F.S.; revising an exemption from public records requirements for certain written reports of crashes; revising the agencies to which the exemption applies; revising the entities to which such reports may be made available; providing construction; requiring certain entities to enter into a memorandum of understanding; providing for future review and repeal; providing penalties; authorizing certain individuals to bring a civil action and be awarded certain relief; providing applicability; amending s. 316.650, F.S.; defining the term "driver information"; providing an exemption from public records requirements for driver information contained in a uniform traffic citation; providing applicability; authorizing release of driver information under certain circumstances; providing for future review and repeal; providing statements of public necessity; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 316.066, Florida Statutes, are amended to read:

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

316.066 Written reports of crashes.—

(2)(a) Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by an ~~any~~ agency, as defined in s. 119.011, ~~that regularly receives or prepares information from or concerning the parties to motor vehicle crashes~~ are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

(b) Crash reports held by an agency under paragraph (a) may be made immediately available to the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, ~~prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations,~~ victim services programs, ~~radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031,~~ and any federal, state, or local governmental agency or any private person or entity acting on behalf of a federal, state, or local governmental agency in carrying out its functions, but not for redistribution to any person or entity not listed in this paragraph. Crash reports

held by an agency under paragraph (a) that do not contain the home or employment street addresses, driver license or identification card numbers, dates of birth, and home and employment telephone numbers of the parties involved in the crash may be made immediately available to radio and television stations licensed by the Federal Communications Commission and newspapers qualified to publish legal notices under ss. 50.011 and 50.031. A crash report may also be made available to any third party acting on behalf of a person or entity authorized under this section to access the crash report, except that the third party may disclose the crash report only to the person or entity authorized to access the crash report under this section on whose behalf the third party has sought the report. This section does not prevent an agency, pursuant to a memorandum of understanding, from providing data derived from crash reports to a third party solely for the purpose of identifying vehicles involved in crashes if such data does not reveal the identities, home or employment telephone numbers or home or employment addresses, or other personal information, as defined in s. 119.0712(2)(b) and 18 U.S.C. s. 2725(3), of the parties involved in the crash~~, in accordance with paragraph (f), free newspapers of general circulation, published once a week or more often, of which at least 7,500 copies are distributed by mail or by carrier as verified by a postal statement or by a notarized printer's statement of press run, which are intended to be~~

~~generally distributed and circulated, and which contain news of general interest with at least 10 pages per publication, available and of interest to the public generally for the dissemination of news. For the purposes of this section, the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes~~.

(c) Any local, state, or federal agency that is authorized to have access to crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties.

(d) As a condition precedent to accessing a crash report ~~within 60 days after the date the report is filed~~, a person must present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access that information and file a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims~~,~~ or knowingly disclosed to any third party for

the purpose of such solicitation~~, during the period of time that the information remains confidential and exempt~~. Such written sworn statement must be completed and sworn to by the requesting party for each individual crash report that is being requested ~~within 60 days after the report is filed~~. In lieu of requiring the written sworn statement, an agency may provide crash reports by electronic means pursuant to a memorandum of understanding to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims by the vendors~~,~~ or knowingly disclosed by the vendors to any third party for the purpose of such solicitation~~, during the period of time that the information remains confidential and exempt,~~ and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status.

(e) This subsection does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information pursuant to this section.

(f) Crash reports held by an agency under paragraph (a) may be made available 60 days after the date the report is filed to any person or entity eligible to access crash reports under paragraph (b), or in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and

redisclosure requirements in 18 U.S.C. s. 2721(c).

(g) If crash reports are created by or submitted to an agency electronically as data elements within a computerized database, or if personal information from a crash report is entered into a computerized database, such crash data held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Sixty days after the date the crash report is filed, an agency may provide crash data derived from the crash report which includes personal information to entities eligible to access crash reports under paragraph (b), or in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c). Such data shall be provided pursuant to a memorandum of understanding. ~~Free newspapers of general circulation published once a week or more often, of which at least 7,500 copies are distributed by mail or by carrier as verified by a postal statement or by a notarized printer's statement of press run, which are intended to be generally distributed and circulated, which contain news of general interest with at least 10 pages per publication, available and of interest to the public generally for the dissemination of news, and which request 10 or more crash reports within a 24-hour period before 60 days have elapsed after the report is filed may not have access to the home, cellular, employment, or other telephone number or the home or~~

~~employment address of any of the parties involved in the crash.~~

(h) This subsection ~~paragraph~~ is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027 ~~2019~~, unless reviewed and saved from repeal through reenactment by the Legislature.

(3)(a) Any driver failing to file the written report required under subsection (1) commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b) Any employee of a state or local agency in possession of information made confidential and exempt by this section who knowingly discloses such confidential and exempt information to a person not entitled to access such information under this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person, knowing that he or she is not entitled to obtain information made confidential and exempt by this section, who obtains or attempts to obtain such information commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Any person who knowingly uses confidential and exempt information in violation of a filed written sworn statement, memorandum of understanding, or contractual agreement required by this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) In addition to penalties outlined in paragraphs (c) and (d), a person who obtains a crash report or crash data and who knowingly discloses or knowingly uses personal information revealed in the report for a purpose not permitted under 18 U.S.C. s. 2721(b) is liable to the individual to whom the information pertains, who may bring a civil action in any court of competent jurisdiction. The court may award:

1. Actual damages, but not less than liquidated damages in the amount of $2,500.

2. Punitive damages upon proof of willful or reckless disregard of the law.

3. Reasonable attorney fees and other litigation costs reasonably incurred.

4. Such other preliminary and equitable relief as the court determines to be appropriate.

This paragraph does not apply to radio and television stations licensed by the Federal Communications Commission and newspapers qualified to publish legal notices under ss. 50.011 and 50.031.

Section 2. Subsection (11) of section 316.650, Florida Statutes, is amended to read:

316.650 Traffic citations.—

(11)(a) As used in this subsection, the term "driver information" means a driver's date of birth, driver license or identification card number, address excluding the five-digit zip

code, telephone number, motor vehicle license plate number, and trailer tag number. The term does not include the driver's name.

(b)1. Driver information contained in a uniform traffic citation held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph applies to driver information held by an agency before, on, or after the effective date of the exemption.

2. An agency may release driver information in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) in the same manner applicable to the release of personal information contained in a motor vehicle record pursuant to s. 119.0712(2)(b).

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) Driver information contained in a uniform traffic citation, including ~~which includes but is not limited to,~~ the accused person's name and address, shall not be used for commercial solicitation purposes. However, the use of such driver information contained in a uniform traffic citation shall not be considered a commercial purpose when used for publication in a newspaper or other news periodical, when used for broadcast by radio or television, or when used to inform a person of the availability of driver safety training.

Section 3. (1) The Legislature finds that it is a public necessity that crash reports that reveal personal information concerning parties, passengers, and witnesses to a crash for a period of 60 days after the date the crash report is filed with an agency; such personal information revealed in crash reports held by an agency following the 60-day period; and computerized crash report data held by an agency be confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Crash reports reveal significant personal information, not only about parties involved in a crash but also about passengers and other witnesses to the crash. Pervasive use of the Internet and related technologies abet those with malicious purposes in exploiting the use of personal information revealed in crash reports, such as a party's, passenger's, or witness's date of birth, driver license number, and address, creating ever-expanding threats to privacy and security never envisioned in generations past. Moreover, ever-increasing use of information technology for the preparation, submission, and management of crash reports has led agencies to hold vast repositories of computerized crash report data, which includes such personal information. Personal information, when held by the Department of Highway Safety and Motor Vehicles in driver license and motor vehicle records, is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), Florida

Statutes. These restrictions on disclosure of personal information, however, have not applied to personal information revealed in crash reports. When personal information revealed in crash reports or computerized crash report data is made available to the public, because it comprises much of the same personal information contained in driver license and motor vehicle records, the protections afforded by the federal Driver's Privacy Protection Act of 1994 are significantly undermined, eroding the privacy and safety of drivers. Therefore, the Legislature finds that it is a public necessity to make confidential and exempt from public records requirements crash reports that reveal personal information concerning parties, passengers, and witnesses to a crash for a period of 60 days after the date the crash report is filed with an agency; such personal information revealed in crash reports held by an agency following the 60-day period; and computerized crash report data held by an agency.

(2) The Legislature finds that it is a public necessity that driver information contained in a uniform traffic citation held by an agency be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Uniform traffic citations reveal significant personal information about drivers issued a citation. Pervasive use of the Internet and related technologies abet those with malicious purposes in exploiting the use of personal information contained in traffic

citations, such as a driver's date of birth, driver license number, and address, creating ever-expanding threats to privacy and security never envisioned in generations past. Driver information, when held by the Department of Highway Safety and Motor Vehicles in driver license and motor vehicle records, is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), Florida Statutes. These restrictions on disclosure of personal information, however, have not applied to driver information contained in uniform traffic citations. When driver information contained in uniform traffic citations is made available to the public, because it comprises much of the same personal information contained in driver license and motor vehicle records, the protections afforded by the federal Driver's Privacy Protection Act of 1994 are significantly undermined, eroding the privacy and safety of drivers. Therefore, the Legislature finds that it is a public necessity to make exempt from public records requirements driver information contained in uniform traffic citations.

Section 4. This act shall take effect March 1, 2023.

COMMERCE COMMITTEE

CS/CS/HB 1121 by Rep. Brannan
Public Records/Crash Reports and Traffic Citations

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Rep. Brannan (Line 55):

- Clarifies that a redacted crash report shall, upon request, be provided to the media.

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 Brannan offered the following:

Amendment

Remove line 55 and insert:

crash shall, upon request, be made immediately available to radio and television

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1307 Citizens Property Insurance Corporation
SPONSOR(S): Insurance & Banking Subcommittee, Gregory and others
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill makes several changes to the operations of, and requirements for, Citizens Property Insurance Corporation (Citizens), the state-run property insurer:

- Establishes that the Office of Insurance Regulation (OIR) must approve the method that Citizens uses to value dwelling replacement cost.
- Establishes Citizens must charge policyholders a surcharge to offset a projected deficit according to a schedule based upon the number of Citizens' policyholders.
- Defines "demonstrated expertise in insurance" for the purpose of board appointments as at least ten years of responsible experience in specific areas of the insurance industry.
- Establishes that, at the time of appointment, Citizens' executive director must have the experience, character, and qualifications sufficient to qualify as a chief executive officer of an insurer in accordance with the requirements for managers, officers, and directors of private insurers.
- Establishes that when Citizens' personal lines residential or commercial lines residential policyholders receive offers of coverage at renewal from authorized insurers, the risks are not eligible for coverage from Citizens unless the premiums from the authorized insurers are more than a set percentage greater than the renewal premiums for comparable coverage from Citizens. This percentage begins at 5 percent and increases incrementally to 20 percent by 2026.
- Establishes that for new applications for commercial lines residential risks, the risk is not eligible for coverage by Citizens unless the premium for coverage from an authorized insurer is more than 20 percent greater than the premium for Citizens. SB 76 (2021) made the change from 15 percent to 20 percent for personal lines residential risks, but the change was not made for commercial lines residential risks in that bill.
- Eliminates the ability of Citizens to include the cost of reinsurance in its rate calculations if it does not purchase reinsurance.
- Establishes that when Citizens' policyholders receive take-out offers from authorized insurers that include premiums that are not more than a set percentage greater than Citizens' premium for comparable coverage, they are no longer eligible for Citizens' coverage. This percentage begins at 5 percent and increases incrementally to 20 percent by 2026. The bill also requires that Citizens' notify policyholders of the fact that they have received such an offer and that the offer renders their risks ineligible for Citizens' coverage.
- Establishes that surplus lines insurers may participate in Citizens' take-out program subject to the insurers meeting certain financial requirements and having a depopulation, take-out, or keep-out plan (plan) approved by OIR.

The bill has no effect on state or local government revenues or expenditures. It may have an indeterminate negative impact on the private sector.

The bill is effective on July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt government entity that is an integral part of the state, whose public purpose is to provide property insurance to those unable to find affordable coverage in the private market.[1] Citizens is overseen by a board of directors (board) and operated by an executive director. Citizens writes both personal and commercial property policies, including the following:

- Standard personal lines policies that are comprehensive multiperil policies providing full coverage of residential property equivalent to the coverage provided in the private insurance market;
- Basic personal lines policies that are similar to dwelling fire policies that provide coverage meeting the requirements of the secondary mortgage market, but are more limited in coverage than under a standard policy;
- Commercial lines residential and nonresidential policies that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the private market;
- Personal lines and commercial lines residential property insurance policies that cover the peril of wind only;
- Commercial lines nonresidential property insurance policies that cover the peril of wind only.[2]

Dwelling Valuation

Background

Dwelling coverage, sometimes called "dwelling insurance," is the part of a homeowners policy that pays for the rebuilding or repair of the physical structure of the home if it is damaged by a covered peril.[3] Coverage may be provided on a replacement cost or actual cash-value basis. Replacement cost includes the cost of materials and labor necessary to rebuild or repair the home. Actual cash value is calculated by subtracting depreciation from replacement cost.

Since January 1, 2017, with certain exceptions, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for Citizens' coverage.[4] However, in counties where the Office of Insurance Regulation (OIR) has determined there is not a reasonable degree of competition in the availability of property insurance, the limit for the dwelling replacement cost of a structure, or the dwelling and contents replacement cost of a single condominium eligible for coverage is $1,000,000.[5]

Insurance companies typically use information on a customer's application, proprietary formulas, and third-party data to calculate dwelling replacement costs, which differ from market value.[6] Current law does not specify the method by which Citizens must calculate dwelling replacement cost and does not involve OIR in the process of completing such calculations.

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[1] S. 627.351(6)(a)1., F.S.
[2] S. 627.351(6)(c)1., F.S.
[3] Allstate, *What is Dwelling Insurance Coverage?*, https://www.allstate.com/tr/home-insurance/dwelling-insurance.aspx (last visited Jan. 29, 2022).
[4] S. 627.351(6)(a)3.d., F.S.
[5] *Id.*
[6] Kin, *What is a Replacement Cost Estimate?,* https://www.kin.com/faq/replacement-cost-estimate (last visited Jan. 29, 2022).

Effect of the Bill

The bill establishes that OIR must approve the method that Citizens uses to value dwelling replacement cost. It also removes obsolete language regarding dwelling and contents coverage provided by Citizens.

Policyholder Surcharge

Background

All of Citizens' revenues, assets, liabilities, losses, and expenses are divided into three accounts as follows:

- A personal lines account for personal residential policies issued by Citizens which provides comprehensive, multiperil coverage on risks that are not located in the areas covered by the coastal account and for policies that do not provide coverage for the peril of wind on risks located in the areas covered by the coastal account;
- A commercial lines account for commercial residential and commercial nonresidential policies issued by Citizens which provides coverage for basic property perils on risks that are not located in areas covered by the coastal account and do not provide coverage for the peril of wind only risks located in the areas covered by the coastal account; and
- A coastal account for personal residential policies, and commercial residential and commercial nonresidential property policies issued by Citizens which provides coverage for the peril of wind only risks that are located in the coastal areas. [7]

Upon a determination by the board that an account has a projected deficit, the board must levy a surcharge against all Citizens' policyholders.[8] The surcharge must be levied as a uniform percentage of the premium for the policy, up to 15 percent of the premium, and must be used to offset the deficit.[9] The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of new policy by Citizens within the first 12 months after the levy or the period of time necessary to fully collect the surcharge.[10] The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes.[11] However, failure of the insured to pay the surcharge is considered failure to pay premium.[12]

Effect of the Bill

The bill establishes Citizens must charge policyholders a surcharge to offset a projected deficit according to the following schedule:

- If the total number of Citizens' policyholders is less than one million, a surcharge of 15 percent of the premium;
- If the total number of Citizens' policyholders is at least one million but less than 1.5 million, a surcharge of 20 percent of the premium; and
- If the total number of Citizens' policyholders is at least 1.5 million, a surcharge of 25 percent of the premium.

Primary Residence

Background

[7] S. 627.351(6)(b)2.a., F.S.
[8] S. 627.351(6)(b)2.i., F.S.
[9] S. 627.351(6)(b)2.i.(I), F.S.
[10] S. 627.351(6)(b)2.i.(II), F.S.
[11] S. 627.351(6)(b)2.i.(IV), F.S.
[12] *Id.*

Currently Florida statutes regarding Citizens do not define or otherwise mention a primary residence or establish different rates or coverage based upon whether a property is an insured's primary residence.

Effect of the Bill

The bill defines "primary residence" as a residential dwelling that an insured has listed as a homestead either on an insurance application or has informed Citizens of by other means and is owned by a citizen of, or lawful permanent resident of, the United States. However, the definition is not utilized in any current provisions of law or new provisions of the bill.

Qualifications of Citizens' Board Members

Background

Citizens is overseen by its board, which consists of nine individuals who must be residents of different geographical areas of Florida.[13] The Governor, Chief Financial Officer, President of the Senate, and Speaker of the House, each appoint two members of the board.[14] The Governor appoints one additional member who serves solely to advocate on behalf of consumers.[15] At least one of the two members appointed by each appointing officer must have demonstrated experience in insurance.[16] However, current law does not define the insurance experience that the board members must have in order to qualify for their board positions.

Effect of the Bill

The bill defines "demonstrated expertise in insurance" as at least ten years of responsible experience:

- In property and casualty insurance as a full-time employee, an officer or owner of a licensed insurance agency, or an insurer writing residential property insurance; or
- As an insurance regulator or an executive or officer of an insurance trade association.

Qualifications of Citizens' Executive Director

Background

Citizens is run by an executive director that is engaged by the board and serves "at the pleasure of the board."[17] The executive director is subject to confirmation by the Senate.[18] He or she is responsible for employing other staff as Citizens requires, subject to review and agreement by the board.[19] However, current law does not specify the experience, character, or qualifications that an individual must have in order to be qualified to serve as Citizens' executive director.

Florida law provides guidance regarding the qualifications necessary for individuals to serve as officers and directors of private insurers within the state.[20] In general, OIR must not grant or continue to grant authority to transact insurance to any insurer, which has management, officers, or directors that it finds to be incompetent or untrustworthy, or "so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public."[21] Additionally, OIR must not grant or continue authority to transact insurance to any insurer if any person in control of the insurer "does not possess the financial standing and business experience for the successful operation of the insurer."[22]

[13] S. 627.351(6)(c)4., F.S.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *See* s. 624.404(3), F.S.
[21] S. 624.404(3)(a), F.S.
[22] S. 624.404(3)(b), F.S.

Effect of the Bill

The bill establishes that, at the time of appointment, Citizens' executive director must have the experience, character, and qualifications sufficient to qualify as a chief executive officer of an insurer in accordance with s. 624.404(3), F.S.

Competitiveness of Citizens' Rates and Eligibility for Coverage

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for coverage from Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens also has additional eligibility requirements set out in their underwriting rules. These rules are approved by OIR and set out in Citizens' underwriting manuals.[23]

Citizens' rate cap, also known as the "glide path," is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private insurers and does not need to purchase as much reinsurance as private insurers because of Citizens' higher levels of capital and surplus.

Eligibility for Personal and Commercial Lines Residential Coverage at Renewal

Background

Both personal lines residential and commercial lines residential policyholders cannot renew Citizens' insurance policies if an authorized insurer offers to insure their property at a premium equal to or less than Citizens' renewal premium.[24] Additionally, the insurance from the authorized insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.[25]

Effect of the Bill

The bill establishes that when Citizens' personal lines residential or commercial lines residential policyholders receive offers of coverage at renewal from authorized insurers, the risks are not eligible for coverage from Citizens unless the premiums from the authorized insurers are more than the following percent greater than the renewal premiums for comparable coverage from Citizens:

- 5 percent for policies that renew during 2023.
- 10 percent for policies that renew during 2024.
- 15 percent for policies that renew during 2025.
- 20 percent for policies that renew during 2026 and during all subsequent years.

The bill also establishes that policies removed from Citizens under an assumption agreement may remain on Citizen's policy forms through the end of the assumption period so that Citizens may continue to provide service to the policyholder for the claims that are payable by the assuming insurer.

Eligibility for New Commercial Lines Residential Coverage

[23] *See* Citizens Property Insurance Corporation, *Revised Underwriting Manuals*, https://www.citizensfla.com/-/20160329-revised-underwriting-manuals (last visited Jan. 30, 2022).
[24] S. 627.351(6)(c)5., F.S.
[25] *Id.*

Background

New applicants are eligible for commercial lines residential coverage from Citizens if no authorized insurer will write them a policy for a premium that is less than 15 percent greater than what Citizens would offer them for comparable coverage.[26] However, new applicants are eligible for personal lines residential coverage if no authorized insurer will write them a policy for a premium that is less than 20 percent greater than what Citizens would offer them for comparable coverage.[27]

Effect of the Bill

The bill establishes that for new applications for commercial lines residential risks, the risk is not eligible for coverage by Citizens unless the premium for coverage from an authorized insurer is more than 20 percent greater than the premium for Citizens.[28]

Purchase of Reinsurance

Background

Current law requires that Citizens make its best efforts to procure catastrophe reinsurance at reasonable rates to cover its projected 100-year probable maximum loss (PML).[29] Due to the high cost of reinsurance in recent years, some years Citizens has determined that reinsurance is not available at reasonable rates and has not purchased it. If catastrophe reinsurance is not available at reasonable rates, Citizens need not purchase it, but Citizens shall include the costs of reinsurance to cover its projected 100-year PML in its rate calculations even it if does not purchase it.[30]

Effect of the Bill

The bill changes existing statutory language regarding Citizens' purchase of reinsurance so that Citizens shall no longer include the cost of reinsurance in its rate calculations if it does not purchase reinsurance.

[26] S. 627.351(6)(c)5., F.S.
[27] *Id.*
[28] SB 76 (2021) made the change from 15 percent to 20 percent for personal lines residential risks, but the change was not made for commercial lines residential risks in that bill.
[29] S. 627.351(6)(c)9., F.S. Probable maximum loss refers to the value that may be reasonably expected to be lost in a single casualty. IRMI, https://www.irmi.com/term/insurance-definitions/probable-maximum-loss (last visited Feb. 3, 2022). If an insurer is buying reinsurance to cover its 100-year probable maximum loss, it is purchasing reinsurance to cover the maximum loss that has a chance of occurring once in 100 years.
[30] *Id.*

Citizens' Take-out Program/Depopulation

Eligibility After a Take-out Offer

Background

Florida law requires that Citizens create programs to help return its policyholders to the private property insurance market and to reduce the risk of additional assessments for all Floridians in the even that Citizens is unable to meet its obligations.[31] In 2016, the Legislature passed requirements that by January 1, 2017, Citizens amend its operations relating to take-out agreements, whereby private insurers remove policies from Citizens.[32] As part of these requirements, a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer requests to take out;[33]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take out a policy; the list must include a description of the coverage offered and the estimated premium for each take-out request;
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with Citizens. The notice must be in a format prescribed by Citizens and include, for each take-out offer:
    - The amount of the estimated premium;
    - A description of coverage; and
    - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by Citizens.[34]

Effect of the Bill

The bill establishes that when Citizens' policyholders receive take-out offers from authorized insurers that include premiums that are not more than the following percent greater than Citizens' renewal premium for comparable coverage, they are no longer eligible for Citizens' coverage:

- 5 percent for policies effective on or after January 1, 2023.
- 10 percent for policies effective on or after January 1, 2024.
- 15 percent for policies effective on or after January 1, 2025.
- 20 percent for policies effective on or after January 1, 2026, and in all subsequent years.

The bill requires that Citizens' notify policyholders that they have received such an offer and that the offer renders their risks ineligible for Citizens' coverage.

The bill also eliminates a 36-month exception where a policyholder whose policy has been taken-out of Citizens can still be considered a renewal if the authorized insurer that took the policy raises the policyholder's rates.

[31] S. 627.351(6)(q)3.a., F.S.
[32] Ch. 2016-229, Laws of Fla.
[33] These requests from insurers must include a description of the coverage offered and an estimated premium for it and must be submitted to Citizens in a form prescribed by Citizens.
[34] S. 627.351(6)(ii), F.S.

Surplus Lines Insurer Participation in Citizens' Take-out Program

Background

With certain exceptions, Florida law requires any person transacting insurance to have a certificate of authority issued by the OIR.[35] Authorized insurers in Florida are subject to the provisions of the Florida Insurance Code[36] and regulation primarily by OIR.[37] OIR's regulatory authority over authorized insurers includes solvency and financial strength, insurance policy forms and rates, and market conduct of the insurers. There are risks for which insurance in the admitted market are not available because insurers are unable or unwilling to write policies for them. Therefore, states allow insurers that are not otherwise authorized to sell policies to sell surplus lines insurance if they meet certain requirements.

Surplus lines insurers are still considered "unauthorized" insurers[38], and may write only surplus lines policies if they are made "eligible" by OIR. Except as specifically stated, surplus lines insurers are not subject to regulation by OIR under ch. 627, F.S., which includes statutory provisions regarding rating standards and insurance policy forms.[39] Currently, surplus lines insurers are not permitted to participate in Citizens' take-out program.

Effect of the Bill

The bill establishes that surplus lines insurers may participate in Citizens' take-out program subject to the insurers meeting certain financial requirements and having a depopulation, take-out, or keep-out plan (plan) approved by OIR. In considering a surplus lines insurer's request for approval of its plan, OIR must determine whether the surplus lines insurer:

- Maintains a surplus of $50 million on a company or pooled basis;
- Has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to OIR;
- Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season and submits such reinsurance to OIR to review for purposes of the plan;
- Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies do not receive coverage from the Florida Insurance Guaranty Association[40] and provides an outline of any substantial differences in coverage between the existing policy and the policy it is offering to the policyholder;
- Provides policy coverage similar to the coverage that Citizens provides.

The bill establishes that to obtain approval of a plan, the surplus lines insurer must file the following information with OIR:

- Information OIR requests to demonstrate that the insurer complies with the statutory requirements regarding competence and trustworthiness of its officers;[41]
- A service-of-process consent and agreement form executed by the insurer;
- Proof that the insurer has been an eligible or authorized insurer for at least 3 years;
- An authenticated copy of the insurer's current audited financial statement;
- A completed certified copy of the latest official financial statement required by the insurer's domiciliary state, if different from the audited financial statement;
- A copy of the insurer's United States trust account agreement, if applicable.

[35] S. 624.401, F.S. In the Florida Insurance Code (FIC), a person also includes a business entity such as an insurer.
[36] Section 624.404, F.S., provides that an insurer must be in compliance with the FIC to qualify for and hold authority to transact insurance in the state. The FIC is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.
[37] In general, OIR has regulatory authority over insurers and the Department of Financial Services (DFS) has regulatory authority over insurance agents and agencies.
[38] S. 624.09(2), F.S.
[39] S. 626.913(4), F.S.
[40] The Florida Insurance Guaranty Association provides a "mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer." S. 631.51, F.S.
[41] *See* s. 624.404(3), F.S. and s. 624.34, F.S.

The bill also establishes that, within 10 days after the date of assumption of policies that it has taken-out from Citizens, the surplus lines insurer must remit to the Bureau of Collateral Management (BCM) within the Department of Financial Services (DFS) a special deposit equal to the unearned premium, minus unearned commissions, on the assumed policies. According to the bill, the surplus lines insurer is also required to provide the BCM with an accounting of the policies assumed within 10 days of the assumption, a quarterly filing with the BCM regarding the unearned premium on the policies in force for those assumed from Citizens, and additional deposits if the deposit previously made to the BCM is insufficient to cover the unearned premium on the assumed policies.

The bill provides that, if an order of liquidation is entered in any state against the surplus lines insurer, DFS may use the special deposit for payment of unearned premium or policy claims, return all or part of the deposit to the receiver in the surplus lines insurer's state of domicile, or use the funds in accordance with any action authorized under ch. 631, part I, F.S.,[42] or in compliance with an order from a court having jurisdiction over the insolvency.

According to the bill, before a surplus lines insurer assumes a policy from Citizens, surplus lines brokers representing the surplus lines insurer shall obtain written or email confirmation from each producing agent stating that the agent is willing to participate in the take-out program with that surplus lines insurer. The bill further establishes that if both a surplus lines insurer and an authorized insurer select a policyholder for removal from Citizens, Citizens must give priority to the offer from the authorized insurer.

The bill provides that the following risks are not eligible for Citizens coverage if they are offered comparable coverage from qualified surplus lines insurer at a premium no greater than 15 percent above the premium charged by Citizens:

- A risk that has a dwelling replacement cost of $700,000 or more.
- A single condominium unit that has a dwelling and content replacement cost of $700,000 or more.

However, the bill also establishes that a risk that has a dwelling replacement cost below $700,000, or a single condominium unit that has a combined dwelling and contents replacement cost below $700,000 remains eligible for Citizens coverage if a qualified surplus lines insurer offers it coverage.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.022, F.S., relating to scope of this part.

Section 2. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 3. Amends s. 627.3517, F.S., relating to consumer choice.

Section 4. Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

Section 5. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[42] Ch. 631, part 1, F.S., establishes the requirements for rehabilitation and liquidation of insolvent insurers in Florida.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that less policyholders are eligible for Citizens' coverage, they may pay more in insurance premiums on the private market. Therefore, the bill may have an indeterminate negative impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 573-576 of the bill define the term "primary residence." However, that term is not used elsewhere in the bill and the definition may be unnecessary. Additionally, as written, the definition is unclear as to whether the primary residence must be owned by the insured or may be owned by another citizen of the United States or lawful permanent resident and declared a homestead by someone other than the owner. If the bill is amended to use the term elsewhere, it is recommended to amend the definition for clarity about who may own the property that is declared to be a homestead.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 2, 2022, the Insurance & Banking Subcommittee considered the bill, adopted three amendments, and reported the bill favorably as a committee substitute. The amendments made the following changes to the bill:

- Phased in the percentage, by which an authorized insurer's renewal offer for a Citizens' policyholder may exceed Citizens' premium and make a policyholder ineligible for Citizens' coverage, by 5 percent per year until it reaches 20 percent in 2026.
- Clarified that a policy removed from Citizens under an assumption agreement may remain on Citizens' policy forms for the remainder of the assumption period so that Citizens may continue to provide service to the policyholder for the claims that are payable by the assuming insurer.
- Changed existing statutory language regarding Citizens' purchase of reinsurance so that Citizens shall no longer include the cost of reinsurance in its rate calculations if it does not purchase reinsurance.
- Phased in the percentage, by which an authorized insurer's take-out offer may exceed Citizens' premium and make a policyholder ineligible for Citizens' coverage, by 5 percent per year until it reaches 20 percent in 2026.

- Eliminated language that creates a 36-month exception whereby a policyholder whose policy has been taken-out of Citizens can still be considered a renewal if the authorized insurer that took the policy raises the policyholder's rates.

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

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.021, F.S.; revising applicability; amending s. 627.351, F.S.; deleting obsolete language; requiring the Office of Insurance Regulation to approve the method used by Citizens Property Insurance Corporation for valuing the dwelling replacement costs; revising the method for determining the amounts of potential surcharges to be levied against policyholders under certain circumstances; defining the term "primary residence"; specifying qualification requirements for certain members of the corporation's board of governors at the time of appointment and reappointment; defining the term "demonstrated expertise in insurance" to specify the qualifications of some appointees for the board membership; revising thresholds for determining eligibility of a risk for coverage by the corporation; providing that policyholders removed from the corporation through an assumption agreement do not remain eligible for coverage from the corporation but may remain on the corporation's policy forms for a specified time for a specified purpose; eliminating costs of reinsurance in rates under certain circumstances; making technical changes; specifying

the qualifications for an appointee as the executive director of the corporation; providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as authorized insurers, in depopulation, take-out, or keep-out programs relating to policies removed from the corporation; providing certain exceptions, conditions, and requirements relating to such participation by surplus lines insurers in the corporation's depopulation, take-out, or keep-out programs; providing thresholds for eligibility for coverage by the corporation for risks that are offered coverage from qualified surplus lines insurers; revising circumstances under which information from underwriting files and confidential claims files may be released by the corporation; revising the list of entities that such files may be released to; specifying that only the corporation's transfer of a policy file to an insurer, rather than the transfer of any file, changes the file's public record status; providing thresholds for determining eligibility for coverage by the corporation for policyholders who receive take-out offers from authorized insurers; revising the notice that must be provided by the corporation when insurers request to take out a policy; amending s. 627.3517, F.S.; making

technical changes; amending s. 627.3518, F.S.; deleting obsolete provisions relating to the purpose of the corporation's clearinghouse program and reporting requirements; revising procedures for determining eligibility of a risk for coverage with the corporation; deleting provisions relating to renewal status for coverage by the corporation; providing an effective date.

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

Section 1. Subsection (2) of section 627.021, Florida Statutes, is amended to read:

627.021 Scope of this part.—

(2) This part does not apply to:

(a) Reinsurance, except joint reinsurance as provided in s. 627.311.

(b) Insurance against loss of or damage to aircraft, their hulls, accessories, or equipment, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of aircraft.

(c) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies.

(d) Commercial inland marine insurance.

(e) Except as may be specifically stated to apply, surplus lines insurance placed under ~~the provisions of~~ ss. 626.913-626.937.

Section 2. Paragraphs (a), (b), (c), (d), (n), (q), (x), and (ii) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare.

It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and

commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. With respect to coverage for personal lines residential structures,~~:~~

~~a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office~~

~~shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.~~

~~b. Effective January 1, 2015, a structure that has a dwelling replacement cost of $900,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $900,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2014, may continue to be covered by the corporation only until the end of the policy term.~~

~~c. Effective January 1, 2016, a structure that has a dwelling replacement cost of $800,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $800,000 or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2015, may continue to be covered by the corporation until the end of the policy term.~~

~~d.~~ effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for

coverage by the corporation. The office shall approve the method used by the corporation for valuing the dwelling replacement cost ~~Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term~~. The requirements of this subparagraph ~~sub-subparagraphs b.-d.~~ do not apply in counties where the office determines there is not a reasonable degree of competition. In such counties a personal lines residential structure that has a dwelling replacement cost of less than $1 million, or a single condominium unit that has a combined dwelling and contents replacement cost of less than $1 million, is eligible for coverage by the corporation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of

$750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

6. With respect to wind-only coverage for commercial lines residential condominiums, effective July 1, 2014, a condominium shall be deemed ineligible for coverage if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are

referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers; however, insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential policies issued by the corporation which provides comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential

and commercial nonresidential policies issued by the corporation which provides coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A coastal account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation which provides coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the coastal account. Effective July 1, 2014, the corporation shall cease offering new commercial residential policies providing multiperil coverage and shall instead continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. The corporation may, however, continue to renew a commercial residential multiperil policy on a building that is insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage, the corporation may use

its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share

primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal account also includes the area within Port Canaveral~~,~~ which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If the financing obligations are no longer outstanding, the corporation may use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan for consolidating the three separate accounts into a single account.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting

Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. The income of the corporation may not inure to the benefit of any private person.

3. With respect to a deficit in an account:

a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., if the remaining projected deficit incurred in the coastal account in a particular calendar year:

(I) Is not greater than 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.

(II) Exceeds 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior

calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 percent of the projected deficit or 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph d.

b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the

surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

c. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., the remaining projected deficits in the personal lines account and in the commercial lines account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph d.

d. Upon a determination by the board of governors that a projected deficit in an account exceeds the amount that is expected to be recovered through regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph i., the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance

Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account in any calendar year may be less than but may not exceed the greater of

10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

e. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a. or subparagraph (q)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's

rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

f. As used in this subsection for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

g. The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

i. Upon determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge must ~~shall~~ be levied as a uniform percentage of the premium for the policy ~~of up to 15 percent of such premium~~, and must ~~which funds shall~~ be used to offset the deficit, as follows:

(A) If the total number of policyholders of the corporation is less than 1 million, a surcharge of 15 percent of the premium.

(B) If the total number of policyholders of the corporation is at least 1 million but less than 1.5 million, a surcharge of 20 percent of the premium.

(C) If the total number of policyholders of the corporation is at least 1.5 million, a surcharge of 25 percent of the premium.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.

(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

j. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and

approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

(c) The corporation's plan of operation:

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

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

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

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The

forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

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

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

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

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

a. As used in this subsection, the term:

(II) "Primary residence" means the residential dwelling that the insured has represented as homestead on an insurance application or otherwise to the corporation which is owned by a

citizen of the United States or a lawful permanent resident.

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

(I) ~~(II)~~ "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in

areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels

for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing

insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected

recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of this ~~the~~ state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b) at the time of appointment or reappointment. The

Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board. As used in this sub-subparagraph, the term "demonstrated expertise in insurance" means at least 10 years of responsible experience:

(I) In property and casualty insurance as a full-time employee, an officer or owner of a licensed insurance agency, or an insurer writing residential property coverage; or

(II) As an insurance regulator or an executive or officer

of an insurance trade association.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in this ~~the~~ state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues that ~~which~~ may include rates and rate competition with the voluntary market; service,

including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation.

(I) Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than the following percent greater than the renewal premium for comparable coverage from the corporation:

(A) Five percent for policies that renew during 2023.

(B) Ten percent for policies that renew during 2024.

(C) Fifteen percent for policies that renew during 2025.

(D) Twenty percent for polices that renew during 2026 and during all subsequent years.

If the risk is not able to obtain such offers ~~offer~~, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. ~~However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.~~ The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation. However, any policy removed from the corporation through an assumption agreement may remain on the corporation's policy forms through the end of the assumption period so that the corporation may continue to provide service to the policyholder for the claims that are payable by the assuming insurer.

(II) ~~(I)~~ If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(III) ~~(II)~~ If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned

commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 ~~15~~ percent greater than the premium for comparable coverage from the corporation.

(I) Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer~~

~~is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than the following percent greater than the renewal premium for comparable coverage from the corporation:

(A) Five percent for policies that renew during 2023.

(B) Ten percent for policies that renew during 2024.

(C) Fifteen percent for policies that renew during 2025.

(D) Twenty percent for policies that renew during 2026 and during all subsequent years.

If the risk is not able to obtain any such offers ~~offer~~, the risk is eligible for a policy including wind coverage issued by the corporation. ~~However,~~ A policyholder removed from the corporation through an assumption agreement does not remain ~~remains~~ eligible for coverage from the corporation ~~until the end of the assumption period~~. However, any policy removed from the corporation through an assumption agreement may remain on the corporation's policy forms through the end of the assumption period so that the corporation may continue to provide service to the policyholder for the claims that are payable by the assuming insurer.

(II) ~~(I)~~ If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by

the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(III) ~~(II)~~ If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first

year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation

and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in

excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation must ~~shall~~ be construed as the private placement of insurance, and ~~the provisions of~~ chapter 120 does ~~do~~ not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. ~~If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase~~

~~it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe reinsurance.~~

10. ~~The policies issued by the corporation~~ Must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. ~~Corporation policies and applications~~ Must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods

continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an

impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within this ~~the~~ state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary

dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(d)1. All prospective employees for senior management positions, as defined by the plan of operation, are subject to background checks as a prerequisite for employment. The office shall conduct the background checks pursuant to ss. 624.34, 624.404(3), and 628.261.

2. On or before July 1 of each year, employees of the corporation must sign and submit a statement attesting that they do not have a conflict of interest, as defined in part III of chapter 112. As a condition of employment, all prospective employees must sign and submit to the corporation a conflict-of-interest statement.

3. The executive director, senior managers, and members of the board of governors are subject to part III of chapter 112, including, but not limited to, the code of ethics and public

disclosure and reporting of financial interests, pursuant to s. 112.3145. For purposes of applying part III of chapter 112 to activities of the executive director, senior managers, and members of the board of governors, those persons shall be considered public officers or employees and the corporation shall be considered their agency. Notwithstanding s. 112.3143(2), a board member may not vote on any measure that would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the assembly the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. Senior managers and board members are also required to file such disclosures with the Commission on Ethics and the Office of Insurance Regulation. The executive director of the corporation or his or her designee shall notify each existing and newly

appointed member of the board of governors and senior managers of their duty to comply with the reporting requirements of part III of chapter 112. At least quarterly, the executive director or his or her designee shall submit to the Commission on Ethics a list of names of the senior managers and members of the board of governors who are subject to the public disclosure requirements under s. 112.3145.

4. Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law, an employee or board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the corporation or who is under consideration for a contract. An employee or board member who fails to comply with subparagraph 3. or this subparagraph is subject to penalties provided under ss. 112.317 and 112.3173.

5. Any senior manager of the corporation who is employed on or after January 1, 2007, regardless of the date of hire, who subsequently retires or terminates employment is prohibited from representing another person or entity before the corporation for 2 years after retirement or termination of employment from the corporation.

6. The executive director, members of the board of governors, and senior managers of the corporation are prohibited from having any employment or contractual relationship for 2

years after retirement from or termination of service to the corporation with an insurer that has entered into a take-out bonus agreement with the corporation.

7. At the time of appointment, the executive director must have the experience, character, and qualifications sufficient to qualify as a chief executive officer of an insurer in accordance with s. 624.404(3).

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. If ~~After~~ the public hurricane loss-projection model under s. 627.06281 is ~~has been~~ found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection

Methodology, it must ~~the model shall~~ be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase that ~~which~~, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Eleven percent for 2022.

b. Twelve percent for 2023.

c. Thirteen percent for 2024.

d. Fourteen percent for 2025.

e. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed

in subparagraph 5. must ~~shall~~ cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor

in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants

and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government may ~~shall~~ not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a

program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraph (b) 3.a. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in

accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

d. Notwithstanding any other law, for purposes of a depopulation, take-out, or keep-out program adopted by the corporation, including an initial or renewal offer of coverage made to a policyholder removed from the corporation pursuant to such program, an eligible surplus lines insurer may participate in the program in the same manner and on the same terms as an authorized insurer, except as provided under this sub-subparagraph.

(I) To qualify for participation, the surplus lines insurer must first obtain approval from the office for its depopulation, take-out, or keep-out plan and then comply with all of the corporation's requirements for the plan applicable to

admitted insurers and with all statutory provisions applicable to the removal of policies from the corporation.

(II) In considering a surplus lines insurer's request for approval for its plan, the office shall determine whether the surplus lines insurer meets the following requirements:

(A) Maintains a surplus of $50 million on a company or pooled basis;

(B) Has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the office;

(C) Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season and submits such reinsurance to the office to review for purposes of the take-out;

(D) Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association and provides an outline of any substantial differences in coverage between the existing policy and the policy being offered to the policyholder; and

(E) Provides policy coverage similar to that provided by the corporation.

(III) To obtain approval for a plan, the surplus lines insurer must file the following with the office:

(A) Information requested by the office to demonstrate compliance with s. 624.404(3), including biographical affidavits, fingerprints processed pursuant to s. 624.34, and the results of criminal history records checks for officers and directors of the insurer and its parent or holding company;

(B) A service-of-process consent and agreement form executed by the insurer;

(C) Proof that the insurer has been an eligible or authorized insurer for at least 3 years;

(D) A duly authenticated copy of the insurer's current audited financial statement, in English, which, in the case of statements originally made in the currencies of other countries, expresses all monetary values in United States dollars, at an exchange rate then current and shown in the statement, and including any additional information relative to the insurer as the office may request;

(E) A complete certified copy of the latest official financial statement required by the insurer's domiciliary state, if different from the statement required by sub-sub-sub-subparagraph (D); and

(F) If applicable, a copy of the United States trust account agreement.

This sub-sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626.

Surplus lines brokers making an offer of coverage under this sub-sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), or (e).

(IV) Within 10 days after the date of assumption, the surplus lines insurer assuming policies from the corporation shall remit to the Bureau of Collateral Management within the Department of Financial Services a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business. The surplus lines insurer shall submit to the office, along with the special deposit, an accounting of the policies assumed and the amount of unearned premium for such policies and a sworn affidavit attesting to the accuracy of the accounting by an officer of the surplus lines insurer. Thereafter, the surplus lines insurer shall make a filing within 10 days after the end of each calendar quarter attesting to the unearned premium in force for the previous quarter on policies assumed from the corporation and shall submit additional funds with that filing if the special deposit is insufficient to cover the unearned premium on assumed policies, or shall receive a return of funds within 60 days if the special deposit exceeds the amount of unearned premium required for assumed policies. The special deposit is an asset of the surplus lines insurer which is held by the department for the benefit of state policyholders of the surplus lines insurer in the event of the insolvency of the surplus lines insurer. If an order of

liquidation is entered in any state against the surplus lines insurer, the department may use the special deposit for payment of unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of chapter 631 or in compliance with any order of a court having jurisdiction over the insolvency.

(V) In advance of a surplus lines insurer assuming a policy, surplus lines brokers representing a surplus lines insurer on a take-out program shall obtain confirmation, in written or e-mail form, from each producing agent stating that the agent is willing to participate in the take-out program with the surplus lines insurer engaging in the take-out program. The take-out program is also subject to s. 627.3517. If a policyholder is selected for removal from the corporation by a surplus lines insurer and an authorized insurer, the corporation must give priority to the offer of coverage from the authorized insurer.

(VI)(A) A risk that has a dwelling replacement cost of $700,000 or more or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more is not eligible for coverage by the corporation if it is offered comparable coverage from a qualified surplus lines insurer at a premium no greater than 15 percent above the premium charged by the corporation.

(B) A risk that has a dwelling replacement cost below $700,000 or a single condominium unit that has a combined dwelling and contents replacement cost below $700,000 remains eligible for coverage by the corporation if it is offered coverage from a qualified surplus lines insurer.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

5. Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer

and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

7. For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of such policy form or endorsement.

(x)1. The following records of the corporation are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon

written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt includes ~~shall include~~, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a

behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all records relative to that participation are ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law must ~~shall~~ be redacted.

2. If an authorized insurer, a reinsurance intermediary, an eligible surplus lines insurer, or an entity that has filed an application with the office for licensure as a property and casualty insurer in this state is considering writing or assisting in the underwriting of a risk insured by the corporation, relevant information from both the underwriting files and confidential claims files may be released to the insurer, reinsurance intermediary, eligible surplus lines insurer, or entity that has been created to seek authority to write property and casualty insurance in this state, provided that the recipient ~~insurer~~ agrees in writing, notarized and

under oath, to maintain the confidentiality of such files. If a policy file is transferred to an insurer, that policy file is no longer a public record because it is not held by an agency subject to ~~the provisions of~~ the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or

otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or

confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After January 1, 2017, a policy may not be taken out of the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies that the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation must maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy. The list must include a description of the coverage offered and the estimated premium for each take-out request.

3. If a policyholder receives a take-out offer from an authorized insurer, the risk is no longer eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than the following percent greater than the renewal premium for comparable coverage from the corporation:

a. Five percent for policies effective on or after January 1, 2023.

b. Ten percent for policies effective on or after January 1, 2024.

c. Fifteen percent for policies effective on or after January 1, 2025.

d. Twenty percent for policies effective on or after January 1, 2026 and in all subsequent years.

4.~~3.~~ The corporation must provide written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy, which ~~and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice~~ must be in a format prescribed by the corporation and

include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

Section 3. Section 627.3517, Florida Statutes, is amended to read:

627.3517 Consumer choice.—No provision of s. 627.351, s. 627.3511, or s. 627.3515 shall be construed to impair the right of any insurance risk apportionment plan policyholder, upon receipt of any keep-out ~~keepout~~ or take-out offer, to retain his or her current agent, so long as that agent is duly licensed and appointed by the insurance risk apportionment plan or otherwise authorized to place business with the insurance risk apportionment plan. This right may ~~shall~~ not be canceled, suspended, impeded, abridged, or otherwise compromised by any rule, plan of operation, or depopulation plan, whether through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any insurance risk apportionment plan or depopulation plan, including, but not limited to, those described in s. 627.351, s. 627.3511, or s. 627.3515. The commission shall adopt any rules necessary to cause any insurance risk apportionment plan or market assistance plan under such sections to demonstrate that the operations of the plan do not interfere

with, promote, or allow interference with the rights created under this section. If the policyholder's current agent is unable or unwilling to be appointed with the insurer making the take-out or keep-out ~~keepout~~ offer, the policyholder is ~~shall~~ not ~~be~~ disqualified from participation in the appropriate insurance risk apportionment plan because of an offer of coverage in the voluntary market. An offer of full property insurance coverage by the insurer currently insuring either the ex-wind or wind-only coverage on the policy to which the offer applies is ~~shall~~ not ~~be~~ considered a take-out or keep-out ~~keepout~~ offer. Any rule, plan of operation, or plan of depopulation, through keep-out ~~keepout~~, take-out, midterm assumption, or any other means, of any property insurance risk apportionment plan under s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c) and 627.3511(4).

Section 4. Section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program. ~~The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.~~

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

(a) "Corporation" means Citizens Property Insurance Corporation.

(b) "Exclusive agent" means any licensed insurance agent

that has, by contract, agreed to act exclusively for one company or group of affiliated insurance companies and is disallowed by the provisions of that contract to directly write for any other unaffiliated insurer absent express consent from the company or group of affiliated insurance companies.

(c) "Independent agent" means any licensed insurance agent not described in paragraph (b).

(d) "Program" means the clearinghouse created under this section.

(2) In order to confirm eligibility with the corporation and to enhance access of new applicants for coverage and existing policyholders of the corporation to offers of coverage from authorized insurers, the corporation shall establish a program for personal residential risks in order to facilitate the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market. The corporation shall also develop appropriate procedures for facilitating the diversion of ineligible applicants and existing policyholders for commercial residential coverage into the private insurance market ~~and shall report such procedures to the President of the Senate and the Speaker of the House of Representatives by January 1, 2014~~.

(3) The corporation board shall establish the clearinghouse program as an organizational unit within the corporation. The program shall have all the rights and

responsibilities in carrying out its duties as a licensed general lines agent, but may not be required to employ or engage a licensed general lines agent or to maintain an insurance agency license to carry out its activities in the solicitation and placement of insurance coverage. In establishing the program, the corporation may:

(a) Require all new applications, and all policies due for renewal, to be submitted for coverage to the program in order to facilitate obtaining an offer of coverage from an authorized insurer before binding or renewing coverage by the corporation.

(b) Employ or otherwise contract with individuals or other entities for appropriate administrative or professional services to effectuate the plan within the corporation in accordance with the applicable purchasing requirements under s. 627.351.

(c) Enter into contracts with any authorized insurer to participate in the program and accept an appointment by such insurer.

(d) Provide funds to operate the program. Insurers and agents participating in the program are not required to pay a fee to offset or partially offset the cost of the program or use the program for renewal of policies initially written through the clearinghouse.

(e) Develop an enhanced application that includes information to assist private insurers in determining whether to make an offer of coverage through the program.

(f) For personal lines residential risks, require, before approving all new applications for coverage by the corporation, that every application be subject to a period of 2 business days when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(4) Any authorized insurer may participate in the program; however, participation is not mandatory for any insurer. Insurers making offers of coverage to new applicants or renewal policyholders through the program:

(a) May not be required to individually appoint any agent whose customer is underwritten and bound through the program. Notwithstanding s. 626.112, insurers are not required to appoint any agent on a policy underwritten through the program for as long as that policy remains with the insurer. Insurers may, at their election, appoint any agent whose customer is initially underwritten and bound through the program. In the event an insurer accepts a policy from an agent who is not appointed pursuant to this paragraph, and thereafter elects to accept a policy from such agent, the provisions of s. 626.112 requiring appointment apply to the agent.

(b) Must enter into a limited agency agreement with each agent that is not appointed in accordance with paragraph (a) and whose customer is underwritten and bound through the program.

(c) Must enter into its standard agency agreement with each agent whose customer is underwritten and bound through the program when that agent has been appointed by the insurer pursuant to s. 626.112.

(d) Must comply with s. 627.4133(2).

(e) May participate through their single-designated managing general agent or broker; however, the provisions of paragraph (6)(a) regarding ownership, control, and use of the expirations continue to apply.

(f) Must pay to the producing agent a commission equal to that paid by the corporation or the usual and customary commission paid by the insurer for that line of business, whichever is greater.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold established in s. 627.351(6)(c)5.a. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation if the offer is at or below the eligibility threshold specified in s. 627.351(6)(c)5.a. In the event that an

offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold specified ~~contained~~ in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event that an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered is at or below the eligibility threshold specified in s. 627.351(6)(c)5.a. ~~more than the corporation's renewal premium for comparable coverage~~, the insured is not eligible to ~~may elect to accept such coverage, or may elect to accept or~~ continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. ~~An applicant for coverage from the corporation who was declared ineligible for coverage at renewal by the corporation in the previous 36 months due to an offer of coverage pursuant to this subsection shall be considered a renewal under this section if the corporation determines that the authorized insurer making the offer of coverage pursuant to this subsection continues to insure the applicant and increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)5.~~

(6) Independent insurance agents submitting new

applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) May enter into either a standard or limited agency agreement with the insurer, at the insurer's option.

Applicants ineligible for coverage in accordance with subsection

(5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must only facilitate the placement of an offer of coverage from an insurer whose limited servicing agreement is approved by that exclusive agent's exclusive insurer.

(d) May enter into a limited servicing agreement with the insurer making an offer of coverage, and only after the

exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

(8) Submission of an application for coverage by the corporation to the program does not constitute the binding of coverage by the corporation, and failure of the program to obtain an offer of coverage by an insurer may not be considered acceptance of coverage of the risk by the corporation.

(9) The 45-day notice of nonrenewal requirement set forth in s. 627.4133(2)(b)5. applies when a policy is nonrenewed by the corporation because the risk has received an offer of coverage pursuant to this section which renders the risk ineligible for coverage by the corporation.

(10) The program may not include commercial nonresidential policies.

(11) Proprietary business information provided to the corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

of the State Constitution.

(a) As used in this subsection, the term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer and:

1. Is identified by the insurer as proprietary business information and is intended to be and is treated by the insurer as private in that the disclosure of the information would cause harm to the insurer, an individual, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

2. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to the clearinghouse; and

3. Includes:

a. Trade secrets, as defined in s. 688.002.

b. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Proprietary business information may be found in underwriting criteria or instructions which are used to identify and select risks through the program for an offer of coverage and are shared with the clearinghouse to facilitate the shopping of

risks with the insurer.

(b) The clearinghouse may disclose confidential and exempt proprietary business information:

1. If the insurer to which it pertains gives prior written consent;

2. Pursuant to a court order; or

3. To another state agency in this or another state or to a federal agency if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality.

Section 5. This act shall take effect July 1, 2022.

COMMERCE COMMITTEE

CS/HB 1307 by Rep. Gregory
Citizens Property Insurance

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Gregory (line 490):

- Removes language from the bill that increased the surcharge on Citizens' policyholders based upon Citizens' overall policy count.
- Extends the implementation of the percentage by which an authorized insurer's renewal offer for a Citizens' policyholder or an authorized insurer's take-out offer for a Citizens' policyholder may exceed Citizens' premium and make the policyholder ineligible for Citizens' coverage from 5% per year to 4% per year.
- Removes the definition, but not the requirement, of "demonstrated expertise in insurance" that is required of one of the two Citizens' board members appointed by the Governor, Chief Financial Officer, Senate President, and Speaker of the House.
- Removes language allowing surplus lines insurers to participate in Citizens' take-out program.
- Removes the definition of primary residence that was in the bill as filed, but not actually utilized in the bill.
- Adds language that prohibits a registered lobbyist from being a member of Citizens' board.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 490-1644 and insert:

(c) The corporation's plan of operation:

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

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

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

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

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

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

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

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with

dwelling repair based on common construction materials and methods.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of this ~~the~~ state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a. A registered lobbyist for executive or legislative branch may not be a member of the board.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b) at the time of appointment or reappointment. The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning

annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin

American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in this ~~the~~ state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues that ~~which~~ may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any

policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation.

(I) Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than the following percent greater than the renewal premium for comparable coverage from the corporation:

(A) Four percent for policies that renew during 2023.

(B) Eight percent for policies that renew during 2024.

(C) Twelve percent for policies that renew during 2025.

(D) Sixteen percent for polices that renew during 2026.

(E) Twenty percent for policies that renew during 2027 and during all subsequent years.

If the risk is not able to obtain such offers ~~offer~~, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage

unless rejected under subparagraph 8. ~~However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.~~ The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation beyond the end of the policy term. However, any policy removed from the corporation through an assumption agreement shall remain on the corporation's policy forms through the end of the policy term.

(II) ~~(I)~~ If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or

a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(III) ~~(II)~~ If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 ~~15~~ percent greater than the premium for comparable coverage from the corporation.

(I) Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, ~~if the offer is equal to or less than the corporation's renewal premium for comparable coverage,~~ the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than the following percent greater than the renewal premium for comparable coverage from the corporation:

(A) Four percent for policies that renew during 2023.

(B) Eight percent for policies that renew during 2024.

(C) Twelve percent for policies that renew during 2025.

(D) Sixteen percent for policies that renew during 2026.

(E) Twenty percent for policies that renew during 2027 and during all subsequent years.

If the risk is not able to obtain any such offers ~~offer~~, the risk is eligible for a policy including wind coverage issued by the corporation. ~~However,~~ A policyholder removed from the corporation through an assumption agreement does not remain ~~remains~~ eligible for coverage from the corporation beyond the end of the policy term ~~until the end of the assumption period~~. However, any policy removed from the corporation through an assumption agreement shall remain on the corporation's policy forms through the end of the policy term.

(II) ~~(I)~~ If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss

payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray

deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation must ~~shall~~ be construed as the private placement of insurance, and ~~the provisions of~~ chapter 120 does ~~do~~ not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. ~~If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its~~

~~rate calculations even if it does not purchase catastrophe reinsurance.~~

10. ~~The policies issued by the corporation~~ Must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. ~~Corporation policies and applications~~ Must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer,

the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be

deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by an insurer who is authorized to write and is actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within this ~~the~~ state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(d)1. All prospective employees for senior management positions, as defined by the plan of operation, are subject to background checks as a prerequisite for employment. The office shall conduct the background checks pursuant to ss. 624.34, 624.404(3), and 628.261.

2. On or before July 1 of each year, employees of the corporation must sign and submit a statement attesting that they do not have a conflict of interest, as defined in part III of chapter 112. As a condition of employment, all prospective employees must sign and submit to the corporation a conflict-of-interest statement.

3. The executive director, senior managers, and members of the board of governors are subject to part III of chapter 112, including, but not limited to, the code of ethics and public

disclosure and reporting of financial interests, pursuant to s. 112.3145. For purposes of applying part III of chapter 112 to activities of the executive director, senior managers, and members of the board of governors, those persons shall be considered public officers or employees and the corporation shall be considered their agency. Notwithstanding s. 112.3143(2), a board member may not vote on any measure that would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the assembly the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. Senior managers and board members are also required to file such disclosures with the Commission on Ethics and the Office of Insurance Regulation. The executive director of the corporation or his or her designee shall notify each existing and newly

appointed member of the board of governors and senior managers of their duty to comply with the reporting requirements of part III of chapter 112. At least quarterly, the executive director or his or her designee shall submit to the Commission on Ethics a list of names of the senior managers and members of the board of governors who are subject to the public disclosure requirements under s. 112.3145.

4. Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law, an employee or board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the corporation or who is under consideration for a contract. An employee or board member who fails to comply with subparagraph 3. or this subparagraph is subject to penalties provided under ss. 112.317 and 112.3173.

5. Any senior manager of the corporation who is employed on or after January 1, 2007, regardless of the date of hire, who subsequently retires or terminates employment is prohibited from representing another person or entity before the corporation for 2 years after retirement or termination of employment from the corporation.

6. The executive director, members of the board of governors, and senior managers of the corporation are prohibited from having any employment or contractual relationship for 2

years after retirement from or termination of service to the corporation with an insurer that has entered into a take-out bonus agreement with the corporation.

7. At the time of appointment, the executive director must have the experience, character, and qualifications sufficient to qualify as a chief executive officer of an insurer in accordance with s. 624.404(3).

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. If ~~After~~ the public hurricane loss-projection model under s. 627.06281 is ~~has been~~ found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection

Methodology, it must ~~the model shall~~ be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase that ~~which~~, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Eleven percent for 2022.

b. Twelve percent for 2023.

c. Thirteen percent for 2024.

d. Fourteen percent for 2025.

e. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraph 5. must ~~shall~~ cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

(x)1. The following records of the corporation are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt includes ~~shall include~~, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all records relative to that participation are

~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law must ~~shall~~ be redacted.

2. If an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a policy file is transferred to an insurer, that policy file is no longer a public record because it is not held by an agency subject to ~~the provisions of~~ the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized

and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a

third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any

exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After January 1, 2017, a policy may not be taken out of the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies that the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation must maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy. The list must include a description of the coverage offered and the estimated premium for each take-out request.

3. If a policyholder receives a take-out offer from an authorized insurer, the risk is no longer eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than the following percent greater

than the renewal premium for comparable coverage from the corporation:

a. Four percent for policies effective on or after January 1, 2023.

b. Eight percent for policies effective on or after January 1, 2024.

c. Twelve percent for policies effective on or after January 1, 2025.

d. Sixteen percent for policies effective on or after January 1, 2026.

e. Twenty percent for policies effective on or after January 1, 2027 and in all subsequent years.

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

Remove lines 8-38 and insert:

dwelling replacement costs; specifying that a registered lobbyist may not be a member of the corporation's board of governors; specifying qualification requirements for certain members of the corporation's board of governors at the time of appointment and reappointment; revising thresholds for determining eligibility of a risk for coverage by the corporation; providing that policyholders removed from the corporation through an assumption agreement do not remain

eligible for coverage from the corporation but may remain on the corporation's policy forms for a specified time for a specified purpose; eliminating costs of reinsurance in rates under certain circumstances; making technical changes; specifying the qualifications for an appointee as the executive director of the corporation; revising circumstances under which

HB 7063

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7063 PCB PIE 22-05 Identification Cards
SPONSOR(S): Public Integrity & Elections Committee, Perez
TIED BILLS: **IDEN./SIM. BILLS:** SB 144

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Public Integrity & Elections Committee	18 Y, 0 N	Friant	Rubottom
1) Infrastructure & Tourism Appropriations Subcommittee	12 Y, 0 N	Hicks	Davis
2) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

Florida law authorizes any person who is five years of age or older, or any person who has a disability regardless of age, to be issued an identification card by the Department of Highway Safety and Motor Vehicles (DHSMV) upon completion of an application and payment of a $25 application fee. Of this amount, $7 is deposited into the Highway Safety Operating Trust Fund or retained by the county tax collector, and $18 is deposited into the General Revenue Fund.

Under current law, DHSMV must issue identification cards at no charge to certain persons. This exemption is limited to applicants who present satisfactory evidence of homelessness, as well as specified juvenile offenders and prison inmates upon the expiration of their sentence.

The bill adds the following individuals to whom DHSMV must issue a Florida identification card at no charge:

- A person who presents a valid Florida voter's registration card and attests that he or she is experiencing a financial hardship. DHSMV may not require such persons to present evidence of financial hardship.
- Persons 80 years of age or older whose driving privilege is denied due to failure to pass a vision test.

The bill may have a significant negative fiscal impact on local and state government revenues as a result of adding these two new statutory fee exemptions relating to the issuance of identification cards. However, it is unknown how many individuals would qualify for the exemptions. *See* Fiscal Analysis.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 322, F.S, governs the issuance of Florida driver licenses and identification cards. Florida identification cards provide the same reliable photographic identification as Florida driver licenses. In Florida identification cards are interchangeable with driver licenses for purposes of commercial air travel, banking, and voter registration.

Florida law authorizes any person who is five years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking permit, to be issued an identification card by the Department of Highway Safety and Motor Vehicles (DHSMV) upon completion of an application and payment of an application fee.[1] The cost for an original, renewal, or replacement identification card is $25. Of this amount, $7 is deposited into the Highway Safety Operating Trust Fund or retained by the county tax collector,[2] and $18 is deposited into the General Revenue Fund.[3]

Under Florida law, DHSMV must issue identification cards at no charge to certain persons. The exemption is limited to applicants who present satisfactory evidence of homelessness, as well as specified juvenile offenders and prison inmates upon the expiration of their sentence.[4]

In 2020, Florida ranked second in the nation for the percentage of state population aged 65 or older. At the time of the last census, it was determined that over 21 percent of Florida citizens are in this category.[5]

Florida law requires driver licenses to be renewed every eight years, except drivers who are 80 years or older are required to renew every six years. Mandatory vision tests are required for drivers 80 years or older at each renewal.[6]

Effect of the Bill

The bill adds the following persons to the list of persons to whom DHSMV must issue a Florida identification card at no charge:

- A person who presents a valid Florida voter's registration card and attests that he or she is experiencing a financial hardship. DHSMV may not require such persons to present evidence of financial hardship.
- Persons 80 years of age or older whose driving privilege is denied due to failure to pass a vision test.

The bill authorizes DHSMV to issue a replacement or renewal identification card to registered voters experiencing financial hardship and prohibits the department from requiring evidence of a financial hardship.

Finally, the bill would require the DHSMV to issue identification cards to drivers who are 80 years of age or older and have been denied driving privileges due to failure to pass a vision test. This removes the identification burden imposed on such Floridians when they lose their driving privilege due to a vision disability.

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

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[1] S. 322.051(1), F.S.
[2] This is based on whether DHSMV or the county tax collector issues the identification card.
[3] S. 322.21(1)(f), F.S.
[4] s. 322.051(9)
[5] https://www.prb.org/resources/which-us-states-are-the-oldest/ (last accessed: Feb. 1, 2022).
[6] S. 322.18(2)(a) and (b), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 322.051, F.S., relating to identification cards.

Section 2: Amends s. 322.18, F.S., relating to original applications, licenses, and renewals; expiration of licenses; delinquent licenses.

Section 3: Amends s. 322.21, F.S., relating to license fees.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill creates two new groups that qualify for the issuance of an identification card at no charge. It is unknown how many individuals would claim a hardship and seek an identification card at no charge. For Fiscal Year 2022-2023, DHSMV projects a likely significant decrease in revenues as a result of these two new statutory fee exemptions: $4.3 million impact to the General Revenue Fund and $381,794 impact to the Highway Safety Operating Trust Fund. However, these impacts are indeterminate, as this bill has not been reviewed in an official revenue estimating conference to determine a consensus cost estimate, and it is indeterminate how many would qualify for a fee exemption.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The creation of the two new groups that can receive an identification card at no charge is projected to reduce revenues collected by tax collectors by $315,919. This projection is based upon DHSMV's calculations as the bill has not been reviewed in an official revenue estimating conference to determine a consensus cost estimate. It is unknown how many individuals would claim a hardship and seek an identification card at no charge.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who attest to experiencing financial hardship and those at least 80 years of age will benefit from being able to receive an identification card at no charge to them.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

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

Not applicable.

A bill to be entitled

An act relating to identification cards; amending s. 322.051, F.S.; requiring the Department of Highway Safety and Motor Vehicles to issue or renew identification cards at no charge to persons presenting a valid voter's registration card and attesting to financial hardship; prohibiting the department from requiring such persons to present certain evidence; requiring the department to issue identification cards at no charge to certain other persons; conforming cross-references; amending ss. 322.18 and 322.21, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraphs (b), (c), and (d) of subsection (8) and subsection (9) of section 322.051, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

322.051 Identification cards.—

(8)

(b)1. The word "Veteran" must be exhibited on the identification card of a veteran upon the presentation of a copy of the person's:

a. DD Form 214, issued by the United States Department of

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

Defense;

b. Veteran health identification card, issued by the United States Department of Veterans Affairs;

c. Veteran identification card, issued by the United States Department of Veterans Affairs pursuant to the Veterans Identification Card Act of 2015, Pub. L. No. 114-31; or

d. Other acceptable form specified by the Department of Veterans' Affairs.

2. Until a veteran's identification card is next renewed, the veteran may have the word "Veteran" added to his or her identification card upon surrender of his or her current identification card and presentation of any of the forms of identification specified in subparagraph 1. If the applicant is not conducting any other transaction affecting the identification card, a replacement identification card must be issued with the word "Veteran" without payment of the fee required in s. 322.21(1)(f)3.c. ~~s. 322.21(1)(f)3.~~

(c) The international symbol for the deaf and hard of hearing shall be exhibited on the identification card of a person who is deaf or hard of hearing upon the payment of an additional $1 fee for the identification card and the presentation of sufficient proof that the person is deaf or hard of hearing as determined by the department. Until a person's identification card is next renewed, the person may have the symbol added to his or her identification card upon surrender of

his or her current identification card, payment of a $2 fee to be deposited into the Highway Safety Operating Trust Fund, and presentation of sufficient proof that the person is deaf or hard of hearing as determined by the department. If the applicant is not conducting any other transaction affecting the identification card, a replacement identification card may be issued with the symbol without payment of the fee required in s. 322.21(1)(f)3.c. ~~s. 322.21(1)(f)3.~~ For purposes of this paragraph, the international symbol for the deaf and hard of hearing is substantially as follows:



(d) The department shall include symbols representing the following on an identification card upon the payment of an additional $1 fee by an applicant who meets the requirements of subsection (1) and presents his or her:

1. Lifetime freshwater fishing license;
2. Lifetime saltwater fishing license;
3. Lifetime hunting license;
4. Lifetime sportsman's license; or
5. Lifetime boater safety identification card.

A person may replace his or her identification card before its expiration date with a card that includes his or her status as a lifetime licensee or boater safety cardholder upon surrender of his or her current identification card, payment of a $2 fee to be deposited into the Highway Safety Operating Trust Fund, and presentation of the person's lifetime license or card. If the sole purpose of the replacement identification card is the inclusion of the applicant's status as a lifetime licensee or cardholder, the replacement identification card must be issued without payment of the fee required in s. 322.21(1)(f)3.c. ~~s. 322.21(1)(f)3.~~

(9)(a) Notwithstanding any other provision of this section or s. 322.21 to the contrary, the department shall issue or renew a card at no charge to:

1. A person who presents a valid Florida voter's registration card to the department and attests that he or she is experiencing a financial hardship. The department may not require such person to present evidence of a financial hardship.

2. A person who presents evidence satisfactory to the department that he or she is homeless as defined in s. 414.0252(7).

3.~~, to~~ A juvenile offender who is in the custody or under the supervision of the Department of Juvenile Justice and receiving services pursuant to s. 985.461.

4.~~, to~~ An inmate receiving a card issued pursuant to s. 944.605(7), or, if necessary, to an inmate receiving a replacement card if the department determines that he or she has a valid state identification card. If the replacement state identification card is scheduled to expire within 6 months, the department may also issue a temporary permit valid for at least 6 months after the release date.

(b) The department's mobile issuing units shall process the identification cards for juvenile offenders and inmates at no charge, as provided by s. 944.605 (7)(a) and (b).

(10) Notwithstanding any other provision of this section or s. 322.21 to the contrary, the department shall issue an identification card at no charge to a person who is 80 years of age or older and whose driving privilege is denied due to failure to pass a vision test administered pursuant to s. 322.18(5).

Section 2. Paragraph (c) is added to subsection (5) of section 322.18, Florida Statutes, to read:

322.18 Original applications, licenses, and renewals; expiration of licenses; delinquent licenses.—

(5) All renewal driver licenses may be issued after the applicant licensee has been determined to be eligible by the department.

(c) The department shall issue an identification card under s. 322.051 at no charge to a licensee who is at least 80

years of age and whose driving privilege is denied due to failure to pass a vision test pursuant to this subsection.

Section 3. Paragraph (f) of subsection (1) of section 322.21, Florida Statutes, is amended to read:

322.21 License fees; procedure for handling and collecting fees.—

(1) Except as otherwise provided herein, the fee for:

(f) An original, renewal, or replacement identification card issued pursuant to s. 322.051 is $25.

1.~~, except that~~ An applicant who meets any of the following criteria is exempt from the fee under this paragraph for an original, renewal, or replacement identification card:

a. The applicant presents a valid Florida voter's registration card to the department and attests that he or she is experiencing a financial hardship.

b. The applicant presents evidence satisfactory to the department that he or she is homeless as defined in s. 414.0252(7).

c. The applicant presents evidence satisfactory to the department that~~;~~ his or her annual income is at or below 100 percent of the federal poverty level.

d. The applicant~~; or he or she~~ is a juvenile offender who is in the custody or under the supervision of the Department of Juvenile Justice, who is receiving services pursuant to s. 985.461, and whose identification card is issued by the

department's mobile issuing units ~~is exempt from such fee~~.

2. Pursuant to s. 322.051(10), an applicant who is 80 years of age or older and whose driving privilege is denied due to failure to pass a vision test administered pursuant to s. 322.18(5) is exempt from the fee under this paragraph for an original identification card.

3. Funds collected from fees for original, renewal, or replacement identification cards shall be distributed as follows:

a.~~1.~~ For an original identification card issued pursuant to s. 322.051, the fee shall be deposited into the General Revenue Fund.

b.~~2.~~ For a renewal identification card issued pursuant to s. 322.051, $6 shall be deposited into the Highway Safety Operating Trust Fund, and $19 shall be deposited into the General Revenue Fund.

c.~~3.~~ For a replacement identification card issued pursuant to s. 322.051, $9 shall be deposited into the Highway Safety Operating Trust Fund, and $16 shall be deposited into the General Revenue Fund. Beginning July 1, 2015, or upon completion of the transition of the driver license issuance services, if the replacement identification card is issued by the tax collector, the tax collector shall retain the $9 that would otherwise be deposited into the Highway Safety Operating Trust Fund and the remaining revenues shall be deposited into the

General Revenue Fund.

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

PCS for CS/HB 67

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 67 Specialty License Plates
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Currently, 123 specialty license plates and one motorcycle specialty license plate are available to any owner or lessee of a motor vehicle who is willing to pay the additional annual use fee for such plate. The collected fees are distributed by the Department of Highway Safety and Motor Vehicles (DHSMV) to statutorily designated organizations in support of a particular cause or charity.

The bill creates the following new specialty license plates:

- Inter Miami CF
- Florida Swims
- Down Syndrome Awareness
- Gopher Tortoise
- Take Stock in Children

The bill also creates a Blue Angels motorcycle specialty license plate.

The bill establishes the authorized uses of the annual use fees from the sale of these plates.

The bill also amends the authorized distribution of proceeds from the existing Live the Dream specialty license plate.

According to the DHSMV, the bill may have a negative, but insignificant, fiscal impact associated with programming costs. These costs can be absorbed within existing resources.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The first Florida specialty license plates were created by law in 1986 and included the creation of the Challenger plate and ten Florida collegiate plates. Today, there are 159 legislatively authorized specialty license plates, with 123 available for sale and an additional 36 in presale.[1] Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay the additional use fee for the privilege, typically $25 annually.[2] Current law provides that if the Legislature[3] has approved 150 or more specialty license plates, the Department of Highway Safety and Motor Vehicles (DHMSV) may not issue any new specialty license plates until a sufficient number of plates are discontinued[4] so that the number of plates being issued does not exceed 150.[5]

Establishment of Specialty License Plates

If a specialty license plate requested by an organization is approved by law, the organization submits its proposed art design to DHSMV as soon as practicable, but no later than 60 days after the act approving the plate becomes a law.[6]

Within 120 days after the act approving the specialty license plate becomes law, DHSMV must establish a method to issue a voucher allowing for the presale of the plate. A $5 processing fee,[7] a service charge and branch fee,[8] and an annual use fee for the specialty license plate are charged for the voucher. All other applicable fees are charged at the time the license plate is issued.[9]

Within 24 months after establishing a presale specialty license plate voucher, a minimum of 3,000 voucher sales of the plate must be recorded with DHSMV[10] before the license plate may be manufactured. If the minimum sales requirement is not met at the conclusion of the 24-month presale period, the specialty license plate is deauthorized and DHSMV discontinues the plate's development and the issuance of presale vouchers. Upon deauthorization of the license plate or if the plate has met the presale requirement but has not been issued, a purchaser of the license plate voucher may use the annual use fee paid as a credit towards any other specialty license plate or may apply for a refund.[11]

New specialty license plates that have been approved by law, but are awaiting issuance, will be issued in the order they appear in s. 320.08058, F.S.,[12] if all statutory requirements, including the presale requirement, have been met. If the next awaiting specialty license plate has not met its presale requirement, DHSMV proceeds in the order provided in s. 320.08058, F.S., to identify the next qualified specialty license plate that has met the presale requirement. DHSMV must cycle through the list in statutory order.[13]

If the Legislature has approved 150 or more specialty license plates, DHSMV may not issue any new specialty license plates until a sufficient number of plates are discontinued so that the number of plates

[1] Department of Highway Safety and Motor Vehicles (DHSMV), Agency Analysis of 2022 Senate Bill 364, p.2. (Oct. 15, 2021)
[2] Section 320.08056(3)(d), F.S., provides that, except if specifically provided in s. 320.08056(4), F.S., the annual use fee for a specialty license plate is $25.
[3] Creation of a specialty license plate requires an act of the Legislature.
[4] Specialty license plates may be discontinued pursuant to s. 320.08056(8), F.S.
[5] S. 320.08053(3)(b), F.S.
[6] S. 320.08053(1), F.S.
[7] The processing fee is prescribed in s. 320.08056, F.S.
[8] Service charges and branch fees are prescribed in s. 320.04, F.S.
[9] S. 320.08053(2)(a), F.S.
[10] In the case of an out-of-state college or university license plate, the license plate must register 4,000 voucher sales.
[11] S. 320.08053(2)(b), F.S.
[12] S. 320.08058, F.S., creates each specialty license plate.
[13] S. 320.08053(3)(a), F.S.

being issued is no more than 150. The 150-plate limit applies to all specialty license plates, including those above the minimum sales threshold and those exempt from the minimum sales threshold.[14]

Specialty License Plate Issuance and Fees

DHSMV is responsible for developing authorized specialty license plates.[15] DHSMV must issue a specialty license plate to the owner or lessee of any motor vehicle, except a vehicle registered under the International Registration Plan, a commercial truck required to display two license plates, or a truck tractor, upon request and payment of the appropriate license tax and fees.[16] Specific specialty license plates are authorized for dealer and fleet vehicles.[17] A specialty license plate for motorcycles is created separately in s. 320.08068, F.S.

Each request for a specialty license plate must be made annually to DHSMV or its authorized agent[18] accompanied by the following tax and fees: the vehicle's required license tax,[19] a processing fee of $5,[20] a license plate fee,[21] and a license plate annual use fee as required for the specialty license plate.[22]

Live the Dream Specialty License Plate

Current Situation

Current law creates the Live the Dream license plate with an annual use fee of $25.[23] The word "Florida" appears at the top of the plate, and the words "Live the Dream" appear at the bottom of the plate. An image of an American flag and Dr. Martin Luther King, Jr., appears at the center of the plate.[24]

The proceeds from the sale of the Live the Dream license plate are distributed to the Dream Foundation, Inc., to be used in the following manner:

- Up to five percent may be used to administer, promote, and market the license plate.
- At least 60 percent is distributed equally among the sickle cell organizations that are Florida members of the Sickle Cell Disease Association of America, Inc., for programs that provide research, care, and treatment for sickle cell disease.
- At least 30 percent is distributed to Chapman Partnership, Inc.,[25] for programs that provide relief from poverty, hunger, and homelessness.
- Up to five percent may be distributed by DHSMV on behalf of The Dream Foundation, Inc., to The Martin Luther King, Jr. Center for Nonviolent Social Change, Inc., as a royalty for the use of the image of Dr. Martin Luther King, Jr.[26]

In 2020, 5,292 Live the Dream license plates were sold.[27]

The distribution of proceeds from the sale of the Live the Dream license plate were last amended in 2020.[28]

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[14] S. 320.08053(3)(b), F.S.
[15] S. 320.08056(1), F.S.
[16] S. 320.08056(2), F.S.
[17] *See* ss. 320.06(3)(a), 320.0657(2)(a), 320.08(12) and 320.08056(2)(b) and (c), F.S.
[18] DHSMV's authorized agents are the county tax collectors.
[19] Motor vehicle license taxes are set forth in s. 320.08, F.S.
[20] The $5 processing fee is deposited into the Highway Safety Operating Trust Fund.
[21] Section 320.06(1)(b), F.S., provides for a $2.80 annual license plate replacement fee.
[22] S. 320.08056(3), F.S.
[23] The $25 annual use fee is provided for in s. 320.08056(3)(d), F.S.
[24] A photo of the Live the Dream license plate is available at https://www.flhsmv.gov/motor-vehicles-tags-titles/personalized-specialty-license-plates/specialty-license-plates/ (last visited Oct. 20, 2021).
[25] Based in Miami, Chapman Partnership's mission is to provide comprehensive programs and services in collaboration with others that empower our residents with dignity and respect to overcome homelessness, and achieve and maintain long-term self-sufficiency. https://chapmanpartnership.org/about/ (last visited Nov. 22, 2021).
[26] S. 320.08058(47)(b), F.S.
[27] DHSMV, *2020 Specialty License Plate Ranking*, https://www.flhsmv.gov/pdf/specialtyplates/license_plate_rankings.pdf (last visited Nov. 22, 2021).

Founded in 2001 around the creation of the Live the Dream license plate, the Dream Foundation, Inc., (foundation) is a statewide 501(c)(3) organization.[29] The Dream Foundation, Inc., is listed as an active corporation with the Department of State.[30]

Effect of the Bill

The bill revises the authorized uses of proceeds from the sale of the Live the Dream license plate. The bill provides that the annual use fees distributed to the Dream Foundation, Inc. must be used in the following manner:

- Up to 10 percent may be used to promote and market the license plate and for costs directly associated with the administration of the foundation.
- At least 40 percent must be distributed equally among the sickle cell organizations that are Florida members of the Sickle Cell Disease Association of America, Inc., for programs that provide research, care, and treatment for sickle cell disease.
- At least 10 percent must be used for programs and services provided directly by the foundation, which assists inmates released from the custody of a county jail in this state or a Department of Corrections (DOC) facility in successfully reentering the community.
- At least 15 percent must be distributed as grants for programs and services throughout Florida which assist inmates released form a county jail in the state or a DOC facility in successfully reentering the community.
- At least 20 percent must be distributed as scholarships to Florida high school seniors who have at least parent or legal guardian incarcerated, for the purposes of attending a state university, a Florida College System institution, a career center operated by a school district, or a charter technical career center.

Up to five percent may continue to be distributed by the Department of Highway Safety and Motor Vehicles on behalf of the Dream Foundation, Inc., to The Martin Luther King, Jr. Center for Nonviolent Social Change, Inc., as a royalty for the use of the image of Dr. Martin Luther King, Jr. This is the same as in current law.

The bill eliminates the distribution to the Chapman Partnership, Inc.

Blue Angels Motorcycle Specialty License Plate

Current Situation

Motorcycle Specialty License Plates

Current law authorizes a reduced dimensions specialty license plate for display on motorcycles, upon paying the appropriate license tax,[31] the license plate fee,[32] a $2 processing fee, and a $20 license plate annual use fee.[33]

The annual use fees are distributed equally to the Brain and Spinal Cord Injury Program Trust Fund, Preserve Vision Florida, the Blind Services Foundation of Florida, the Florida Association of Centers for Independent Living to support the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program, and the Florida Association of Centers for Independent Living.[34]

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[28] Ch. 2020-181, Laws of Fla.
[29] The Dream Foundation, *About Us*, https://www.livethedreamfoundation.org/about-us.html (last visited Oct. 20, 2021).
[30] Department of State, https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=DREAMFOUNDATION%20N010000038910&aggregateId=domnp-n01000003891-2461ac21-eb6a-411a-b759-47d16568ca4b&searchTerm=Dream%20foundation&listNameOrder=DREAMFOUNDATION%20N010000038910 (last visited Oct. 22, 2021).
[31] The license tax is required under s. 320.08, F.S.
[32] The license plate fee is required under s. 320.06(1)(b), F.S.
[33] S. 320.08068, F.S.
[34] S. 320.08068(4), F.S.

Blue Angels Specialty License Plate

Current law creates a Blue Angels license plate with an annual use fee of $25.The plate must bear DHSMV-approved colors and design. The word "Florida" must appear at the top of the plate, and the words "Home of the Blue Angels" must appear at the bottom of the plate.[35]

The annual use fees from the sale of the Blue Angels license plate is distributed to the Naval Aviation Museum Foundation, a nonprofit Florida corporation under s. 501(c)(3) of the Internal Revenue Code, to fund the maintenance, programs, marketing, and projects of the foundation, including the National Naval Aviation Museum and the National Flight Academy in Pensacola. Up to 10 percent of the funds received by the Naval Aviation Museum Foundation may be used for marketing of the plate and costs directly associated with the administration of the foundation. The Naval Aviation Museum Foundation must distribute 50 percent of the funds to eligible programs and projects associated with the National Flight Academy and the remainder of the funds to eligible programs and projects associated with the National Naval Aviation Museum.[36]

Distribution of Blue Angels Annual Use Fees

Since 1946, and based in Pensacola, the Blue Angels represent the United States Navy and Marine Corps by showing the power of naval aviation. The Blue Angels consists of 140 world-class, active-duty sailors and Marines, each one bringing experience and expertise from their service in the fleet.[37]

The Naval Aviation Museum Foundation supports the National Naval Aviation Museum and National Flight Academy, which advance science, technology, engineering and math (STEM) education for our nation's youth. The foundation promotes the history and heritage of naval aviation for current and future generations.[38]

The Naval Aviation Museum Foundation, Inc. is registered with the Department of State as a Florida not-for-profit corporation.[39]

The National Flight Academy, a subsidiary of the Naval Aviation Museum Foundation, has the mission to inspire students who subsequently return to their parent schools and seek out the more challenging courses in science, technology, engineering, and math.[40]

Effect of the Bill

The bill creates a motorcycle specialty license plate option for the Blue Angels specialty license plate with an annual use fee of $25.[41] Any department-approved image must be placed on the far-left side of a plate for display on a motorcycle, and the number of valid plates issued for display on a motor vehicle or on a motorcycle must be added together to determine whether the plate must be discontinued.

Proceeds from the sale of the Blue Angels motorcycle specialty license plate are distributed to the National Aviation Museum Foundation to be used in the same manner as the proceeds from the sale of the existing Blue Angels specialty license plate for motor vehicles.

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[35] S. 320.08058(79), F.S.
[36] S. 320.08058(79(b), F.S.
[37] Blue Angels Website, *Message from the Commanding Officer,* https://www.blueangels.navy.mil/default.htm (last visited Oct. 28, 2021).
[38] Naval Aviation Museum Foundation, *Who We Are*, https://navalaviationfoundation.org/who-we-are/ (last visited Oct. 14, 2021)
[39] Department of State, *The Naval Aviation Museum Foundation, Inc.,* https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=NAVALAVIATIONMUSEUMFOUNDATION%207119151&aggregateId=domnp-711915-5404ccba-a444-4087-baa7-806a7f12e637&searchTerm=Naval%20Aviation&listNameOrder=NAVALAVIATIONLEGACYFOUNDATION%20N060000061800 (last visited Oct. 18, 2021).
[40] National Flight Academy, *About the National Flight Academy,* https://www.nationalflightacademy.com/about/about-the-nfa/ (last visited Dec. 2, 2022).
[41] The annual use fee is tied to s. 320.08056(3)(d), F.S., which provides that unless otherwise provided in 320.08056(4), F.S., the annual use fee for a specialty license plate is $25.

Inter Miami CF Specialty License Plate

Current Situation

Florida Professional Sports Team License Plates

Current law establishes the Florida Professional Sports Team license plate for Major League Baseball, National Basketball Association, National Football League, Arena Football League, National Hockey League, and Major League Soccer teams that are domiciled in Florida. However, any Florida Professional Sports Team license plate created or established after January 1, 1997, must be specifically authorized by the Legislature. These license plates must bear DHSMV-approved colors and design and must include the official league or team logo, or both. The word "Florida" must appear at the top of the plate.[42]

The annual use fees from the sale of these plates are distributed as follows:

- Fifty-five percent of the proceeds are deposited into the Professional Sports Development Trust Fund within the Department of Economic Opportunity (DEO) to be used solely to attract and support major sports events in Florida.[43]
- The remaining proceeds are allocated to Enterprise Florida, Inc., and must be deposited into the Professional Sports Development Trust Fund within DEO. These funds must be used by Enterprise Florida, Inc., to:
    - Promote the economic development of the sports industry;
    - Distribute licensing and royalty fees to participating professional sports teams;
    - Promote education programs in Florida schools that provide an awareness of the benefits of physical activity and nutrition standards;
    - Partner with the Department of Education and the Department of Health to develop a program that recognizes schools whose students demonstrate excellent physical fitness or fitness improvement;
    - Institute a grant program for communities bidding on minor sporting events that create an economic impact for the state;
    - Distribute funds to Florida-based charities designated by Enterprise Florida, Inc., and the participating professional sports teams; and
    - Fulfill the sports promotion responsibilities of DEO.[44]

The proceeds from the Professional Sports Development Trust Fund may also be used for operational expenses of Enterprise Florida, Inc., and financial support of the Sunshine State Games.[45]

Inter Miami CF

Inter Miami CF, Major League Soccer's 25th Club, began play in March 2018.[46]

According to its website, the Inter Miami CF Foundation, a 501(c)(3) nonprofit corporation, is dedicated to having a measurable impact on the community in South Florida and beyond by seeking to level the playing field for at-risk kids. It intends to use soccer as a catalyst for positive change. The Foundation states that it is dedicated to strategically planning and executing "sports-based development and direct-service community programs, initiatives, and events."[47]

[42] S. 320.08058(9)(a), F.S.
[43] As used in s. 320.08058(9)(b)1., F.S., the term "major sports events" means, but is not limited to, championship or all-star contests of Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, Major League Soccer, the men's and women's National Collegiate Athletic Association Final Four basketball championship, or a horseracing or dogracing Breeders' Cup.
[44] S. 320.08058(9)(b)1. and 2., F.S.
[45] S. 320.08058(9)(b)4., F.S.
[46] Inter Miami CF Website, https://www.intermiamicf.com/club/about (last visited Sep. 2, 2021).
[47] Inter Miami CF Foundation, https://inter-miami-cf-foundation-store.myshopify.com/ (last visited Sep. 2, 2021).

According to the Department of State, Inter Miami CF Foundation is an active Florida not-for-profit corporation that has been active since February 12, 2020.[48]

Effect of the Bill

The bill creates the Florida Inter Miami CF license plate with an annual use fee of $25. The plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Inter Miami CF" appears at the bottom of the plate.

The annual use fees are distributed to the Inter Miami CF Foundation Corporation, to be used as follows:

- Up to ten percent to promote and market the plate; and
- The remainder to plan and execute sports-based development and direct-service community programs, initiatives, and events in this state.

Florida Swims Specialty License Plate

Current Situation

The Swimming Pool Education and Safety Foundation, Inc., also known as Florida Swims Foundation,[49] is a nonprofit organization that funds swimming lessons and distributes safety information throughout the state. The foundation awards scholarships to college students and provides grants for swimming lessons. The foundation also collaborates with local organizations, such as the YMCA and Boys & Girls Clubs, to bring water safety measures and swimming lessons to families with young children.[50]

Effect of the Bill

The bill creates the Florida Swims license plate with an annual use fee of $25. The plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Swim for Life" appears at the bottom of the plate.

The annual use fees are distributed to the Swimming Pool Education and Safety Foundation, Inc., doing business as Florida Swims, to be used as follows:

- Up to ten percent for administration, promotion, and marketing of the plate; and
- The remainder to be used by the Swimming Pool Education and Safety Foundation, Inc., to promote swimming pool and water safety and to provide grants and scholarships for childhood swimming lessons in this state.

Down Syndrome Awareness Specialty License Plate

Current Situation

Based in Sanford, Florida, Our City Beautiful, Inc., is a 501(c)(3) non-profit organization with a focus on working with disabled individuals in Sanford and surrounding Seminole County, with the goal of eventually serving all of Florida.[51] Created by Our City Beautiful, HOLLAND is a proposed tiny house community for persons with Down Syndrome and other intellectual disabilities.[52] Its World Changer

[48] Inter Miami CF Foundation Corporation, *Articles of Incorporation*, https://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2020%5C0214%5C40715676.Tif&documentNumber=P20000013003 (last visited Oct. 18, 2021)
[49] Department of State, Sunbiz.org, Detail by Entity Name, *Swimming Pool Education And Safety Foundation Inc.*, Document No. N07000000242.
[50] Florida Swimming Pool Association, *SPESF*, https://floridapoolpro.portals7.gomembers.com/About/FloridaSwimsFoundation.aspx (last visited Feb. 19, 2022).
[51] Seminole County Chamber of Commerce, *Our City Beautiful, Inc.,* https://business.seminolebusiness.org/list/member/our-city-beautiful-inc-25389 (last visited Sep. 30, 2021).
[52] Our City Beautiful, *HOLLAND*, https://our-city-beautiful.com/ocbhomeproject/ (last visited Sep. 30, 2021).

Scholarships were created to support individuals with Down Syndrome, age 18 or older, pursuing higher education.[53]

Our City Beautiful, Inc., is registered with the Department of State as a not-for-profit corporation.[54]

Effect of the Bill

The bill creates the Down Syndrome Awareness license plate with an annual use fee of $25. The l plate must bear DHSMV-approved colors and design. The word "Florida" appears at the top of the plate, and "Down Syndrome Awareness" appears at the bottom of the plate.

The annual use fees are distributed Our City Beautiful, Inc., to be used as follows:

- Up to ten percent for administrative costs and marketing of the plate;
- 50 percent to build and maintain HOLLAND, an affordable housing project for independent living for persons with Down syndrome or other intellectual disability;
- 15 percent for Our City Beautiful World Changer scholarships for Florida residents 18 years of age or older with Down syndrome who wish to further their education at postsecondary educational institutions located in this state; and
- 35 percent for grants to other nonprofit organizations within this state to support housing, educational scholarships, and employment assistance programs for persons with Down syndrome or other intellectual disability.

Gopher Tortoise Specialty License Plate

Current Situation

Wildlands Conservation, Inc., is a nonprofit organization specializing in conservation planning and policy, land management, land protection, research, education, and outreach.[55]

Wildlands Conservation, Inc., offers gopher tortoise survey, relocation, and recipient site services. It is committed to ensuring that gopher tortoise work is conducted thoroughly and professionally to protect gopher tortoises and related species across the state. Its staff has over 50 collective years of experience in gopher tortoise conservation including ecological and policy research, permitting, relocation, habitat management, monitoring, and training.[56]

Effect of the Bill

The bill creates the Gopher Tortoise license plate with an annual use fee of $25. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Protect the Gopher Tortoise" appears at the bottom of the plate.

The annual use fees are distributed to Wildlands Conservation, Inc., to be used as follows:

- Up to 10 percent for marketing of the plate and costs directly associated with administration of its gopher tortoise protection program; and
- The remainder to be used by Wildlands Conservation, Inc., and distributed to eligible Florida-based scientific, conservation, and educational organizations for gopher tortoise, commensal species, and upland habitat research, conservation, and management.

[53] Our City Beautiful, *World Changer Scholarships,* https://our-city-beautiful.com/world-changer-scholarship/ (last visited Sep. 30, 2021)
[54] Department of State, *Our City Beautiful, Inc.* https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=OURCITYBEAUTIFUL%20N190000028900&aggregateId=domnp-n19000002890-9f97c1a8-17e2-49f3-a4c9-b30fff938143&searchTerm=Our%20city%20beautiful&listNameOrder=OURCITYBEAUTIFUL%20N190000028900 (last visited Oct. 18, 2021).
[55] Wildland Conservation, *About Us*, https://wildlandsconservation.org/about-us/ (last visited Feb. 18, 2022). Department of State, Sunbiz.org, Detail by Entity Name, Wildlands Conservation, Inc., Document No. N03000002778.
[56] Wildlands Conservation, *Gopher Tortoise Conservation,* https://wildlandsconservation.org/gopher-tortoise-conservation/, (last visited Feb. 18, 2022).

Take Stock in Children Specialty License Plate

Current Situation

Established in 1995, Take Stock in Children of Florida is a Florida non-profit organization that provides a unique opportunity for low-income youth to escape the cycle of poverty through education. It offers underserved students one-on-one support through volunteer mentors, professional college success services, the opportunity to earn a college scholarship, and hope for success in college, career, and life.[57]

Effect of the Bill

The bill creates a Take Stock in Children license plate with an annual use fee of $25. The license plate must bear the DHSMV-approved colors and design. The word "Florida" appears at the top of the plate and "Take Stock in Children" appears at the bottom of the plate.

The annual use fees are distributed to Take Stock in Children of Florida, to be used as follows:

- Up to 10 percent for administrative costs and marketing the plate.
- The remainder, with approval of its board of directors, to promote and support programs that provide mentorship for at risk students.

The above license plates will be added to DHSMV's presale voucher process, but a plate will only be placed into production once it meets the 3,000 minimum sales threshold and if the 150-plate cap has not yet been reached.[58]

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

B. SECTION DIRECTORY:

Section 1 Amends s. 320.08058, F.S., relating to specialty license plates.

Section 2 Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DHSMV advised an update to internal procedures and instructions to organizations regarding specialty license plate requirements will be needed; however, there will be no programming costs incurred by the DHSMV.[59]

   Programming will be required initially to allow DHSMV to accept vouchers, but the DHSMV may not finalize a design or issue the new license plate if the 150 cap is reached prior to the license plate selling 2,500 vouchers. The amount of programming is determined by the number of plates and the number of distributions per plate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[57] Take Sock in Children Website, https://www.takestockinchildren.org/ (last visited Feb. 18, 2022).
[58] DSHMV, *supra* note 1. p. 4.
[59] *Id.*

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Once a specialty license plate goes into production, organizations authorized for a distribution from the proceeds of the sale of the license plate will benefit.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

This bill does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to specialty license plates; amending s. 320.08058, F.S.; revising annual use fee distributions from the sale of the Live the Dream license plate; providing for the award of scholarships to certain students through a competitive application process; providing for fiscal oversight by a certified public accounting firm; requiring the department to develop a Blue Angels motorcycle specialty license plate; specifying a design requirement for the plate; requiring that the number of valid Blue Angels motor vehicle and motorcycle specialty license plates be added together for purposes of a certain determination; requiring the Department of Highway Safety and Motor Vehicles to develop specified specialty license plates; providing for distribution and use of fees collected from the sale of such plates; providing an effective date.

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

Section 1. Subsections (47) and (79) of section 320.08058, Florida Statutes, are amended, and subsections (119) through (123) are added to that section, to read:

320.08058 Specialty license plates.—

(47) LIVE THE DREAM LICENSE PLATES.—

(a) The department shall develop a Live the Dream license plate as provided in this section. Live the Dream license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Live the Dream" must appear at the bottom of the plate.

(b) The proceeds of the annual use fee shall be distributed to the Dream Foundation, Inc., to be used in the following manner:

1. Up to 5 percent may be used to administer, promote, and market the license plate.

2. At least 40 ~~60~~ percent shall be distributed equally among the sickle cell organizations that are Florida members of the Sickle Cell Disease Association of America, Inc., for programs that provide research, care, and treatment for sickle cell disease.

3. At least 10 percent shall be used for programs and services provided directly by the Dream Foundation, Inc., which assist inmates released from the custody of a county jail in this state or a Department of Corrections facility in successfully reentering the community.

4. At least 15 percent shall be distributed as grants for programs and services throughout this state which assist inmates released from the custody of a county jail in this state or a Department of Corrections facility in successfully reentering

the community.

5. At least 25 ~~30~~ percent shall be distributed as scholarships to graduating high school seniors in this state who have at least one parent or legal guardian who is incarcerated, for the purpose of attending a state university, a Florida College System institution, a career center operated by a school district under s. 1001.44, or a charter technical career center under s. 1002.34. Scholarships shall be awarded through a competitive application process ~~to Chapman Partnership, Inc., for programs that provide relief from poverty, hunger, and homelessness~~.

6.~~4.~~ Up to 5 percent may be distributed by the department on behalf of the Dream Foundation, Inc., to The Martin Luther King, Jr. Center for Nonviolent Social Change, Inc., as a royalty for the use of the image of Dr. Martin Luther King, Jr.

(79) BLUE ANGELS LICENSE PLATES.—

(a) The department shall develop a Blue Angels license plate for display on a motor vehicle and for display on a motorcycle as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Home of the Blue Angels" must appear at the bottom of the plate. Any department-approved image must be placed on the far left side of a plate for display on a motorcycle.

(b) The annual use fees from the sale of the plate shall be distributed to the Naval Aviation Museum Foundation, a nonprofit Florida corporation under s. 501(c)(3) of the Internal Revenue Code, to fund the maintenance, programs, marketing, and projects of the foundation, including the National Naval Aviation Museum and the National Flight Academy in Pensacola. Up to 10 percent of the funds received by the Naval Aviation Museum Foundation may be used for marketing of the plate and costs directly associated with the administration of the foundation. The Naval Aviation Museum Foundation shall distribute 50 percent of the funds to eligible programs and projects associated with the National Flight Academy and the remainder of the funds to eligible programs and projects associated with the National Naval Aviation Museum.

(c) The number of valid specialty license plates issued for display on a motor vehicle or on a motorcycle must be added together to determine whether the specialty license plate must be discontinued pursuant to s. 320.08056(8)(a).

(119) INTER MIAMI CF LICENSE PLATES.—

(a) The department shall develop an Inter Miami CF license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Inter Miami CF" must appear at the bottom of the plate.

(b) Notwithstanding paragraph (9)(b), the annual use fees

from the sale of the plate shall be distributed to Inter Miami CF Foundation Corporation, a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, which may use a maximum of 10 percent of the proceeds to promote and market the plate. The remainder of the proceeds shall be used by Inter Miami CF Foundation Corporation to plan and execute sports-based development and direct-service community programs, initiatives, and events in this state.

(120) FLORIDA SWIMS LICENSE PLATES.—

(a) The department shall develop a Florida Swims license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Swim for Life" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to the Swimming Pool Education and Safety Foundation, Inc., doing business as Florida Swims, a nonprofit organization under s. 501(c)(3) of the Internal Revenue Code, which may use up to 10 percent of the proceeds for administration, promotion, and marketing of the plate. All remaining proceeds shall be used by the Swimming Pool Education and Safety Foundation, Inc., doing business as Florida Swims, to promote swimming pool and water safety and to provide grants and scholarships for childhood swimming lessons in this state.

(121) DOWN SYNDROME AWARENESS LICENSE PLATES.—

(a) The department shall develop a Down Syndrome Awareness license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Down Syndrome Awareness" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to Our City Beautiful, Inc., a Florida nonprofit corporation. Up to 10 percent of the fees may be used for administrative costs and marketing of the plate. Of the remaining fees:

1. Fifty percent shall be used to build and maintain HOLLAND, an affordable housing project for independent living for persons with Down syndrome or other intellectual disability.

2. Fifteen percent shall be dedicated to Our City Beautiful World Changer scholarships for Florida residents 18 years of age or older with Down syndrome who wish to further their education at postsecondary educational institutions located in this state.

3. Thirty-five percent shall be used for grants to other nonprofit organizations within this state to support housing, educational scholarships, and employment assistance programs for persons with Down syndrome or other intellectual disability.

(122) GOPHER TORTOISE LICENSE PLATES.—

(a) The department shall develop a Gopher Tortoise license

plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Protect the Gopher Tortoise" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to Wildlands Conservation, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to fund gopher tortoise and commensal species research, education, and conservation, as well as upland habitat protection, restoration, and management in this state to benefit the gopher tortoise and other upland species. Up to 10 percent of the funds received by Wildlands Conservation, Inc., may be used for marketing of the plate and costs directly associated with the administration of the gopher tortoise protection program. Wildlands Conservation, Inc., shall use and distribute the funds to eligible Florida-based scientific, conservation, and educational organizations for gopher tortoise, commensal species, and upland habitat research, conservation, and management.

(123) TAKE STOCK IN CHILDREN LICENSE PLATES.—

(a) The department shall develop a Take Stock in Children license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the

plate, and the words "Take Stock in Children" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to Take Stock in Children of Florida, a Florida nonprofit corporation. Up to 10 percent of the fees may be used for administrative costs and marketing of the plate. The remaining funds must be distributed with the approval of, and accountability to, the board of directors of Take Stock in Children of Florida, and must be used to promote and support programs that provide mentorship for at risk students.

Section 2. This act shall take effect October 1, 2022.

COMMERCE COMMITTEE

PCS for CS/HB 67 by Rep. Rizo
Specialty License Plates

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Rep. Gregory (Line 21):

- Lowering the cap on the number of specialty license plates that the Department of Highway Safety and Motor Vehicles may issue from 150 plates to 125 plates.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 21 and 22, insert:

Section 1. Paragraph (b) of subsection (3) of section 320.08053, Florida Statutes, is amended to read:

320.08053 Establishment of specialty license plates.—

(3)

(b) If the Legislature has approved 125 ~~150~~ or more specialty license plates, the department may not issue any new specialty license plates until a sufficient number of plates are discontinued pursuant to s. 320.08056(8) such that the number of plates being issued does not exceed 125 ~~150~~. Notwithstanding s. 320.08056(8)(a), the 125-license-plate ~~150-license-plate~~ limit includes license plates above the minimum sales threshold and

those exempt from that threshold.

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

Between lines 2 and 3, insert:

s. 320.08053, F.S.; revising the limit on the number of specialty license plates the Department of Highway Safety and Motor Vehicles may issue; amending;

PCS for CS/HB 157

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 157 Transportation
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill addresses matters related to transportation. The bill:

- Requires a local government to provide mobility fee credits to residential developers for certain capital improvements to a transportation system that the Department of Transportation (DOT) deems necessary in certain circumstances.
- Codifies the Implementing Solutions from Transportation Research and Evaluation of Emerging Technologies (I-STREET) Living Lab within the University of Florida and provides for its duties relating to transportation research, education, workforce development, and related issues.
- Clarifies DOT's authority to engage in progressive design-build contracting as an innovative technique of highway and bridge design and construction.
- Exempts certain progressive design-build contracts from an existing statutory cap on innovative contracts.
- Authorizes landowners to obtain permits from DOT to clear vegetation from the right-of-way on limited access facilities under specified conditions.
- Removes a limitation on design-build contracting to certain types of projects and authorizes design-build contracting for all types of projects.
- Requires contracts for bridge work over navigable waters to contain provisions requiring a minimum amount of general liability insurance.
- Provides that stipends paid by DOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in DOT's legislatively-approved work program are not subject to existing documentation and notification requirements for settlement payments made by DOT to resolve bid protests.
- Authorizes an applying contractor who desires to bid exclusively on construction contracts with proposed budget estimates of $2 million or less (increased from $1 million) to submit reviewed annual or reviewed interim financial statements.
- Authorizes an applicant for a contractor certificate of qualification to submit a request to keep an existing certificate, with the current maximum capacity rating, in place until the expiration date of the existing certificate.
- Repeals a public records exemption for documents that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by DOT.
- Changes from 5 years to 10 years the length of time that DOT must adjust toll rates for inflation.

The bill may have an indeterminate positive fiscal impact on state government revenues and a negative fiscal impact on state government expenditures. The bill does not appear to have a fiscal impact to local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Mobility Fee Credits

Current Situation

Transportation Concurrency

The Community Planning Act,[1] authorizes local governments (counties or municipalities) to establish a a concurrency management system to assess landowners the costs of maintaining specified levels of service for the local government's transportation system when the projected impacts of their development would adversely impact the system.[2]

Prior to June 2, 2011, Florida law required local government comprehensive plans to provide for transportation concurrency. Under current law, transportation concurrency is optional, and a local government may eliminate transportation concurrency from its comprehensive plan. If the local government eliminates transportation concurrency, it is encouraged, but not required to adopt a mobility fee-based plan in its place.[3]

Impact Fees

Impact fees are used by local governments to fund infrastructure necessitated by new growth.[4] Florida law requires each local government that adopts and collects an impact fee to:

- Ensure that the impact fee is proportional and reasonably connected to the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.
- Ensure that the impact fee is proportional and reasonably connected to the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.[5]

A local government must credit against the collection of the impact fee any contribution related to public facilities or infrastructure, including land dedication, site planning and design, or construction. Any contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any impact fee collected for the general category or class of public facilities or infrastructure for which the contribution was made.[6]

Mobility Fees

A mobility fee is a transportation system charge designed to recoup the proportionate costs of transportation demand generated by all new development. Its focus is new development due to the fee's association with transportation concurrency systems and its use to fund planned transportation facilities and services.[7]

[1] Ch. 163, part II, F.S.
[2] Department of Economic Opportunity (DEO), *Transportation Planning*. https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/transportation-planning (last visited Feb. 16, 2022).
[3] *id*.
[4] S. 163.31801(2), F.S.
[5] S. 163.31801(4), F.S.
[6] S. 163.31801(5)(a), F.S.
[7] Center for Urban Transportation Research, *Evaluation of the Mobility Fee Concept Final Report*, University of South Florida (Nov. 2009), available at cutr.usf.edu/wp-content/uploads/2012/08/Evaluation-of-the-Mobility-Fee-Concept-CUTR-Webcast-04.21.11.pdf (last visited Jan. 18, 2021).

If a local government repeals transportation concurrency, Florida law encourages, but does not require, it to adopt an alternative mobility funding system and provides tools and techniques to be used in establishing a mobility fee.[8]

Effect of the Bill

The bill clarifies that a local government, pursuant to current law, must provide mobility fee credits to a residential developer for capital improvements to a transportation system that the Department of Transportation (DOT) deems necessary to ensure the safe and efficient mobility of people, commerce and goods to bring a planned housing community into service.

Implementing Solutions from Transportation Research and Evaluation of Emerging Technologies (I-STREET) Living Lab

Current Situation

Various centers, institutes, and special programs within the State University System are codified in Florida Statutes, including the Florida Industrial and Phosphate Research Institute at Florida Polytechnic University,[9] the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida,[10] the Louis de la Parte Florida Mental Health Institute at the University of South Florida,[11] the Florida Institute for Child Welfare at Florida State University,[12] and the Center for Urban Transportation Research at the University of South Florida.[13]

The University of Florida (UF) College of Engineering's Transportation Institute aims to advance transportation, disseminate research results, and provide educational opportunities related to transportation. The institute is an umbrella organization housing several transportation-related centers.[14]

UF's Transportation Institute, the Department of Transportation (DOT), and the City of Gainesville have partnered to create the Implementing Solutions from Transportation Research and Evaluation of Emerging Technologies (I-STREET) Living Lab. I-STREET's principal objective is to make significant improvements to transportation safety and mobility, utilizing a real-world testbed environment that has been created on and surrounding the UF campus and the expanding set of diverse technology installed on Florida segments of the Interstate Highway System.[15] I-STREET has received funding from the National Science Foundation and through research conducted as part of the United States Department of Transportation's University Transportation Centers Program.[16]

I-STREET's mission and main goals are to:

- Facilitate the development and implementation of advanced and emerging technologies to improve safety and mobility that are suitable for implementation statewide and beyond;
- Foster collaboration with industry wishing to develop, test, and implement their own technologies to improve safety, and mobility; and
- Become a recognized national and global leader in the development and implementation of advanced technologies to improve transportation safety and mobility.[17]

I-STREET projects include:

- I-75 Florida Regional Advanced Mobility Elements;

[8] S. 163.3180(5)(f), F.S.
[9] S. 1004.346, F.S.
[10] S. 1004.43, F.S.
[11] S. 1004.44, F.S.
[12] S. 1004.615, F.S.
[13] S. 334.065(1), F.S.
[14] University of Florida (UF) Transportation Institute, *Overview,* https://www.transportation.institute.ufl.edu/overview/ (last visited Jan 13, 2022).
[15] UF, *I-Street Living Lab*, https://www.transportation.institute.ufl.edu/i-street-living-lab/ (last visited Feb, 11, 2022).
[16] House of Representatives, Appropriations Project Request – Fiscal Year 2022-2023 HB 4285 (2022) p. 5.
[17] UF, *supra* note 14.

- Pedestrian and Bicycle Safety Demonstration;
- Gainesville Autonomous Shuttle Evaluation; and
- Transportation Mobility Assessment and Recommendations for Smart City Planning.[18]

DOT has issued an invitation to transportation industry leaders for participation in the "UF I-STREET program." According to DOT:

> I-STREET is designed to assist in implementing emerging technologies aimed at safety and mobility improvements. DOT will develop requests for proposals utilizing the emerging technologies and will select vendors through a competitive bidding process. The selected vendor for each project will deploy technology solutions. UF will conduct before-and-after evaluations of implemented projects. After evaluation, DOT will consider whether to expand the successful I-STREET projects elsewhere in the state.
>
> DOT has allocated funding for these innovative projects per fiscal year (FY) from FY 2020-2021 until FY 2024-2025. Each FY, DOT will fund multiple projects based on the projects' merits and safety and mobility improvement potential. The number of awards will vary depending on the project type and scope.[19]

Effect of the Bill

The bill codifies the I-STREET Living Lab within UF. The bill requires I-STREET to, at a minimum:

- Conduct and facilitate research on issues related to innovative transportation mobility and safety technology development and deployment in Florida and serve as an information exchange and depository for the most current information pertaining to transportation research, education, workforce development, and related issues.
- Be a continuous resource for the Legislature, DOT, local governments, the nation's metropolitan regions, and the private sector in the area of transportation and related research.
- Promote intercampus transportation and related research activities among Florida universities to enhance the ability of these universities to attract federal and private sector funding for transportation and related research.
- Provide by July 1, 2023, and each July 1 thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives a comprehensive report that outlines I-STREET's clearly defined goals and its efforts and progress on reaching those goals.

The bill creates an advisory board to periodically review and advise I-STREET concerning its research program. The board must consist of nine members with expertise in transportation-related areas, including:

- A member appointed by the President of the Senate.
- A member appointed by the Speaker of the House of Representatives.
- The Secretary of Transportation or his or her designee.
- The Secretary of Economic Opportunity or his or her designee.
- A member of the Florida Transportation Commission.[20]
- Four members nominated by UF's College of Engineering and approved by UF's president. These nominees may include representatives of UF, other academic and research institutions, or private entities.

Progressive Design-Build and Innovative Contracting

Current Situation

[18] UF Transportation Institute, *Projects,* https://www.transportation.institute.ufl.edu/i-street-living-lab/projects/ (last visited Jan. 13, 2022).
[19] Department of Transportation (DOT), *UF I-Street*, https://www.fdot.gov/traffic/its/projects-deploy/cv/maplocations/uf-testbed.shtm (last visited Jan. 14, 2022).
[20] The Florida Transportation Commission is a citizen's advisory board for the Department of Transportation.

Current law authorizes DOT, if it determines that doing so is in the public interest, to combine the design and construction phases of a building, a major bridge, a limited access facility, or a rail corridor project into a single contract, referred to as a "design-build" contract.[21] DOT must adopt, by rule, procedures for administering design-build contracts. Such procedures must include, but are not limited to:

- Prequalification requirements.
- Public announcement procedures.
- Scope of service requirements.
- Letters of interest requirements.
- Short-listing criteria and procedures.
- Bid proposal requirements.
- Technical review committee.
- Selection and award processes.
- Stipend requirements.[22]

Under Florida law, DOT is authorized to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance. The innovations must be intended to measure resiliency and structural integrity and control time and cost increases on construction projects. These techniques may include state-of-the-art technology for pavement, safety, and other aspects of:

- Highway and bridge design, construction, and maintenance;
- Innovative bidding and financing techniques;
- Accelerated construction procedures; and
- Techniques that have the potential to reduce project life cycle costs.

To the maximum extent practical, DOT must use existing processes to award and administer construction and maintenance contracts.[23]

DOT's authority for utilizing innovative techniques is limited to $120 million annually for the purposes of contracting for innovative transportation projects. The $120 million annual cap does not apply to:

- Turnpike Enterprise projects, and
- Low-bid design-build milling and resurfacing contracts.[24]

According to the Design-Build Institute of America (DBIA), design-build projects enable the project owner to manage only one contract, with the designer and contractor working together from the beginning and providing consensus project recommendations to fit the owner's schedule and budget. The entire team addresses any necessary changes, which leads "to collaborative problem-solving and innovation...." This method of project delivery, the DBIA asserts, creates an inherent "culture of collaboration."[25] As described by the DBIA, the "progressive" type of design-build contract "uses a qualifications-based or best value selection, followed by a process whereby the owner then 'progresses' towards a design and contract price with the team."[26]

Effect of the Bill

The bill authorizes DOT to engage in design-build contracting for all types of projects, not just buildings, major bridges, limited access facilities, or rail corridors.

The bill amends DOT's authority to undertake innovative transportation projects, expressly authorizing DOT to use progressive design-build contracts for such projects. If determined to be in the best interest of the public, a progressive design-build approach would combine the design and construction phases

[21] S. 337.11(7)(a), F.S.
[22] S. 337.11(7)(b), F.S.
[23] S. 337.025(1), F.S.
[24] S. 337.025(2), F.S.
[25] *See* DBIA, *What is Design-Build*, available at https://dbia.org/what-is-design-build/ (last visited Jan. 5, 2022).
[26] *See* DBIA, *Progressive Design-Build, Design-Build Procured with a Progressive Design and Price*, at p. 3, available at https://dbia.org/wp-content/uploads/2018/05/Primer-Progressive-Design-Build.pdf (last visited Jan. 5, 2022).

of a project into a single contract and select the design-build firm in the early stages of a project to ensure that the firm is part of the collaboration and development of the design as part of a step-by-step progression through construction.

The bill requires the selection and award processes for a progressive design-build contract to involve a two-phase process. In the first phase, DOT must competitively award the contract to a design-build firm based upon the firm's qualifications. In phase two, the selected firm must competitively bid construction trade and subcontractor packages and, based upon these bids, negotiate with DOT for a fixed price or a guaranteed maximum price that meets the project budget and scope.

In addition, the bill revises DOT's $120 million cap on innovative contracting to eliminate the exception for low-bid design-build milling and resurfacing contracts, and to create an exception for progressive design-build contracts for complex, high-risk projects with a minimum contract value of $400 million. DOT would still be authorized to continue using "traditional" design-build contracting provided that all innovative project contracts do not exceed the $120 million annual cap.

The bill also requires DOT, by rule, to establish procedures for progressive design-build.

Clearing of DOT Right-of-Way by Landowners

Current Situation

Current law does not authorize landowners with land contiguous to DOT's right-of-way to clear land on DOT's right-of-way prior to construction on a limited access facility.[27]

DOT's work program is a five-year plan for transportation projects which DOT plans to undertake.[28] Current law indicates the Legislature's intent that the first three years of DOT's adopted work program stands as the state's commitment to undertake transportation projects. The law also provides that local governments may rely on those years for planning and concurrency purposes and in the development and amendment of the capital improvement elements of their local government comprehensive plans.[29]

Effect of the Bill

The bill provides, that for a construction project funded in the first three years of DOT's adopted work program, a landowner with land contiguous to a limited access facility may be allowed, under a DOT-issued permit, to remove vegetation designated to be removed as part of the construction project on a DOT right-of-way in an area associated with a limited access facility. Such removal must be performed within the same limits of removal as identified in the final plans of the project.

DOT Contracting and Procurement Authority/Settlements and Stipends

Current Situation

Bid Settlements

Under current law, when DOT determines that it is in the public's best interest to resolve a bid protest[30] related to the purchase of personal property or contractual services,[31] through a settlement that requires DOT to pay a nonselected responsive bidder a total sum of $1 million or more, including any

[27] Section 334.03(12) defines the term "limited access facility" to mean a street or highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason.
[28] DOT's work program is developed pursuant to s. 339.135, F.S.
[29] S. 339.135(4)(b)3., F.S.
[30] Bid protests are handled in accordance with s. 120.57(3), F.S.
[31] S. 287.057, F.S.

amount paid relating to patents, copyrights, and trademarks,[32] relating to design-build stipends,[33] or any other law, DOT must:

- Document in a written memorandum prepared by the DOT secretary the specific reasons that such settlement and payment to a nonselected bidder is in the state's best interest. The written memorandum must be included and maintained in DOT's permanent files concerning the procurement and must include:
  - A description of the property rights, patent rights, copyrights, trademarks, or the engineering design or other design work that DOT will acquire or retain as a result of such settlement; and
  - The specific appropriation in the existing General Appropriations Act which DOT intends to use to provide such payment.
- Provide prior written notification to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General at least five business days, or as soon thereafter as practicable, before DOT makes the settlement agreement final. Such written notification must include the written memorandum.
- Provide, at the time settlement discussions regarding any such payment have begun in earnest, written notification of such discussions to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General.[34]

Design-Build Stipends

Florida law provides that if DOT determines that it is in the public's best interest, it may pay a stipend to nonselected design-build firms that have submitted responsive proposals for construction contracts. The decision and amount of a stipend must be based upon DOT analysis of the estimated proposal development costs and the anticipated degree of engineering design during the procurement process. DOT retains the right to use those designs from responsive nonselected design-build firms that accept a stipend.[35]

Effect of the Bill

The bill provides that stipends paid by DOT to non-selected design-build firms that have submitted responsive proposals for construction contracts contained in DOT's legislatively approved work program are not subject to existing documentation and notification requirements for stipend payments made by DOT to resolve a bid protest through a settlement. If DOT pays a stipend to *settle* a bid protest in an amount that triggers the requirements ($1 million), DOT must continue to comply with the documentation and notification requirements.

Contractor Insurance Requirements

Current Situation

DOT Contractor Liability Insurance Requirements

DOT requires each contractor to indemnify and hold harmless DOT, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the construction contract.[36]

[32] S. 334.049, F.S.
[33] S. 337.11(8), F.S.
[34] S. 337.1101(1), F.S.
[35] S. 337.11(8), F.S.
[36] DOT Specs Book, Section 7-12.1, *Contractor to Provide Indemnification,* January 2017, available at: https://www.fdot.gov/docs/default-source/programmanagement/implemented/specbooks/january2017/files/007-117.pdf (last visited Feb. 18, 2022).

DOT also requires each contractor to carry commercial general liability insurance that provides continuous coverage for all work and operations provided under the contract. Additional requirements exist for construction adjacent to railroad tracks and certain utility facilities.[37]

Federal Limitation of Liability Act of 1851

On September 16, 2020, during Hurricane Sally, the Pensacola Bay Bridge suffered severe damage after multiple barges used in the bridge's construction escaped their moorings and struck the bridge. Once the damage was identified, DOT closed the bridge to all traffic,[38] and the bridge remained was closed until May 2021.[39] In its aftermath, lawsuits were filed by businesses, homeowners, governments, and others claiming direct losses due to the barges destroying a portion of the Pensacola Bay Bridge.[40]

Citing the federal Limitation of Liability Act of 1851,[41] the bridge contractor has sought to limit its liability to the value of the five barges that actually damaged the bridge, approximately $1.43 million.[42] A federal judge subsequently opined that the bridge contractor was negligent in its preparations for Hurricane Sally, and that the company should not be able to limit its liability.[43] Lawsuits are still pending to determine the bridge contractor's liability.

Under the federal Limitation of Liability Act of 1851, the liability of the owner of a vessel for specified claims, debts, or liabilities may not exceed the value of the vessel and pending freight. [44]

Except as otherwise provided, the federal Limitation of Liability Act of 1851 applies to seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats and barges.[45]

Effect of the Bill

The bill requires that each contract let by DOT for performance of bridge construction or maintenance over navigable waters contain a provision requiring general liability insurance in an amount to be determined by DOT covering potential liability for third-party personal injury and property damage claims caused by vessels used by the contractor in the performance of the work.

Contractor Certificate of Qualification

Current Situation

A contractor desiring to bid on any DOT construction contract in excess of $250,000 must obtain a certificate of qualification from DOT.[46] Each application for certification must be accompanied by the contractor's latest audited annual financial statements. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date on which

[37] DOT Specs Book, Section 7-13.2, 3, and 4. *Commercial General Liability Insurance,* January 2017, available at: https://www.fdot.gov/docs/default-source/programmanagement/implemented/specbooks/january2017/files/007-117.pdf (last visited Feb. 18, 2022).
[38] DOT, *Pensacola Bay Bridge Project*, https://www.fdot.gov/info/PensacolaBay (last visited Feb. 10, 2022).
[39] Emma Kennedy, *Pensacola Bay Bridge Finally Opens after 8-month Closure; Drivers Can Expect Some Delays,* Pensacola News Journal, https://www.pnj.com/story/news/2021/05/28/pensacola-bay-bridge-reopen-traffic-memorial-day-hurricane-sally-skanska/7466670002/ (last visited Feb. 10, 2022).
[40] *Skanska Loses Federal Lawsuit Over Hurricane Sally Barge Damage,* Dec. 29, 2021. http://www.northescambia.com/2021/12/skanska-loses-federal-lawsuit-over-hurricane-sally (last visited Feb. 10, 2022).
[41] 46 U.S.C. s. 30501, et. seq.
[42] Joe Bousquin, *Skanska Wins Key Ruling in Pensacola Bridge Case,* Construction Dive, Aug. 3, 2011. https://www.constructiondive.com/news/skanska-wins-key-ruling-in-pensacola-bridge-case/604340/ (last visited Feb. 17, 2022).
[43] Emma Kennedy, *Skanska Loses Hurricane Sally Trial, Judge Finds Company Negligent for Failing to Prepare,* Pensacola News Journal, Dec. 29, 2021. https://www.pnj.com/story/news/local/pensacola/2021/12/29/skanska-trial-judge-sides-claimants-hurricane-sally-case-largely-centered-on-pensacola-bay-bridge/9045991002/ (last visited Feb. 17, 2022).
[44] 46 USC s. 30505(a).
[45] 46 U.S.C. s. 30502.
[46] S. 337.14, F.S., and R. 14-22, F.A.C.

DOT receives the application, the contractor must also submit audited interim financial statements and an updated application.[47]

DOT's rules include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor, which are necessary to perform the specific class of work for which the contractor seeks certification. DOT verifies and evaluates whether an applicant is competent and responsible and possesses the necessary financial resources to perform the requested work.[48]

Part of DOT's inquiry involves whether an applicant has the financial resources sufficient to establish a maximum capacity rating, which is the total aggregate dollar amount of *uncompleted* work an applicant may have under contract at any one time as a prime contractor and/or subcontractor, regardless of the work location and with whom the applicant contracted.[49] According to DOT's rules, the maximum capacity rating is established by a formula, one element of which is the "ability factor."[50] DOT's rules require an applicant's maximum capacity rating to be reduced by the total value of their current uncompleted work, producing the applicant's "current capacity," or bidding capacity. Under the rule, the current capacity must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired.[51]

Currently, if an applicant for a certificate of qualification is found to possess the prescribed qualifications, DOT must issue the applicant a certificate, which, unless revoked by DOT for good cause, is valid for a period of 18 months after the date of the applicant's financial statement, or such shorter period as DOT prescribes. Submission of an application does not affect expiration of an existing certificate, the ability factor of the applicant, or the maximum capacity rating of the applicant.[52]

Under Florida law, an applying contractor desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant, instead of audited, certified financial statements. DOT may waive these requirements for projects having a contract price of $500,000 or less if DOT determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.[53]

Effect of the Bill

The bill removes current provisions providing that submission of an application does not affect the ability factor or the maximum capacity rating of an applicant for DOT certificate of qualification. Instead, the bill authorizes an applicant to submit a written request to DOT, along with its timely submitted application, to keep an existing certificate in place until its expiration date. If DOT approves the request, the applicant's current maximum capacity rating must remain in place until expiration of the current certification. In the absence of DOT's approval and in accordance with DOT's existing rules, the current capacity rating must be amended immediately upon issuance of a new certificate of qualification, regardless of whether the existing certificate has expired.

The bill increases from $1 million to $2 million the proposed budget estimate amount for contracts under which an applying contractor may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. Thus, an applying contractor who desires to bid

[47] The interim financial statements must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than four months prior to the date DOT receives the interim statement but, upon request of the applicant, an application and accompanying annual or interim financial statement received by the DOT within 15 days after either four-month period is considered timely.
[48] R. 14.22-003(1), F.A.C.
[49] R. 14.22-003(1)(d) and (2), F.A.C.
[50] The ability factor is a performance score which a contractor receives from DOT upon completion of a project. The initial abil ityfactor is based on the applicant's organization, management, work experience, and letters of recommendation. R. 14 -22-003, F.A.C.
[51] R. 14-22.006(1), F.A.C.
[52] S. 337.14(4), F.S.
[53] S. 337.14(1), F.S.

exclusively on construction contracts with proposed budget estimates of $2 million or less may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant.

Identities of Potential Bidders on DOT Contracts

Current Situation

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.[54]

Current law provides that a document revealing the identity of persons who have requested or obtained bid packages, plans, or specifications pertaining to any project to be let by DOT is confidential and exempt from the public records law for the period which begins two working days before the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity of such persons more than the two working days before the deadline for obtaining bid packages, plans, or specifications remains a public record.[55]

Effect of the Bill

The bill eliminates the public records exemption for documents revealing the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by DOT for the period that begins two working days before the deadline for obtaining bid packages plans, or specifications, and ends with the letting of the bid. These documents will now be public records.

Toll Indexing and Cashless Tolling

Current Situation

With limited exceptions, all users of a toll facility must pay the appropriate toll.[56] Under Florida law, DOT must index its toll rates to the annual Consumer Price Index or similar inflation indicators. Toll rate adjustments for inflation may be made no more frequently than once a year and must be made no less frequently than once every five years, as necessary to accommodate cash toll rate schedules. Toll rates may be increased beyond these limits as directed by bond documents, covenants, or governing body authorization or pursuant DOT administrative rule.[57] These toll rate adjustments are exempt from the rule ratification requirements in the Administrative Procedures Act.[58]

The last time that DOT adjusted its toll rates for inflation was in October 2017.[59] Therefore, under current law, DOT must adjust its toll rates in 2022.

Effect of the Bill

The bill changes the frequency that DOT must adjust its toll rates for inflation. Instead of adjusting for inflation every five years, DOT must adjust its toll rates every 10 years. DOT may still adjust its toll rates to comply with bond documents or other obligations.

The bill also removes the provision that provides for toll rate adjustments to be made as necessary to accommodate cash toll rate schedules.

[54] Art. I, s. 24(c), Fla. Const.
[55] S. 336.168(2), F.S.
[56] S. 338.155(1)(a), F.S. Exceptions include emergency vehicles and emergency evacuations.
[57] S. 338.165(3), F.S.
[58] S. 120.80(18), F.S.
[59] DOT, *Toll Rats for Florida Turnpike and Florida Department of Transportation Toll Facilities, South Florida,* https://floridasturnpike.com/wp-content/uploads/2020/04/Toll-Rates-Booklet-South-Florida.pdf (last visited Feb. 15, 2022).

Effective Date

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

B. SECTION DIRECTORY:

Section 1 Creates s. 163.31803, F.S., relating to mobility fee credits for certain planned housing communities.

Section 2 Creates s. 334.066, F.S., relating to Implementing Solutions from Transportation Research and Evaluating Emerging Technologies (I-STREET) Living Lab.

Section 3 Amends s. 337.025, F.S., relating to innovative transportation projects.

Section 4 Amends s. 337.107, F.S., relating to contracts for right-of-way services.

Section 5 Amends s. 337.11, F.S., relating to contracting authority of the department.

Section 6 Amends s. 337.1101, F.S., relating to contracting and procurement authority of the department; settlements; notifications required.

Section 7 Amends s. 337.14, F.S., relating to application for qualification; certificate of qualification; restrictions; request for hearing.

Section 8 Amends s. 337.168, F.S., relating to confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.

Section 9 Amends s. 338.165, F.S., relating to the continuation of tolls.

Section 10 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The costs associated with I-STREET are unknown but are expected to be absorbed within the existing resources of the UF, DOT, and other potential government sector participants. The bill does not provide funding for any costs associated with participation.

   The fiscal impact of the revisions relating to design-build, progressive design-build, and innovative contracting authority is indeterminate because the number and details of any such contracts to be undertaken by DOT is unknown.

   The fiscal impact of the revisions relating to DOT contractor certificates of qualification is indeterminate.

   Any expenses incurred by DOT associated with rulemaking can be absorbed within existing resources.

   DOT may incur expenditures related to public records requests for documents that identify a potential bidder on a transportation project. These costs are indeterminate but likely insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The costs associated with I-STREET are unknown but are expected to be absorbed within the existing resources of the UF, DOT, and other potential government sector participants. The bill does not provide funding for any costs associated with participation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce costs for certain contractors to provide required financial statements. A reviewed annual or reviewed interim financial statement is less expensive than an audited, certified annual or interim financial statement.

Motorists may not see inflation-based toll increases as frequently.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill revises DOT's rulemaking authority regarding procedures for design-build projects to provide for progressive design build projects.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DOT, the repeal of the public records exemption may have a negative impact on procurement by eliminating confidentiality of potential bidders and by allowing bid documents, such as letters of interest, to be produced as public records during the procurement process.[60]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[60] DOT Agency Analysis, 2022 House Bill 157, p. 6. (Sep. 24, 2021).

A bill to be entitled

An act relating to transportation; creating s. 163.31803, F.S.; requiring local governments to issue mobility fee credits under a specified circumstance; creating s. 334.066, F.S.; establishing the Implementing Solutions from Transportation Research and Evaluating Emerging Technologies Living Lab (I-STREET) within the University of Florida; specifying the duties of I-STREET; requiring I-STREET to annually provide the Governor and the Legislature with a certain report; requiring the creation of a certain advisory board; specifying the composition of the board; amending s. 337.025, F.S.; providing that the Department of Transportation's program for innovative transportation projects may include progressive design-build contracts; authorizing the department to enter into a progressive design-build contract if it makes a certain determination; providing procedures and requirements for progressive design-build contracts; revising contracts exempt from a specified annual monetary cap on contracts; amending s. 337.107, F.S.; authorizing landowners to permit with the department to remove vegetation under specified circumstances; amending s. 337.11, F.S.; revising the department's authority relating to design-build

contracts; revising rulemaking authority; requiring specified department contracts to contain specified insurance provisions; amending s. 337.1101, F.S.; revising the calculation of a certain settlement paid to a nonselected responsive bidder; amending s. 337.14, F.S.; revising a dollar limit of proposed budget estimates of construction contracts for which an applying contractor may submit certain financial statements; revising procedures relating to certificates of qualification issued by the department to construction contractors seeking certification to bid on certain contracts; exempting progressive design-build prequalifications from a certain restriction on contractors and their affiliates; amending s. 337.168, F.S.; deleting a public records exemption for certain documents revealing the identity of a potential bidder; amending s. 338.165, F.S.; revising the length of time between when the department must revise its toll rates to inflation; providing an effective date.

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

Section 1. Section 163.31803, Florida Statutes, is created to read:

163.31803 Mobility fee credits for certain planned housing communities.—Pursuant to s. 163.31801, a local government must provide mobility fee credits to a residential developer for capital improvements to a transportation system that the Department of Transportation deems necessary to ensure the safe and efficient mobility of people, commerce, and goods to bring a planned housing community into service.

Section 2. Section 334.066, Florida Statutes, is created to read:

334.066 Implementing Solutions from Transportation Research and Evaluating Emerging Technologies Living Lab.—

(1) The Implementing Solutions from Transportation Research and Evaluating Emerging Technologies Living Lab (I-STREET) is established within the University of Florida.

(2) At a minimum, I-STREET shall:

(a) Conduct and facilitate research on issues related to innovative transportation mobility and safety technology development and deployment in this state and serve as an information exchange and depository for the most current information pertaining to transportation research, education, workforce development, and related issues.

(b) Be a continuing resource for the Legislature, the department, local governments, the nation's metropolitan regions, and the private sector in the area of transportation and related research.

(c) Promote intercampus transportation and related research activities among Florida universities to enhance the ability of these universities to attract federal and private sector funding for transportation and related research.

(d) Provide by July 1, 2023, and each July 1 thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives a comprehensive report that outlines its clearly defined goals and its efforts and progress on reaching those goals.

(3) An advisory board shall be created to periodically review and advise I-STREET concerning its research program. The board shall consist of nine members with expertise in transportation-related areas, as follows:

(a) A member appointed by the President of the Senate.

(b) A member appointed by the Speaker of the House of Representatives.

(c) The Secretary of Transportation or his or her designee.

(d) The Secretary of Economic Opportunity or his or her designee.

(e) A member of the Florida Transportation Commission.

(f) Four members nominated by the University of Florida's College of Engineering and approved by the university's president. The College of Engineering's nominees may include representatives of the University of Florida, other academic and

research institutions, or private entities.

Section 3. Section 337.025, Florida Statutes, is amended to read:

337.025 Innovative transportation projects; department to establish program.—

(1) The department may establish a program for transportation projects demonstrating innovative techniques of highway and bridge design, construction, maintenance, and finance which have the intended effect of measuring resiliency and structural integrity and controlling time and cost increases on construction projects. Such techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; progressive design-build contracts as specified in subsection (2); accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the department must use the existing process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, the department is not required to adhere to those provisions of law that would prevent, preclude, or in any way prohibit the department from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, the department must

document in writing the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive. The department may enter into no more than $120 million in contracts awarded annually for the purposes authorized by this section.

(2) If the department determines that it is in the best interests of the public, the department may combine the design and construction phases of a project into a single contract and select the design-build firm in the early stages of a project to ensure that the design-build firm is part of the collaboration and development of the design as part of a step-by-step progression through construction. Such contract is referred to as a progressive design-build contract. For progressive design-build contracts, the selection and award processes must include a two-phase process. For phase one, the department shall competitively award the contract to a design-build firm based upon qualifications. For phase two, the design-build firm shall competitively bid construction trade subcontractor packages and, based upon these bids, negotiate with the department a fixed firm price or guaranteed maximum price that meets the project budget and scope as advertised in the request for qualifications.

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

(a) Turnpike enterprise projects.

(b) Progressive design-build contracts for complex, high-risk projects with a minimum contract value of $400 million ~~Low-bid design-build milling and resurfacing contracts~~.

Section 4. Section 337.107, Florida Statutes, is amended to read:

337.107 Contracts for right-of-way services.—

(1) The department may enter into contracts pursuant to s. 287.055 for right-of-way services on transportation corridors and transportation facilities. Right-of-way services include negotiation and acquisition services, appraisal services, demolition and removal of improvements, and asbestos-abatement services.

(2) For a construction project funded in the first 3 years of the department's adopted work program, a landowner with land contiguous to a limited access facility may be allowed, under a department-issued permit, to remove vegetation designated to be removed as part of the construction project on a department right-of-way in an area associated with a limited access facility, within the same limits of removal as identified in the final plans of the project.

Section 5. Subsections (15) and (16) of section 337.11, Florida Statutes, are renumbered as subsections (16) and (17) respectively, subsection (15) is added to that section, and paragraphs (a) and (b) of subsection (7) are amended to read:

337.11 Contracting authority of department; bids;

emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.—

(7)(a) If the department determines that it is in the best interests of the public, the department may combine the design and construction phases of a ~~building, a major bridge, a limited access facility, or a rail corridor~~ project into a single contract. Such contract is referred to as a design-build contract. Design-build contracts may be advertised and awarded notwithstanding the requirements of paragraph (3)(c). However, construction activities may not begin on any portion of such projects for which the department has not yet obtained title to the necessary rights-of-way and easements for the construction of that portion of the project has vested in the state or a local governmental entity and all railroad crossing and utility agreements have been executed. Title to rights-of-way shall be deemed to have vested in the state when the title has been dedicated to the public or acquired by prescription.

(b) The department shall adopt by rule procedures for administering design-build contracts, including progressive design-build contracts. Such procedures shall include, but not be limited to:

1. Prequalification requirements.

2. Public announcement procedures.

3. Scope of service requirements.

4. Letters of interest requirements.

5. Short-listing criteria and procedures.

6. Bid proposal requirements.

7. Technical review committee.

8. Selection and award processes.

9. Stipend requirements.

(15) Each contract let by the department for performance of bridge construction or maintenance over navigable waters must contain a provision requiring general liability insurance, in an amount to be determined by the department, that covers third-party personal injury and property damage caused by vessels used by the contractor in the performance of the work.

Section 6. Subsection (1) of section 337.1101, Florida Statutes, is amended to read:

337.1101 Contracting and procurement authority of the department; settlements; notification required.—

(1) When the department, or any entity or enterprise within the department, determines that it is in the best interest of the public to resolve a protest filed in accordance with s. 120.57(3) of the award of a contract being procured pursuant to s. 337.11 or related to the purchase of personal property or contractual services being procured pursuant to s. 287.057, through a settlement that requires the department to pay a nonselected responsive bidder a total sum of $1 million or more, including any amount paid pursuant to s. 334.049, any

amount paid pursuant to s. 337.11(8) which is not included in the department's work program approved by the Legislature as part of the General Appropriations Act, or any amount paid pursuant to any other law, the department must:

(a) Document in a written memorandum by the secretary the specific reasons that such settlement and payment to a nonselected responsive bidder is in the best interest of the state. The written memorandum must be included and maintained in the department's permanent files concerning the procurement and must include:

1. A description of the property rights, patent rights, copyrights, trademarks, or the engineering design or other design work that the department will acquire or retain as a result of such settlement; and

2. The specific appropriation in the existing General Appropriations Act which the department intends to use to provide such payment.

(b) Provide prior written notification to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General at least 5 business days, or as soon thereafter as practicable, before the department makes the settlement agreement final. Such written notification must include the written memorandum required pursuant to paragraph (a).

(c) Provide, at the time settlement discussions regarding any such payment have begun in earnest, written notification of such discussions to the President of the Senate, the Speaker of the House of Representatives, the Senate and House of Representatives minority leaders, the chair and vice chair of the Legislative Budget Commission, and the Attorney General.

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

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

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

excess of $15 million, for the department or for any other state department of transportation. The department may limit the dollar amount of any contract upon which a contractor is qualified to bid or the aggregate total dollar volume of contracts such contractor is allowed to have under contract at any one time. Each applying contractor seeking qualification to bid on construction contracts in excess of $250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must be accompanied by audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The audited, certified financial statements must be for the applying contractor and must have been prepared within the immediately preceding 12 months. The department may not consider any financial information of the parent entity of the applying contractor, if any. The department may not certify as qualified any applying contractor who fails to submit the audited, certified financial statements required by this subsection. If the application or the annual financial statement shows the financial condition of the applying contractor more than 4 months before the date on which the application is received by the department, the applicant must also submit interim audited,

certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The interim financial statements must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than 4 months before the date that the interim financial statements are received by the department. However, upon the request of the applying contractor, an application and accompanying annual or interim financial statement received by the department within 15 days after either 4-month period under this subsection shall be considered timely. An applying contractor desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $2 ~~$1~~ million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. The information required by this subsection is confidential and exempt from s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

(4) If the applicant is found to possess the prescribed

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

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

Section 8. Subsection (2) of Section 337.168, Florida Statutes, is amended to read:

337.168 Confidentiality of official estimates~~, identities~~

~~of potential bidders,~~ and bid analysis and monitoring system.—

~~(2) A document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the department is confidential and exempt from the provisions of s. 119.07(1) for the period that begins 2 working days before the deadline for obtaining bid packages, plans, or specifications and ends with the letting of the bid. A document that reveals the identity of a person who has requested or obtained a bid package, plan, or specifications pertaining to any project to be let by the department before the 2 working days before the deadline for obtaining bid packages, plans, or specifications remains a public record subject to s. 119.07(1).~~

Section 9. Subsection (3) of section 338.165, Florida Statutes, is amended to read:

338.165 Continuation of tolls.—

(3) Notwithstanding any other provision of law, the department, including the turnpike enterprise, shall index toll rates on existing toll facilities to the annual Consumer Price Index or similar inflation indicators. Toll rate adjustments for inflation under this subsection may be made no more frequently than once a year and must be made no less frequently than once every 10 ~~5~~ years ~~as necessary to accommodate cash toll rate schedules~~. Toll rates may be increased beyond these limits as directed by bond documents, covenants, or governing body

authorization or pursuant to department administrative rule.

Section 10. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 315 Transportation Facility Designations
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 160

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

SUMMARY ANALYSIS

Under current law, the Legislature may designate a transportation facility, such as a bridge, interchange, or portion of a road, for honorary or memorial purposes or to distinguish a particular facility. Legislative designations do not change the official names of the facilities. The Department of Transportation (DOT) erects markers for each designation, but may not do so until the appropriate city or county commission passes a resolution in support of the designation.

The bill creates 15 designations for various transportation facilities across the state and directs DOT to erect suitable markers for each designation.

The bill will have an insignificant negative fiscal impact to the State Transportation Trust Fund associated with erecting suitable markers for the above designations. The cost can be absorbed within DOT's existing resources.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Transportation Facility Designations
Under current law, the Legislature may designate a transportation facility, such as a bridge, interchange, or portion of a road, for honorary or memorial purposes or to distinguish a particular facility. Legislative designations do not change the official names of the designated facilities, and do not require local governments or private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings to account for the designations.[1]

Current law sets standards for the naming of state buildings and other facilities. The law provides that, unless specifically provided otherwise by law, state buildings, roads, bridges, parks, recreational complexes, and other similar facilities may not be named for a living person.[2]

Road Markers
The Department of Transportation (DOT) must place a marker at each terminus or intersection of a designated road, bridge, or other transportation facility and erect other markers it deems appropriate for the facility.[3] Road markers may not be erected until the appropriate city or county commission passes a resolution in support of a particular designation. Additionally, if a designated facility extends through multiple cities or counties, a resolution must be passed by each affected local government before the road markers can be erected by DOT.[4]

Effect of the Bill

The bill requires DOT to erect suitable markers for each of the following designations.

Reverend Murray Hamilton, Sr., Highway
Under the bill, that portion of U.S. 90 between Canal Street and Stewart Street in Santa Rosa County is designated as "Reverend Murray Hamilton, Sr., Highway."

Reverend Murray Hamilton, Sr., served in the United States Navy and worked for Monsanto/Solutia for 37 years. His life's work revolved around building the community, and he was influential in developing many programs and organizations in Milton, Florida. Reverend Hamilton passed away on January 25, 2021.[5]

Ira Mae Wells-Bruce Memorial Highway
The bill designates that portion of S.R. 87 between E. Bay Boulevard and U.S. 98 in Santa Rosa County as "Ira Mae Wells-Bruce Memorial Highway."

Ira Mae Wells-Bruce was Santa Rosa County's first female commissioner and presided over numerous business and civic organizations. Additionally, Ms. Bruce was co-broker/owner of Century 21 Island View Realty.[6] Ms. Bruce passed away on December 1, 2020.[7]

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[1] S. 334.071(1), F.S.
[2] S. 267.062(1), F.S.
[3] S. 334.071(2), F.S.
[4] S. 334.071(3), F.S.
[5] Email from Sydney Fowler, Legislative Aide, Office of Representative Jayer Williamson, House Bill 315, (Oct. 27, 2021).
[6] South Santa Rosa News (@SouthSRNews), Facebook (Dec. 1, 2020, 3:22 PM), https://www.facebook.com/1619922901599897/posts/santa-rosa-countys-first-female-county-commissioner-has-passed-away-it-is-with-i/2817435305181978/ (last visited Feb. 19, 2022).
[7] *Celebration of life to be held for Ira Mae Bruce*, Navarre Press (May 1, 2021), https://navarrepress.com/celebration-of-life-to-be-held-for-ira-mae-bruce/ (last visited Feb. 19, 2022).

Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace Highway
The bill designates that portion of S.R. 715, also known as Bacom Point Road, between W. Morgan Road and S.W. 14th Street in Palm Beach County as "Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace Highway."

On November 28, 2007, while attempting to remove stop sticks that were deployed as part of an effort to slow a stolen vehicle, Deputy Donta Manuel and Deputy Jonathan Wallace were struck and killed by a patrol car pursuing the stolen vehicle.[8] Deputy Manuel was 33 years old and had served with the Palm Beach County Sheriff's Office for 13 years.[9] Deputy Wallace was 23 years old and had served with the Palm Beach County Sheriff's Office for 1 year and 6 months.[10]

Virginia Creighton Bridge
Under the bill, bridge number 100850 on S.R. 60/Courtney Campbell Causeway over Old Tampa Bay in Hillsborough County is designated as "Virginia Creighton Bridge."

Virginia (Ginger) Creighton worked in the field of wetland science and was key to developing the Courtney Campbell Causeway – Old Tampa Bay Water Quality Improvement Project that provided environmental credit for other DOT projects in the Tampa Bay Area.[11] Ms. Creighton passed away on May 29, 2020.[12]

Arturo Diaz Artiles Plaza
The bill designates the intersection of S.W. 23rd Avenue and S.W. 8th Street in Miami-Dade County as "Arturo Diaz Artiles Plaza."

Arturo Diaz Artiles was a Cuban exile, who immigrated to the City of Miami in 1962. In 1965, he opened the Santa Clara Pharmacy at the corner of Southwest 23rd Avenue and Southwest 8th Street in Miami. Mr. Artiles also received the United Way of Miami-Dade County Gold award for 30 years of service to his community, the Latin Real Estate Organization Board of Directors Award, and the City of Miami's Certification of Appreciation. Mr. Artiles was a founding member of the Latin Chamber of Commerce, and the Miami-Dade County Commission declared February 25th as Arturo "Arturito" Diaz Artiles Day and presented him with a key to the county.[13]

Sergeant First Class Michael C. Aten Memorial Highway
Under the bill, that portion of S.R. 19 between C.R. 48 and Lane Park Cutoff Road in Lake County is designated as "Sergeant First Class Michael C. Aten Memorial Highway."

Sergeant First Class Michael C. "Soldier Mike" Aten served in the U.S. Army, became an Army Ranger, and served his county for 26 years. During his service, Sergeant Aten earned numerous military awards, among them, the Bronze Star while serving in Iraq; the Army Commendation Medal with Combat "V," denoting battlefield valor; the Armed Forces Expeditionary Medal; and the Global War on Terrorism Service Medal. Sergeant Aten passed away after a motorcycle accident on January 3, 2020.[14]

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[8] Officer Down Memorial Page, *Deputy Sheriff Donta J. Manuel*, https://www.odmp.org/officer/19071-deputy-sheriff-donta-j-manuel (last visited Feb. 19, 2022).
[9] *Id.*
[10] Officer Down Memorial Page, *Deputy Sheriff Jonathan D. Wallace*, https://www.odmp.org/officer/19072-deputy-sheriff-jonathan-d-wallace (last visited Feb. 19, 2022).
[11] Virginia (Ginger) Creighton Death Notice from the Florida Department of Transportation.
[12] *Virginia A. "Ginger" Creighton*, Legacy.com, https://www.legacy.com/us/obituaries/staugustine/name/virginia-creighton-obituary?id=8236801 (last visited Feb. 19, 2022).
[13] *Miami-Dade Legislative Item File Number: 211394*, Miami-Dade County, https://www.miamidade.gov/govaction/matter.asp?matter=211394&file=true&fileAnalysis=false&yearFolder=Y2021 (last visited Feb. 19, 2022);
[14] Daily Commercial, *Taps for Sgt. 1st Class "Soldier Mike" Aten,* January 11, 2020, https://www.dailycommercial.com/story/news/local/2020/01/11/taps-for-sgt-lst-class-soldier-mike-aten/1918137007/ (last visited Feb. 19, 2022).

Warren Alvarez Memorial Bridge
The bill designates bridge number 720684 on I-95 over the Trout River in Jacksonville/Duval County as "Warren Alvarez Memorial Bridge."

Former two-term Jacksonville City Council member Warren Alvarez was a native and lifelong resident of Jacksonville's Northside and lived all of his life on his family's dairy farm. Mr. Alvarez was active in agricultural and civic organizations and activities, serving on many boards, commissions, and organizations at the county and state levels. Known for his advocacy for his constituents, Mr. Alvarez worked successfully to have Interstate 95 widened as it crosses the Trout River Bridge. Mr. Alvarez passed away on March 6, 2021, at the age of 86.[15]

Deputy William J. Gentry, Jr., Highway
Under the bill, that portion of U.S. 98 between Haywood Taylor Boulevard and Lakeview Boulevard in Highlands County is designated as "Deputy William J. Gentry, Jr., Highway."

Deputy William J. Gentry, Jr., served with the Highlands County Sherriff's Office for 13 years in various capacities, including time on patrol, the K-9 Unit, the Special Investigations Unit, and as a field training deputy.[16] On May 6, 2019, Deputy Gentry and the deputy he was training responded to an animal abuse call in Highlands County. Deputy Gentry attempted to make contact with the suspect, who opened fire on Deputy Gentry. On May 7, 2019, Deputy Gentry succumbed to his injuries at the age of 40.[17]

Sergeant Eric John Twisdale Memorial Interchange
The bill designates the interchange at S.R. 23/First Coast Expressway and Henley Road in Clay County as "Sergeant Eric John Twisdale Memorial Interchange."

Sergeant Eric John Twisdale served with the Clay County Sheriff's Office in various capacities for 22 years and previously served with the Jacksonville Sheriff's Office.[18] Sergeant Twisdale received the Sheriff's Office's Lifesaving Award in 2014 after he saved someone from drowning, and he was recognized as Deputy of the Year in 2015 for "displaying exceptional valor."[19] Sergeant Twisdale passed away on August 19, 2020, after contracting COVID-19 due to a presumed exposure at the Clay County Sheriff's Office.[20]

Pio Ieraci Memorial Drive
The bill designates that portion of S.R. A1A between the northern terminus and southern terminus of Galt Ocean Drive in Broward County as "Pio Ieraci Memorial Drive."

After moving to Florida over 30 years ago, Pio Richard Ieraci became an active community leader in the Fort Lauderdale Community. Throughout Mr. Ieraci's time in Florida, he served as a member of the City of Fort Lauderdale Education Advisory Board, Chairman of South Florida Business Advisors, Inc., Chairman of the Broward Beach Coalition, President of the Galt Mile Community Association, and President of the Galt Ocean Club Condominium Association. Mr. Ieraci passed away on December 20, 2020, and is survived by his wife and two children.[21]

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[15] The Florida Times-Union, Warren Alvarez, https://www.legacy.com/us/obituaries/timesunion/name/warren-alvarez-obituary?id=6685153 (last visited Feb. 19, 2022).
[16] Legacy.Com, *William J Gentry, Jr.*, https://www.legacy.com/obituaries/name/william-gentry-jr-obituary?pid=188976004 (last visited Feb. 19, 2022).
[17] Officer Down Memorial Page, *Deputy Sheriff William Jackson Gentry, Jr.*, https://www.odmp.org/officer/23672-deputy-sheriff-william-jackson-gentry-jr (last visited Feb. 19, 2022).
[18] Officer Down Memorial Page, *Sergeant Eric John Twisdale*, https://www.odmp.org/officer/24909-sergeant-eric-john-twisdale (last visited Feb. 19, 2022).
[19] Dan Scanlan, *Remebered as 'a cop's cop,' Clay County sergeant laid to rest after COVID-19 death*, jacksonville.com (Sept. 24, 2020), https://www.jacksonville.com/story/news/crime/2020/09/24/sgt-eric-twisdale-remembered-cops-cop-funeral/3515087001/ (last visited Feb. 19, 2022).
[20] Officer Down Memorial Page, *supra* note 18.
[21] Dignity Memorial, *Pio Richard Ieraci*, https://www.dignitymemorial.com/obituaries/fort-lauderdale-fl/pio-ieraci-9961464 (last visited Feb. 19, 2022).

Sgt. George Lee Taylor, Sr., Memorial Highway
The bill designates that portion of S.R. 520/W. King Street between S.R. 501/Clearlake Road and S.R. 519/Fiske Boulevard in Brevard County as "Sgt. George Lee Taylor, Sr., Memorial Highway."

Sgt. George Lee Taylor, Sr., served in the United States Army from 1967 to 1971. After returning from war, Sgt. Taylor founded National Veterans Homeless Support, which is estimated to have helped reduce the homeless veteran population in Brevard County by 90 percent. Sgt. Taylor passed away on May 17, 2020.[22]

Dr. Martin Luther King, Jr., Memorial Highway
The bill designates that portion of S.R. 519/Fiske Boulevard between Rosa L. Jones Drive and I-95 in Brevard County as "Dr. Martin Luther King, Jr., Memorial Highway."

Dr. Martin Luther King, Jr., was a civil rights leader and the youngest man to have received the Nobel Peace Prize. Dr. King traveled over six million miles and spoke over twenty-five hundred times, with his most well-known speech being the famous "I Have a Dream" address. On the evening of April 4, 1968, Dr. King was assassinated.[23]

Anthony Reznik Boulevard
The bill designates that portion of S.R. 826/Sunny Isles Boulevard between N.E. 35th Avenue and S.R. A1A in Miami-Dade County as "Anthony Reznik Boulevard."

Anthony Reznik was an 11-year-old boy from South Florida who was struck by a car while legally crossing the street in Sunny Isles Beach, Florida. After his death, Anthony's family decided to donate his organs to help others. Anthony is survived by his parents and sister.[24]

Cheryl H. Cates Memorial Bridge
Under the bill, the Cow Key Channel Bridge located at mile marker 4.1 on Overseas Highway in Monroe County is designated as "Cheryl H. Cates Memorial Bridge."

Cheryl H. Cates was a long-time resident of Key West and an active member of the community. Mrs. Cates served as The First Lady of Key West for 9 years, and she was involved in many organizations and spearheaded numerous fundraisers for people and causes in her community. Mrs. Cates passed away on December 2, 2020, and is survived by her husband, daughters, and grandchildren.[25]

Soul of Miami Avenue
The bill designates that portion of N.W. 12th Avenue/John Henry Peavy Jr. Avenue between N.W. 62nd Avenue and N.W. 71st Street in Miami-Dade County as "Soul of Miami Avenue."

Liberty City is one of Miami's most significant historically black neighborhoods. Liberty City played a significant role in Miami's unique black history. Some celebrities from Liberty City include rappers Trina and Trick Daddy, NBA player Udonis Haslem with the Miami Heat since 2003, and NFL players Chad

[22] Legacy, *George Taylor Sr.*, https://www.legacy.com/us/obituaries/floridatoday/name/george-taylor-obituary?id=8577009 (last visited Feb. 19, 2022).
[23] The Nobel Prize, *Martin Luther King Jr.*, https://www.nobelprize.org/prizes/peace/1964/king/biographical/ (last visited Feb. 19, 2022).
[24] Gina Benitez & Brandon Beyer, *Family donates organs of 11-year-old boy struck, declared brain dead in Sunny Isles Beach*, 7 News Miami (Feb. 25, 2021), https://wsvn.com/news/local/family-donates-organs-of-11-year-old-boy-struck-declared-brain-dead-in-sunny-isles-beach/ (last visited Feb. 19, 2022).
[25] Keys Weekly, *Obituary: In Loving Memory of Cheryl Cates*, Dec. 11, 2020, https://keysweekly.com/42/obituary-in-loving-memory-of-cheryl-cates/ (last visited Feb. 19, 2022).

"Ochocinco" Johnson and Willis McGahee.[26] The City of Miami passed a resolution allowing for the creation of the Liberty City Soul District.[27]

B. SECTION DIRECTORY:

Section 1: Creates honorary transportation facility designations; directs DOT to erect suitable markers.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOT estimates a cost of $1,040 for the appropriate markers for each designation, which provides for two signs at $520 per sign. Therefore, the bill has an estimated negative fiscal impact of $15,600 to the State Transportation Trust Fund. This cost can be absorbed within existing DOT resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

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[26] Shayne Benowitz, *The History of Liberty Square*, Greater Miami Convention & Visitors Bureau (Jul. 22, 2020), https://www.miamiandbeaches.com/things-to-do/history-and-heritage/the-history-of-liberty-square (last visited Feb. 19, 2022).

[27] *See* City of Miami, *Marked Agenda*, City Commission (Oct. 28, 2021), available at http://miamifl.igm2.com/Citizens/FileOpen.aspx?Type=15&ID=2501&Inline=True (last visited Feb. 19, 2022).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to transportation facility designations; providing honorary designations of certain transportation facilities in specified counties; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. Transportation facility designations; Department of Transportation to erect suitable markers.-

(1) That portion of U.S. 90 between Canal Street and Stewart Street in Santa Rosa County is designated as "Reverend Murray Hamilton, Sr., Highway."

(2) That portion of S.R. 87 between E. Bay Boulevard and U.S. 98 in Santa Rosa County is designated as "Ira Mae Wells-Bruce Memorial Highway."

(3) That portion of S.R. 715/Bacom Point Road between W. Morgan Road and S.W. 14th Street in Palm Beach County is designated as "Deputy Sheriff Donta Manuel and Deputy Sheriff Jonathan Wallace Highway."

(4) Bridge number 100850 on S.R. 60/Courtney Campbell Causeway over Old Tampa Bay in Hillsborough County is designated as "Virginia Creighton Bridge."

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

(5) The intersection of S.W. 23rd Avenue and S.W. 8th Street in Miami-Dade County is designated as "Arturo Diaz Artiles Plaza."

(6) That portion of S.R. 19 between C.R. 48 and Lane Park Cutoff Road in Lake County is designated as "Sergeant First Class Michael C. Aten Memorial Highway."

(7) Bridge number 720684 on I-95 over the Trout River in Jacksonville/Duval County is designated as "Warren Alvarez Memorial Bridge."

(8) That portion of U.S. 98 between Haywood Taylor Boulevard and Lakeview Boulevard in Highlands County is designated as "Deputy William J. Gentry, Jr., Highway."

(9) Upon completion of construction, the interchange at First Coast Expressway/S.R. 23 and Henley Road in Clay County is designated as "Sergeant Eric John Twisdale Memorial Interchange."

(10) That portion of S.R. A1A between the northern terminus and southern terminus of Galt Ocean Drive in Broward County is designated as "Pio Ieraci Memorial Drive."

(11) That portion of S.R. 520/W. King Street between S.R. 501/Clearlake Road and S.R. 519/Fiske Boulevard in Brevard County is designated as "Sgt. George Lee Taylor, Sr., Memorial Highway."

(12) That portion of S.R. 519/Fiske Boulevard between Rosa L. Jones Drive and I-95 in Brevard County is designated as "Dr.

Martin Luther King, Jr., Memorial Highway."

(13) That portion of S.R. 826/Sunny Isles Boulevard between N.E. 35th Avenue and S.R. A1A in Miami-Dade County is designated as "Anthony Reznik Boulevard."

(14) The Cow Key Channel Bridge located at mile marker 4.1 on Overseas Highway in Monroe County is designated as "Cheryl H. Cates Memorial Bridge."

(15) That portion of N.W. 12th Avenue/John Henry Peavy Jr. Avenue between N.W. 62nd Avenue and N.W. 71st Street in Miami-Dade County is designated as "Soul of Miami Avenue."

(16) The Department of Transportation is directed to erect suitable markers designating the transportation facilities as described in this section.

Section 2. This act shall take effect July 1, 2022.

COMMERCE COMMITTEE

PCS for HB 315 by Rep. Williamson
Transportation Facility Designations

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Rep. Williamson (Line 61):

- Adds designations for “Veterans Honor Highway,” “Private Tillman R. Clark Memorial Bridge,” “Oswaldo Payá Way,” "Austin D. Gayne Memorial Highway," and “Pensacola Police Fallen Heroes Highway.”

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Williamson offered the following:

Amendment

Remove line 61 and insert:

(16) That portion of S.R. 100 in Clay County between the Bradford County line and the Putnam County line is designated as "Veterans Honor Highway."

(17) Bridge No. 380097 on U.S. 27 over the Fenholloway River in Taylor County is designated as "Private Tillman R. Clark Memorial Bridge."

(18) That portion of S.R. 953/N.W. 42nd Avenue/Le Jeune Road between N.W. 11th Street and N.W. 14th Street in Miami-Dade County is designated as "Oswaldo Payá Way."

(19) That portion of S.R. 408/Holland East-West Expressway between the Mills Avenue Exit and the Rosalind Avenue Exit in

Orange County is designated as "Austin D. Gayne Memorial Highway."

(20) That portion of E. Main Street/Bayfront Parkway/E. Gregory Street between S. Tarragona Street and the Pensacola Bay Bridge in Escambia County is designated as “Pensacola Police Fallen Heroes Highway.”

(21) The Department of Transportation is directed to erect

PCS for CS/HB 423

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 423 Building Regulation
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

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

Relating to building officials, building inspectors, and plans reviewers, the bill:

- Allows a person to sit for the building inspector or plans examiner licensure test by completing a 4-year internship with a private provider or a private provider's firm in certain circumstances.
- Requires the BCAIB to create a rule allowing partial completion of an internship program to be transferred to any other authorized internship.
- Prohibits the BCAIB from issuing a provisional license with a special condition or requirement that such licensee be employed by a municipality, county, or other local government agency.

Relating to private providers, the bill:

- Allows a person with a provisional license from the BCAIB to be a duly authorized representative for a private provider in certain circumstances.
- Requires local governments to provide equal access to all permitting and inspection documents to a private provider, owner, and contractor in certain circumstances.
- Defines "reasonable administrative fee."
- Increases the amount of time, local building officials have to issue a certificate of occupancy or a notice of deficiencies for permits that are not related to single- or two-family dwellings.
- Provides that if a notice of deficiency is not issued within the required time-period:
  - A certificate is "automatically" granted, instead of "deemed" granted; and
  - Local building officials must provide the applicant with a certificate of occupancy within 10 days.

Relating to "demolition" building permits, the bill:

- Prohibits local governments from preventing private property owners from demolishing single-family buildings that are in certain flood zones, while exempting certain historic buildings.
- Limits the review process for applications for such demolition permits and provides.
- Prohibits local governments from requiring additional building requirements for new homes built on the construction site of such demolished single-family buildings.

Relating to local building departments, the bill:

- Requires local governments to review additional information for an application for certain building permits within a certain time-period.
- Provides a cause of action for certain individuals and associations to enforce the requirement that local governments must use excess funds generated by Building Code enforcement for lawful purposes.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on the state.

The bill provides for an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Building Code

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

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

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

The Florida Building Commission was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,[5] the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[6]

Local Enforcement of the Florida Building Code

The Legislature intends that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions to protect the public's health, safety, and welfare.[7]

Every local government must enforce the Building Code and issue building permits.[8] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may be directed, by resolution or regulation, to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[9]

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[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Nov. 11, 2021).
[2] *Id.*; DBPR, *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited on Nov. 11, 2021).
[3] *Id.*
[4] *See* s. 553.72(1), F.S.
[5] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Dec. 13, 2021).
[6] Ss. 553.73, and 553.74, F.S.
[7] S. 553.72, F.S.
[8] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[9] *See* ss. 125.56(4)(a), 553.79(1), F.S.

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.[10] Construction work may not be done beyond a certain point until it passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.[11]

Building Officials, Inspectors, Plans Examiners, and Private Providers – Current Situation

Building officials, inspectors, and plans examiners are regulated by the Florida Building Code Administrators and Inspectors Board (BCAIB) within DBPR. The BCAIB consists of nine members appointed by the Governor and subject to confirmation by the Senate.[12]

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.[13]

A building code inspector (inspector) inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories under which the inspector has been licensed. The inspector categories are:[14]

- Building inspector
- Coastal construction inspector
- Commercial electrical inspector
- Residential electrical inspector
- Mechanical inspector
- Plumbing inspector
- **Residential inspector**
- Electrical inspector

In 2020, the Legislature renamed the **"one and two family dwelling inspector"** category as the **"residential inspector"** category and expanded the scope of practice to include inspecting one-family, two-family, or three-family residences, and accessory use structures in connection therewith, for compliance with the building, plumbing, mechanical, accessibility, and electrical codes.[15]

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plans examiner's ability to practice is limited to the category or categories under which the plans examiner has been licensed. The plans examiner categories are:[16]

- Building plans examiner
- Plumbing plans examiner
- Mechanical plans examiner

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[10] S. 110, Seventh edition of the Florida Building Code (Building).
[11] Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf (last visited Nov. 11, 2021).
[12] S. 468.605, F.S.
[13] S. 468.603(2), F.S.
[14] *See* s. 468.603(5), F.S.
[15] Ch. 2020-160, s. 19, Laws of Fla., *codified* at s. 468.603(5)(f), F.S.
[16] *See* s. 468.603(8), F.S.

- Electrical plans examiner

In order to sit for the plans examiner or inspector exam a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:[17]

- Have 4 years of combined relevant experience;
- Have 3 years of combined postsecondary education and relevant experience;
- Have 3 years of combined technical education and relevant experience;
- Complete an approved cross-training program and have at least 2 years of experience;
- Hold a standard certificate issued by the BCAIB or a firesafety inspector license; and
    - have at least 4 years of relevant experience as an inspector or plans examiner;
    - have a minimum of 3 years of experience in firesafety inspection or firesafety plan review and have completed a training program of not less than 100 hours in the new category sought;
    - complete an approved training program of not less than 200 hours in inspection or plans review except for **one-family and two family dwelling training programs**,[18] which may not be less than 500 hours; or
- Complete a 4-year internship certification program.

A person who is qualified to sit for the building official, plans examiner, or inspector exam but has not taken the exam may be granted a **provisional license** by the BCAIB. A provisional license allows a person to engage in the duties of a building official, inspector, or plans examiner.[19]

Provisional licenses are valid for two years, but may be renewed by the BCAIB for just cause. A provisional license is not valid for more than three years. However, an applicant who is obtaining licensure as an inspector or plans examiner through an internship may apply to the BCAIB for a provisional license that is valid for the duration of the internship.[20]

The BCAIB may issue provisional licenses with special conditions or requirements relating to the place of employment of the licensee, the supervision of the licensee on a consulting or advisory basis, or other matters that the BCAIB deems necessary to protect the public safety and health.[21]

Internship Programs

After the recession in 2008, Florida experienced a shortage of inspectors, plans examiners, and building officials on account of many of them being laid off. In at least one county, the shortage forced the local building board to rehire retired inspectors.[22]

[17] S. 468.609(2), F.S.
[18] "One-family and two family dwelling" may need to be renamed to "residential" since the Legislature renamed the one-family and two-family dwelling inspector license to the residential inspector license during the 2020 Legislative Session.
[19] S. 468.609(7) and (10), F.S.
[20] *Id.*
[21] *Id.*
[22] *See* James Sullivan, Charles Kibert, Andriel Fenner, & Shirley Morque, *Florida Construction Workforce Taskforce: Address training issues among building code inspectors to increase the number qualified inspectors*,(March 9, 2017) http://www.cce.ufl.edu/wp-content/uploads/2016/12/6-Florida-Construction-Workforce-Taskforce-Address-training-issues-among-building-code-inspectors-to-increase-the-number-qualified-1.pdf (last visited Nov. 23, 2021).

In response to the shortage, during the 2017 Legislative Session, the Legislature created the 4-year internship program as an additional way to obtain licensure as a plans examiner or inspector.[23] A person may sit for the plans examiner or inspector exam in all categories if the person is at least 18 years of age, is of good moral character, and completes an internship program. The requirements of the internship program are:[24]

- Completing a 4-year internship as an inspector or plans examiner while **employed full-time by a local government**, under the direct supervision of a building official. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year;
- Passing an ICC administered examination in the license category sought;
- Passing the principles and practice examination before completing the internship program;
- Passing a BCAIB-approved 40-hour code training course in the license category sought before completing the internship; and
- Obtaining a favorable recommendation from the supervising building official after completion of the internship.

Current law requires the BCAIB to establish by rule that partial completion of the internship program may be **transferred between jurisdictions**.[25]

Currently, the 4-year internship program only applies to a person employed full-time by a local government, and **does not apply** if the person is employed full-time with a private entity that provides building inspection and/or plans review services.

Private Providers

In 2002, section 553.791, F.S., was created to allow property owners and contractors to hire licensed building code officials, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

Private providers and their duly authorized representatives are able to approve building plans and perform building code inspections as long as the plans approval and building inspections are within the scope of the provider's or representative's license.

Current law defines "private provider" as person licensed as a building official, engineer, or as an architect. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.[26]

Current law defines "duly authorized representative" as an employee of a private provider identified in a permit application who reviews plans or performs inspections, and is licensed as an engineer, architect, building official, inspector, or plans examiner. The term does not include a person with a provisional license by the BCAIB.[27]

If an owner or contractor opts to use a private provider, the local government must calculate the cost savings to its building department and reduce the building permit fees accordingly.[28]

[23] Ch. 2017-149, s. 5, Laws of Fla., *codified at* s. 468.609(2)(c)7., F.S.
[24] S. 468.609(2), F.S.
[25] S. 468.609(10), F.S.
[26] S. 553.791(1)(n) and (3), F.S.
[27] S. 553.791(1)(f) and (8), F.S.
[28] S. 553.791(2)(b), F.S.

A local government may not charge a fee for building inspections when an owner or contractor uses a private provider but may charge a **"reasonable administrative fee."**[29] However, current law does not define a "reasonable administrative."

A building official may audit a private provider to ensure the private provider and their duly authorized agent has reviewed the building plans and is performing the required inspections. A building official may deny a building permit or a request for a certificate of completion if the building construction or plans do not comply with the Building Code. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.[30]

When a property owner or a contractor elects to use a private provider, he or she must notify the building official, on a form adopted by the Florida Building Commission, at the time of the permit application or no less than two business days before the first or next scheduled inspection.[31]

A private provider who approves building plans must sign a sworn affidavit that the plans comply with the Building Code and the private provider or their duly authorized representative is authorized to review the plans.[32] Upon receipt of a building permit application from a private provider, a building official has 20 business days to grant or deny the permit. Denying a permit automatically tolls the remaining 20 business days.[33]

Before a private provider or their duly authorized representative performs building inspections, the private provider must notify the building official of each inspection the business day before the inspection. A local building official may visit a building site as often as necessary to ensure the required inspections are being performed. Construction work on a building may continue as long as the private provider or their duly authorized representative passes each inspection and the private provider gives proper notice of each inspection to the building official.[34]

A private provider must post records of every inspection, including the results of the inspections, electronically or on the jobsite and provide the records to the local building official within two business days of posting the records.[35]

Upon completion of all required inspections, a private provider must give the building official a record of all the inspections, **a request for a certificate of occupancy** or certificate of completion, and a sworn statement indicating compliance with the Building Code. Upon receipt of the request and approval of all other governmental approvals, the building official has **two business days** to issue the certificate of occupancy or certificate of completion or provide the permit applicant a notice of deficiencies.[36]

If the local building official does not provide a notice of the deficiencies within two business days, the request for a certificate of occupancy or certificate of completion is **deemed granted**, and the local building official **must issue the certificate of occupancy or certificate of completion the next business day**.[37]

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[29] *Id.*
[30] S. 553.791(1), (14), and (19), F.S.
[31] S. 553.791(4)-(5), F.S.
[32] S. 553.791(6), F.S.
[33] S. 553.791(7), F.S.
[34] S. 553.791(9) and (18), F.S.
[35] S. 553.791(11), F.S.
[36] S. 553.791(11)-(13), F.S.
[37] *Id.*

Building Officials, Inspectors, Plans Examiners, and Private Providers – Effect of the Bill

The bill corrects a scrivener's error and renames the "one-family and two-family dwelling" training program as the "residential" training program in order to conform with the use of "residential inspector" in related provisions of Florida Statutes.

The bill provides that a person may complete the 4-year internship as a building code inspector or plans examiner while **employed full-time with a private provider or a private provider's firm,** which performs the services of a building inspector or plans examiner, while under the direct supervision of a licensed building official.

The bill also provides that the BCAIB must create a rule allowing partial completion of an internship program to be transferred between any authorized internship provider, including local jurisdictions or **private providers, or a private provider's firm.**

The bill removes "the supervision of the licensee on a consulting or advisory basis" from the list of examples of specifically identified "special conditions or requirements" to be used by the BCAIB when issuing provisional licenses.

The BCAIB may still issue a provisional license with a special condition or requirement that the BCAIB deems necessary to protect the public safety and health. However, the bill prohibits the BCAIB from issuing a provisional license with a special condition or requirement related to employment by a municipality, county, or other local government agency.

Private Providers

The bill provides that a person with a provisional license issued by the BCAIB may be a duly authorized representative for a private provider. A duly authorized representative, who only has a provisional license, must be under the direct supervision of a licensed building official.

The bill provides that if an owner or contractor retains a private provider for plans review or inspection services the local government must provide equal access to all permitting and inspection documents and reports to the private provider, the owner, and the contractor as long as such access is provided by software that protects exempt records from disclosure.

A "reasonable administrative fee" must be based on the cost that is actually incurred by the local government, including the labor cost of the personnel providing the service, or the cost attributable to the local government for the clerical and supervisory assistance required, or both.

The bill provides that upon receiving a request for a certificate of occupancy or certificate of completion and approval of all other government approvals, a building official has **10 business days**, instead of two business days, to issue the certificate or provide the permit applicant a notice of deficiencies. However, if the permit is related to a single-family or two-family dwelling, the local building official still has only two business days to issue the certificate or provide the permit applicant a notice of deficiencies.

The bill also provides that payment of all outstanding fees is included in "all other government approvals," and must be paid before the time-period begins for a local building official to issue a certificate of occupancy or certificate of completion or provide the permit applicant a notice of deficiencies.

If a local building official does not provide a notice of deficiencies within two business days, the request for a certificate of occupancy or certificate of completion is **"automatically"** granted and **considered issued** the next business day, instead of **"deemed"** granted and required to be issued by the local building official on the next business day.

The bill also provides that if a local building official does not provide a notice of deficiencies within ten business days or two business days, the local building official must provide the permit applicant with the written certificate of occupancy or certificate of completion within 10 days after it has been automatically granted and considered issued.

Demolition Building Permits – Current Situation

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or **demolish** any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[38]

According to news reports, since 2019, there has been an uptick in permits to demolish older single-family homes in South Florida in order to build new single-family homes.[39]

Some local governments in Florida have adopted land development regulations that determine certain older single-family buildings to be historic. Some local governments have placed restrictions on property owners from obtaining permits for the demolition of the older single- family buildings that the local governments have deemed historic. Below are examples of such regulations:

- Prohibiting certain building permits, such as demolition permits, for buildings that are being considered for historic designation.[40]
- Requiring a public hearing before a preservation board.[41]
- Requiring a special demolition permit.[42]
- Requiring new construction on the site of the demolished structure to be subject to certain architectural regulations, related to:[43]
    - The colors, pattern, and trim used in the building's façade.
    - Design of the roof.
    - The proportions and relationships between doors and windows.

Proponents to these land development regulations argue that people buy property in order to demolish homes that are designed by noteworthy architects, owned by famous people, or reflect Florida's history. Proponents argue these regulations are needed to protect Florida's history and preserve Florida's character and architectural style.[44]

Opponents of these regulations argue that these older homes are damaged, do not meet the Building Code's minimum flood elevation requirements, and can be demolished for a new home that meets the requirements of the current Building Code.[45]

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[38] S. 553.79(1), F.S.
[39] Pedro Portal, *More demolition applications for historic houses in Miami Beach*, Miami Herald (Jan. 9, 2022) https://www.miamiherald.com/news/business/real-estate-news/article257166757.html (last visited Jan. 12, 2022).
[40] *Id.*
[41] Article 8, Coral Gables Zoning Code; *Preserving Our Past*: A Guide to Historic Preservation in Coral Gables, https://evogov.s3.amazonaws.com/media/91/media/52093.pdf (last visited Jan. 17, 2022).
[42] Sec. 54-71., Town of Palm Beach Code of Ordinances.
[43] Sec. 54-122., Town of Palm Beach Code of Ordinances.
[44] Miami Herald Editorial Board, *Historic-home teardowns risk washing away Miami Beach's character in a flood of cash*, Miami Herald (Jan. 11, 2022) https://www.miamiherald.com/opinion/editorials/article257198932.html (last visited Jan. 17, 2022).
[45] Pedro Portal, *Miami Beach older homes demolished in part because of 'flood requirements'*, Miami Herald (Jan. 9, 2022) https://www.miamiherald.com/news/business/real-estate-news/article257166737.html (last visited Jan. 12, 2022); CBS Miami, *Miami Beach Waterfront Home Of Notorious Prohibition-Era Gangster Al Capone Slated For Demolition*, https://miami.cbslocal.com/video/5955888-miami-beach-waterfront-home-of-notorious-prohibition-era-gangster-al-capone-slated-for-demolition/ (last visited Jan. 17, 2022).

Demolition Building Permits – Effect of the Bill

The bill provides that a local law, ordinance, or **regulation may not prohibit** or otherwise restrict the ability of a private property owner to obtain **a building permit to demolish** his or her single-family residential structure provided that:

- Such structure is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program;[46]
- The lowest finished floor elevation of such structure is at or below base flood elevation as established by the Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher; and
- Such permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.

An application for a demolition permit for such single-family structure may only be reviewed administratively for compliance with the Building Code, Fire Prevention Code, local amendments to such codes, and any regulations applicable to a similarly situated parcel. Such applications may not be subject to any additional local land development regulations or public hearings.

A local government may not penalize a private property owner for a demolition that is in compliance with the demolition permit.

If a single-family residential structure is demolished pursuant to a demolition permit, a local government may not impose additional regulatory or building requirements on the new single-family residential structure constructed on the site of the demolished structure that would not otherwise be applicable to a similarly situated vacant parcel.

The bill provides that this does not apply to a:

- Structure designated on the National Register of Historic Places;[47]
- Privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or
- Privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.

Local Government Review of Building Permit Applications – Current Situation

Development Orders and Permits

Under the Community Planning Act, a development permit is any official action of a local government that has the effect of permitting the development of land including, but not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances.[48] A

[46] In order to support the National Flood Insurance Program, FEMA identifies, publishes, and periodically updates flood hazard data nationwide. This data is provided to communities in the form of a Flood Insurance Rate Map and Flood Insurance Study report, typically prepared in a countywide format. FEMA, *Adoption of Flood Insurance Rate Maps by Participating Communities, FEMA 495 January 2019*, https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited Jan. 17, 2022).

[47] The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. In order to be listed on the register the owner of the property must not object. National Park Service, *What is the National Register of Historic Places*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Jan. 17, 2022); National Park Service, *How to List a Property*, https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm (last visited Jan. 17, 2022).

[48] S. 163.3164(16), F.S.

development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.[49]

Within 30 days of receiving an application for a development permit or development order, a county or municipality must review the application and issue a letter to the applicant indicating that the application is complete or specifying the deficiencies.[50] If the county or municipality identifies deficiencies, the applicant has 30 days to submit the required additional information.[51]

When reviewing an application for a development permit or development order, not including building permit applications, a county or municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.[52]

If a county or municipality requests additional information from the applicant and the applicant provides the information within 30 days of receiving the request, the county or municipality must:[53]

- Review the additional information and issue a letter to the applicant indicating that the application is complete or specifying the remaining deficiencies within 30 days of receiving the information, if the request is the county or municipality's **first request**;
- Review the additional information and issue a letter to the applicant indicating that the application is complete or specifying the remaining deficiencies within 10 days of receiving the information, if the request is the county or municipality's **second request**; and
- Deem the application complete within 10 days of receiving the information or proceed to process the application for approval or denial unless the applicant waived the county or municipality's time limitations in writing, if the request is the county or municipality's **third request**.

Before a third request for information, the applicant must be offered a meeting to attempt to resolve outstanding issues.[54] If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the applicant may request the county or municipality proceed to process the application for approval or denial.[55] If denied, the county or municipality is required to give written notice to the applicant and must provide reference to the applicable legal authority for the denial of the permit.[56]

Once an application is deemed complete, a county or municipality must approve, approve with conditions, or deny the application within 120 days or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing.[57]

Building Permit Applications

Local governments are required to review certain building permit applications within a specified time period after receiving the application.[58] These permit types include, but are not limited to, construction or installation of an accessory structure, installation of an alarm system, a nonresidential building less than 25,000 square feet, electric, plumbing, mechanical, or roofing systems, master building permits, or the construction of single-family residential buildings.[59]

[49] *See* ss. 125.022, 163.3164(15), and 166.033, F.S.
[50] Ss. 125.022(1) and (2), and 166.033 (1) and (2), F.S.
[51] *Id.*
[52] Ss. 125.022(2)(a) and 166.033(2)(a), F.S.
[53] Ss. 125.022(2) and 166.033(2), F.S.
[54] *Id.*
[55] *Id.*
[56] Ss. 125.022(3) and 166.033(3), F.S.
[57] Ss. 125.022(1) and 166.033(1), F.S.
[58] S. 553.792, F.S.
[59] S. 553.792(2), F.S.

When a local government receives an application for a building permit, except for master building permits, and single-family residential buildings, the local government must: [60]

- Inform the applicant within 10 days of receiving the application what additional information, if any, is needed to complete the application;[61]
- Notify the applicant within 45 days of the application being deemed complete if additional information is necessary to determine the sufficiency of the application;[62] and
- Approve, approve with conditions, or deny the application within 120 days following receipt of the completed application.[63]

These time limitations do not apply when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.[64]

Local governments are required to reduce the permit fee for any building permit application by 10 percent of the original permit fee for each business day that a local government fails to meet the time period required for building permit application approval by statute or local ordinance.[65] This requirement does not apply if the local government and the applicant have agreed to an extension of time to process the permit.

Local Government Review of Building Permit Applications – Effect of the Bill

The bill provides that a local government may only make three requests for additional information from an applicant applying for the following types of building permits:

- Accessory structure.
- Alarm permit.
- Nonresidential buildings less than 25,000 square feet.
- Electric.
- Irrigation permit.
- Landscaping.
- Mechanical.
- Plumbing.
- Residential units other than a single-family unit.
- Multifamily residential not exceeding 50 units.
- Roofing.
- Signs.
- Site-plan approvals and subdivision plats not requiring public hearings or public notice.
- Lot grading and site alteration associated with the permit application

However, an applicant may agree in writing to waive the limitation that local governments may only make three requests for additional information for such permits.

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[60] S. 553.792(1), F.S.

[61] If the local government fails to provide written notice to the applicant within the 10-day window, the application is deemed to be properly completed.

[62] If additional information is needed the local government must specify what additional information is necessary. The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.

[63] This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.

[64] S. 553.792(2), F.S.

[65] S. 553.792(1)(b), (2)(b), F.S.

If a local government makes a request for additional information from an applicant for one the above building permits, and the applicant provides the information within 30 days of receiving the request, the local government must:

- Review the additional information and determine the application is complete, approve the application, approve the application with conditions, deny the application, or specify the remaining deficiencies within 15 days of receiving the information from the applicant, if the request is the local government's **first request**.
- Review the additional information and determine the application is complete, approve the application, approve the application with conditions, deny the application, or specify the remaining deficiencies within 10 days of receiving the information from the applicant, if the request is the local government's **second request**.
- Deem the application is complete, approve the application, approve the application with conditions, deny the application, or specify the remaining deficiencies within 10 days of receiving the information from the applicant, if the request is the local government's **third request**.

Prior to making a third request for information the local government must offer to meet with the permit applicant to attempt to resolve outstanding issues.

If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the local government, at the applicant's request, shall proceed to process the application for approval, approval with conditions, or denial.

If a local government fails to meet these deadlines it must reduce the building permit fee by 10 percent for each business day that it fails to meet the deadline. However, these time limitations do not apply when a law, agency rule, or local ordinance specifies different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.

Local Government Building Permit Fees – Current Situation

Each local government may provide a schedule of reasonable fees in order to cover the costs of inspection and enforcement of the Building Code.[66] A local government entity's fees, including any fines or investments, must be used solely for carrying out that local government entity's responsibilities in enforcing the Building Code. The basis for the fee structure must relate to the level of service provided by the local government. The fees charged must be consistently applied.[67]

"Enforcing the Building Code," includes:[68]

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

[66] Ss. 125.56(2), 166.222, and 553.80(7), F.S.
[67] Ss. 125.56(2) and (4), 166.222, and 553.80(7), F.S.
[68] S. 553.80(7), F.S.

Local governments are prohibited from using fees to cover the cost of enforcing the Building Code to fund:[69]

- Planning and zoning or other general government activities;
- Inspections of public buildings for a reduced fee or no fee;
- Public information requests, community functions, boards, and any program not directly related to enforcement of the Building Code; and
- Enforcement and implementation of any other local ordinance, excluding local amendments to the Building Code and local ordinances directly related to enforcing the Building Code.

Local governments are also prohibited from levying fees that would generate a total estimated annual revenue that exceeds the total estimated annual cost of its enforcement activities.[70] If any excess funds are accumulated, the local government has discretion to issue refunds or **carry forward those funds into future years**. Local governments are required to use "recognized management, accounting, and oversight practices" to ensure fees, fines, and investment earnings are maintained and used only for authorized purposes.[71]

Prior to 2019, there was no limit on the amount of such funds that local governments could carry forward into future years.[72]

In 2019, the Legislature limited the amount of funds generated by Building Code enforcement activities that local governments could carry forward.[73] Current law provides that **local governments may not carry forward an amount that exceeds an amount equal to one year of their operating budget for Building Code enforcement activities**. The amount of the operating budget is determined by averaging the local government's operating budget for Building Code enforcement activities from the previous four fiscal years. A local government may not count any funds held in reserve when determining the four-year rolling average of its operating budget.[74]

If a local government carries forward an amount of funds that exceeds the statutory limit, it must use the excess funds to rebate and reduce permit fees or for the construction of a building that houses the local government's building department or provides training programs for building officials, inspectors, or plans examiners.[75]

However, a local government may carry forward funds that exceed the allowed statutory limit if the local government established a Building Inspections Fund Advisory Board prior to 2019, and the board recommends to carry forward such excess funds. The board must consist of five members from the construction industry stakeholder community.[76]

Local Government Fees – Effect of the Bill

The bill provides that an owner or builder with a valid building permit issued by a local government for a fee, or an association of owners or builders located in Florida that has members with valid building permits issued by a local government for a fee, **may bring a civil action** against the local government to enforce the requirement that the local government must use excess funds to rebate and reduce permit fees or construct a building that houses the local government's building department or provides training programs for building officials, inspectors, or plans examiners.

B. SECTION DIRECTORY:

[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *See* s. 553.80(7), F.S. (2018).
[73] *See* Ch. 19-75, Laws of Fla.
[74] S. 553.80(7), F.S.
[75] *Id.*
[76] *Id.*

Section 1. Amends s. 468.603, F.S., relating to definitions.

Section 2. Amends s. 468.609, F.S., relating to standards for certification; additional categories of certification.

Section 3. Amends s. 553.79, F.S., relating to permits; applications; issuance; inspections.

Section 4. Amends s. 553.791, F.S., relating to alternative plans review and inspection.

Section 5. Amends s. 553.792, F.S., relating to building permit application to local government.

Section 6. Amends s. 553.80, F.S., relating to enforcement.

Section 7. Providing an effective date of 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:

   None.

2. Expenditures:

   Indeterminate. The bill provides a cause of action for certain individuals and associations to enforce the requirement that local governments must use excess funds generated by Building Code enforcement for lawful purposes. It is indeterminate if this will require local governments to expend funds to defend such actions.

   Local governments may also have to expend funds to ensure they meet the bill's requirements relating to requesting additional information for reviewing building permit applications. However, the amount local governments will have to spend, if any, is indeterminate. However, local governments are permitted by state law to collect fees to cover the cost of their expenses to enforce the Building Code, which includes reviewing building permit applications.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase the number of people who qualify for licensure as a building inspector or plans examiner, which may lead to a decrease in the cost of construction because of a decrease in the time needed for inspections and plans review.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to building regulation; amending s. 468.603, F.S.; defining the term "private provider"; amending s. 468.609, F.S.; revising eligibility requirements for a person applying to become certified as a building code inspector or plans examiner; authorizing a person to perform certain duties under certain conditions if the person is under the direct supervision of a person a certified building code official; revising the special conditions or requirements that the Florida Building Code Administrators and Inspectors Board may impose on provisional certificates; authorizing that partial completion of an internship program be transferable among jurisdictions, private providers, and firms of private provider; amending s. 553.79, F.S.; prohibiting a local government from prohibiting or restricting demolition permits for single-family residential structures located in certain areas; providing that local governments may only review demolition permits administratively for compliance with certain regulations; prohibiting a property owner from being penalized for a demolition in compliance with the demolition permit; prohibiting local governments from imposing additional requirements on

certain structures; providing applicability; amending s. 553.791, F.S.; revising the definition of the term "duly authorized representative"; limiting the administrative fee that a local jurisdiction can charge when an owner or contractor hires a private provider for inspection services; requiring the local jurisdiction to provide access to certain documents to a private provider, contractor, and owner with certain restrictions; requiring the local building official to issue a certificate of occupancy or certificate of completion within a certain number of days after receipt of certain information, including the payment of all outstanding fees; providing that a certificate of occupancy or certificate of completion is automatically granted and issued under certain circumstances; requiring the local building official to provide a written certificate of occupancy or certificate of completion within a specified time; amending s. 553.792; revising the requirements for when a local government may request certain information; amending s. 553.80, F.S.; authorizing a civil action under certain circumstances; providing an effective date.

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

Section 1. Subsection (9) is added to section 468.603, Florida Statutes, to read:

468.603 Definitions.—As used in this part:

(9) "Private provider" has the same meaning as in s. 553.791(1)(n).

Section 2. Paragraph (c) of subsection (2), paragraphs (c) and (d) of subsection (7), and paragraph (b) of subsection (10) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 4 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 3 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in

the field of construction or a related field and experience which totals 3 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate issued by the board or a firesafety inspector license issued under ~~pursuant to~~ chapter 633, with a minimum of 3 years' verifiable full-time experience in firesafety inspection or firesafety plan review, and has satisfactorily completed a building code inspector or plans examiner training program that provides at least 100 hours but not more than 200 hours of cross-training in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board must ~~shall~~ accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement must ~~shall~~ include proof of satisfactory completion of a

training program that provides at least 200 hours but not more than 300 hours of cross-training that is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board must ~~shall~~ accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

6. Currently holds a standard certificate issued by the board or a firesafety inspector license issued under ~~pursuant to~~ chapter 633 and:

a. Has at least 4 years' verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 4 years' verifiable full-time experience as a firesafety inspector licensed under ~~pursuant to~~ chapter 633.

b. Has satisfactorily completed a building code inspector or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours in the certification category sought, except for residential ~~one-family~~

~~and two-family dwelling~~ training programs, which must provide at least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category; or

7.a. Has completed a 4-year internship certification program as a building code inspector or plans examiner while also employed full-time by a municipality, county, or other governmental jurisdiction, under the direct supervision of a certified building official. A person may also complete the internship certification program while employed full time by a private provider or a private provider's firm that performs the services of a building code inspector or plans examiner, while under the direct supervision of a certified building official. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year.

b. Has passed an examination administered by the International Code Council in the certification category sought. Such examination must be passed before beginning the internship certification program.

c. Has passed the principles and practice examination before completing the internship certification program.

d. Has passed a board-approved 40-hour code training

course in the certification category sought before completing the internship certification program.

e. Has obtained a favorable recommendation from the supervising building official after completion of the internship certification program.

(7)

(c) The board shall provide for appropriate levels of provisional certificates and may issue these certificates with such special conditions or requirements ~~relating to the place of employment of the person holding the certificate, the supervision of such person on a consulting or advisory basis, or other matters~~ as the board deems ~~may deem~~ necessary to protect the public safety and health. The board may not place a special condition or requirement on a provisional certificate with respect to the requirement of employment by a municipality, county, or other local governmental agency.

(d) A person may perform the duties of a plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted if such person is under the direct supervision of a person licensed as a ~~certified~~ building code administrator under this part ~~who holds a standard certification~~ and who has found such person qualified for a provisional certificate. Direct supervision and the determination of qualifications may also be provided by a building code administrator who holds a limited or provisional

certificate in a county having a population of fewer than 75,000 and in a municipality located within such county.

(10)

(b) The board shall by rule establish:

1. Reciprocity of certification with any other state that requires an examination administered by the International Code Council.

2. That an applicant for certification as a building code inspector or plans examiner may apply for a provisional certificate valid for the duration of the internship period.

3. That partial completion of an internship program is transferable among jurisdictions, private providers, and firms of private providers ~~may be transferred between jurisdictions~~ on a form prescribed by the board.

4. That an applicant may apply for a standard certificate on a form prescribed by the board upon successful completion of an internship certification program.

5. That an applicant may apply for a standard certificate at least 30 days but ~~and~~ no more than 60 days before completing the internship certification program.

6. That a building code inspector or plans examiner who has standard certification may seek an additional certification in another category by completing an additional nonconcurrent 1-year internship program in the certification category sought and passing an examination administered by the International Code

Council and a board-approved 40-hour code training course.

Section 3. Subsection (25) is added to section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(25)(a) A local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish his or her single-family residential structure located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program if the lowest finished floor elevation of such structure is at or below base flood elevation as established by the Florida Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher, provided that such permit otherwise complies with all applicable Florida Building Code, Florida Fire Prevention Code, and Life Safety Code requirements, or local amendments thereto.

(b) An application for a demolition permit sought under this subsection may only be reviewed administratively for compliance with the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code, or local amendments thereto, and any regulations applicable to a similarly situated parcel. Applications may not be subject to any additional local

land development regulations or public hearings. A local government may not penalize a private property owner for a demolition that is in compliance with the demolition permit.

(c) If a single-family residential structure is demolished pursuant to a demolition permit, a local government may not impose additional regulatory or building requirements on the new single-family residential structure constructed on the site of the demolished structure which would not otherwise be applicable to a similarly situated vacant parcel.

(d) This subsection does not apply to any of the following:

1. A structure designated on the National Register of Historic Places.

2. A privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022.

3. A privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.

Section 4. Paragraph (f) of subsection (1), paragraph (b) of subsection (2) and subsection (13) of section 553.791, Florida Statutes, are amended, and paragraph (c) is added to subsection (2) of that section, to read:

553.791 Alternative plans review and inspection.—

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

(f) "Duly authorized representative" means an agent of the private provider identified in the permit application who reviews plans or performs inspections as provided by this section and who is licensed as an engineer under chapter 471 or as an architect under chapter 481 or who holds a standard or provisional certificate under part XII of chapter 468. A duly authorized representative who only holds a provisional certificate under part XII of chapter 468 must be under the direct supervision of a person licensed as a building code administrator under part XII of chapter 468.

(2)

(b) If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by the amount of cost savings realized by the local enforcement agency for not having to perform such services. Such reduction may be calculated on a flat fee or percentage basis, or any other reasonable means by which a local enforcement agency assesses the cost for its plans review or inspection services. The local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider to perform such services; however, the local jurisdiction may charge a reasonable administrative fee, which shall be based on the cost that is actually incurred, including the labor cost of the personnel providing the service, by the local jurisdiction or

attributable to the local jurisdiction for the clerical and supervisory assistance required, or both.

(c) If an owner or a contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must provide equal access to all permitting and inspection documents and reports to the private provider, owner, and contractor if such access is provided by software that protects exempt records from disclosure.

(13)(a) No more than 10 ~~2~~ business days, or if the permit is related to single-family or two-family dwellings then no more than 2 business days, after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, including the payment of all outstanding fees, the local building official shall issue the certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections.

(b) If the local building official does not provide notice of the deficiencies within the applicable time periods under paragraph (a) ~~prescribed 2-day period~~, the request for a certificate of occupancy or certificate of completion is automatically ~~shall be deemed~~ granted and deemed ~~the certificate of occupancy or certificate of completion shall be~~ issued as of

~~by the local building official on~~ the next business day. The local building official must provide the applicant with the written certificate of occupancy or certificate of completion within 10 days after it is automatically granted and issued. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (14) or to submit a corrected request for a certificate of occupancy or certificate of completion.

Section 5. Subsection (1) of section 553.792, Florida Statutes, is amended to read:

553.792 Building permit application to local government.—

(1)(a) Within 10 days of an applicant submitting an application to the local government, the local government shall advise the applicant what information, if any, is needed to deem the application properly completed in compliance with the filing requirements published by the local government. If the local government does not provide written notice that the applicant has not submitted the properly completed application, the application shall be automatically deemed properly completed and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required for the local government to determine the sufficiency of the application, and shall specify the additional information that is required. The applicant must submit the additional information to the local government or

request that the local government act without the additional information. While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure or other extraordinary circumstance. The local government must approve, approve with conditions, or deny the application within 120 days following receipt of a completed application.

(b)1. When reviewing an application for a building permit, a local government may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.

2. If a local government makes a request for additional information and the applicant submits the required additional information within 30 days after receiving the request, the local government must determine the application is properly completed, approve, approve with conditions, deny the application, or advise the applicant what information, if any, is needed to deem the application properly completed or determine the sufficiency of the application within 15 days after receiving the additional information.

3. If a local government makes a second request for additional information and the applicant submits the required additional information within 30 days after receiving the

request, the local government must determine the application is properly completed, approve, approve with conditions, deny the application, or advise the applicant what information, if any, is needed to deem the application properly completed or to determine the sufficiency of the application within 10 days after receiving the additional information.

4. Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. If a local government makes a third request for additional information and the applicant submits the required additional information within 30 days after receiving the request, the local government must deem the application properly completed, approve, approve with conditions, or deny the application within 10 days after receiving the additional information unless the applicant waived the local government's limitation in writing.

5. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the local government, at the applicant's request, shall proceed to process the application for approval, approval with conditions, or denial.

(c) ~~(b)~~ If a local government fails to meet a deadline provided in paragraphs ~~paragraph~~ (a) and (b), it must reduce the building permit fee by 10 percent for each business day that it fails to meet the deadline. Each 10-percent reduction shall be

based on the original amount of the building permit fee, unless the parties agree to an extension of time.

Section 6. Paragraph (a) of subsection (7) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(7)(a) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances must ~~shall~~ be carried forward to future years for allowable activities or must ~~shall~~ be refunded at the discretion of the local government. A local government may not carry forward an amount exceeding the average of its operating budget for enforcing the Florida Building Code for the previous 4 fiscal years. For purposes of this subsection, the term "operating budget" does not include reserve amounts. Any amount exceeding this limit must be used as authorized in subparagraph 2. However, a local government that ~~which~~ established, as of January 1, 2019, a Building Inspections Fund Advisory Board

consisting of five members from the construction stakeholder community and carries an unexpended balance in excess of the average of its operating budget for the previous 4 fiscal years may continue to carry such excess funds forward upon the recommendation of the advisory board. The basis for a fee structure for allowable activities must ~~shall~~ relate to the level of service provided by the local government and must ~~shall~~ include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged must ~~shall~~ be consistently applied.

1. As used in this subsection, the phrase "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement of the Florida Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

2. A local government must use any excess funds that it is prohibited from carrying forward to rebate and reduce fees, or to pay for the construction of a building or structure that houses a local government's building code enforcement agency or the training programs for building officials, inspectors, or

plans examiners associated with the enforcement of the Florida Building Code. Excess funds used to construct such a building or structure must be designated for such purpose by the local government and may not be carried forward for more than 4 consecutive years. An owner or builder who has a valid building permit issued by a local government for a fee, or an association of owners or builders located in Florida that has members with valid building permits issued by a local government for a fee, may bring a civil action against the local government that issued the permit for a fee to enforce this subparagraph.

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

a. Planning and zoning or other general government activities.

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

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

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

4. A local government must ~~shall~~ use recognized

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

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

a. Providing proof of licensure under ~~pursuant to~~ chapter 489;

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

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

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

Section 7. This act shall take effect July 1, 2022.

PCS for CS/HB 741

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 741 Net Metering
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The role of the Florida Public Service Commission (PSC) is to ensure that Florida's consumers receive some of their most essential services in a safe, affordable, and reliable manner. Current law requires the PSC to allow investor-owned electric utilities (IOUs) to recover honestly and prudently invested costs of providing service, including investments in infrastructure and operating expenses used to provide electric service.

Florida law states that a utility's full avoided cost is the incremental cost of electric energy or capacity, which, but for the purchase from a non-utility generator, the utility would have to generate itself or purchase from another source.

Net energy metering, commonly referred to as net metering, is a billing arrangement designed to compensate customers who own on-site renewable energy generation systems and export electricity generated on-site to an electric utility's system. Net metering is most commonly referenced in relation to customer-owned solar panels. Net metering requires customers who own on-site renewable energy generation systems to interconnect with the electric grid.

In 2008, the Legislature required all electric utilities to develop standardized interconnection agreements and a net metering program for customer-owned renewable generation systems. Under Florida's current net metering framework for IOUs, the credit the customer receives on their monthly bill equates the value of the excess energy to the utility's retail rate. As of year-end 2020, less than one percent (90,552) of Florida's 10.5 million electric utility customers had installed renewable generation equipment.

The bill establishes a revised net metering program that credits excess energy delivered to an IOU's system by customer-owned renewable generation in accordance with a graduated schedule as described in the bill. Under the bill, the value of credit a customer who owns or leases renewable generation receives will be determined by the date the customer owned or leased renewable generation was placed into service.

The bill provides that if the PSC finds that the penetration rate of customer-owned or leased renewable generation across all IOU service territories in the state exceeds certain thresholds, the PSC must initiate rulemaking to adopt a new rule. The bill also states that the program requirements referenced in the bill establish minimum requirements for IOU customer-owned or lease renewable generation programs, and that an IOU may petition the PSC at any time for approval to offer a program that is not less favorable to customers who own or lease renewable generation.

The bill permits an IOU to petition the PSC to allow the IOU to recover, through its fuel and purchased power cost recovery charge, lost revenue resulting from the incremental addition of residential customer-owned or leased solar photovoltaic generation within the IOU's service territory between July 1, 2022 and December 31, 2023.

The bill has no fiscal impact on state or local government revenues or expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[1] The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner. In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[2]

Investor-Owned Electric Utilities

The PSC regulates the rates and services of investor-owned electric utilities (IOUs).[3] There are four IOUs in Florida: Florida Power & Light Company (FPL),[4] Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation.[5] Together, these four IOUs serve over 8.1 million customers in Florida.[6] IOU rates and revenues are regulated by the PSC.[7] The IOUs must file periodic earnings reports, which allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.[8]

IOUs must provide sufficient and adequate service to customers.[9] To fulfill that obligation, utilities monitor customer usage patterns in order to plan for future energy needs. Utilities use billing data to predict the future energy needs of customers and make investments in their infrastructure based on these predictions.[10] Current law requires the PSC to allow IOUs to recover honestly and prudently invested costs of providing service, including investments in infrastructure and operating expenses used to provide electric service.[11]

Full Avoided Costs

An IOU's full avoided cost is the incremental cost of electric energy or capacity,[12] which, but for a purchase from a non-utility generator, the IOU would have to generate itself or purchase from another source.[13] Full avoided cost is based upon either the utility's cost to construct and operate its next

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[1] S. 350.001, F.S.
[2] Florida Public Service Commission (PSC), http://www.psc.state.fl.us/ (last visited Jan. 17, 2022).
[3] The PSC does not regulate the rates of municipal electric utilities or rural electric cooperatives.
[4] FPL acquired Gulf Power Company in 2019 and merged as of January 3, 2022.
[5] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities (last visited Jan. 19, 2022).
[6] PSC, *Facts & Figures of the Florida Utility Industry* (2021), p, 4, available at http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/April%202021.pdf (last visited Jan. 19, 2022).
[7] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, *supra* note 5.
[8] PSC, *Florida PSC 2020 Annual Report*, p. 6, available at http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf (last visited Jan. 19, 2022).
[9] S. 366.03, F.S.
[10] PSC, Agency Analysis of 2022 House Bill 741, p. 2 (Jan. 3, 2022).
[11] S. 366.06, F.S.
[12] Capacity is the maximum electric output, in megawatts, that an electricity generator can produce under ideal conditions. *See* U.S. Energy Information Administration, *What is the difference between electricity generation capacity and electricity generation?*, https://www.eia.gov/tools/faqs/faq.php?id=101&t=3 (last visited Jan. 22, 2022).
[13] S. 366.051, F.S.

planned generating unit or the cost of purchasing capacity and energy from generating units owned by other utilities in the wholesale market.[14]

An IOU's full avoided costs is not the same as the rate it pays for energy provided on an as-available basis. Full avoided costs can include avoided capacity and energy costs, while an as-available energy rate only includes avoided energy costs, which are largely comprised of fuel costs.[15] In 2021, as-available energy rates ranged for Florida IOUs from $0.025 to $0.037 per kilowatt hour (kWh).[16]

Peak Demand

An electric utility must supply the power necessary to meet the total demand of all its customers at any given time. Electric utility customers use different amounts of electricity at different times of a day, week, or year, as well as with changes in the weather. Due to the customers' different levels of demand based on these factors, the power the utility must provide changes as well. Peak demand refers to the maximum amount of demand placed on a utility's system over a specific period.[17] Given that customer demand differs based on weather and location, the peak demand may vary for each IOU for any given period of time. Each IOU reports to the PSC its peak demand for summer and winter.

Net Metering

Net energy metering, commonly referred to as net metering, is a billing arrangement designed to compensate customers who own on-site, renewable energy[18] generation systems and export electricity generated on-site to the utility grid.[19] Net metering essentially allows customers to sell excess electricity to an electric utility, and the utility credits the customer's energy bill on a per kWh basis.[20] The compensation structure for utility customers who engage in net metering varies by location depending on state and local policies.[21]

Common customer-owned renewable energy generation sources around the country include solar panels, natural gas micro-turbines, methane digesters, and small wind power generators;[22] however, net metering is most commonly referenced in relation to customer-owned solar panels.

Net metering requires customers who own on-site renewable energy generation systems to interconnect with the electric grid, which allows customers to reliably power their homes even when their systems are not generating enough power to meet their energy needs.[23] The U.S. Department of Energy defines the term "interconnection" as "the technical procedures and legal requirements surrounding energy customers' ability to connect their small-scale renewable energy projects to the

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[14] PSC, *States' Electric Restructuring Activities Update: Wholesale Sales*, http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#4 (last visited Jan. 22, 2022).
[15] PSC, *supra* note 10, at 2.
[16] Email from Kaley Slattery, Legislative Director, Florida Public Service Commission, Request for information (Feb. 1, 2022).
[17] PSC, *Reducing Electric Costs*, http://www.psc.state.fl.us/Publications/ReducingCosts (last visited Feb. 21, 2022).
[18] "Renewable energy" means electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration. S. 366.91(2)(d), F.S.
[19] National Renewable Energy Laboratory, *Net Metering*, https://www.nrel.gov/state-local-tribal/basics-net-metering.html (last visited Jan. 20, 2022).
[20] *Id.*
[21] *Id.*
[22] National Conference of State Legislatures, *State Net Metering Policies* (Nov. 20, 2017), https://www.ncsl.org/research/energy/net-metering-policy-overview-and-state-legislative-updates.aspx (last visited Jan. 20, 2022).
[23] U.S. Department of Energy, *Grid-Connected Renewable Energy Systems*, https://www.energy.gov/energysaver/grid-connected-renewable-energy-systems (last visited Jan. 22, 2022).

electricity grid."[24] Utility customers primarily benefit from interconnected renewable generation systems through personal use and reducing the amount of electricity they purchase from the utility.[25]

As of August 2021, thirty-seven states, including Florida, have state-developed mandatory net metering rules for certain utilities, eight states have statewide compensation rules other than net metering, two states have some utilities that allow net metering, and three states offer no form of net metering or compensation.[26]

Net Metering in Florida

In 2008, the Legislature required all electric utilities to develop standardized interconnection agreements[27] and a net metering[28] program for customer-owned renewable generation[29] systems.[30] Under this section, the PSC is tasked with establishing requirements relating to expedited interconnection and net metering of customer-owned renewable generation by IOUs and may adopt rules to accomplish this task.[31, 32]

In response to the net metering requirements passed by the Legislature in 2008, the PSC amended r. 25-6.065, F.A.C.,[33] to expand the applicability of the rule to all renewable energy types up to two megawatts (MW) in capacity.[34] The rule creates a billing mechanism by which net metering customers can offset their usage through self-generated energy, with any excess energy delivered to the IOU's system. The amount of any excess energy delivered to the IOU is applied to the customer's next monthly bill as a kWh credit. At the end of the calendar year, the IOU pays for any remaining unused energy credits at a rate based on the utility's avoided cost of generating electricity.[35]

Under Florida's current net metering framework, the credit the customer receives on their monthly bill equates the value of the excess energy to the utility's retail rate. The retail rates for each of the IOUs range from roughly $0.12 to $0.15 per kWh.[36] A utility's retail rate accounts for its cost to provide power to customers, which includes, but is not limited to, the cost of generation, transmission, distribution, fuel, and operating and maintenance expenses.[37]

IOUs must charge net metering customers the applicable rates and charges for the electricity provided

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[24] U.S. Department of Energy, *Renewable Energy: Distributed Generation Policies and Programs*, https://www.energy.gov/eere/slsc/renewable-energy-distributed-generation-policies-and-programs (last visited Jan. 22, 2022)

[25] PSC, *supra* note 10, at 1.

[26] DSIRE, *Net Metering*, NC Clean Energy Technology Center (August 2021), https://ncsolarcen-prod.s3.amazonaws.com/wp-content/uploads/2021/08/DSIRE_Net_Metering_August2021.pdf (last visited Jan. 20, 2022).

[27] An interconnection agreement is a contract between a customer and a utility to interconnect the customer's renewable generation system to the utility's electric grid. *See e.g.* Florida Public Utilities Company, *Interconnection of Customer-Owned Renewable Generation Systems Application*, p. 1, available at https://fpuc.com/wp-content/uploads/FPU17-123_Interconnection-Form.pdf (last visited Jan. 20, 2022).

[28] S. 366.091(2)(d), F.S., defines the term "net metering" as a metering and billing methodology where customer-owned renewable generation is allowed to offset the customer's electricity consumption.

[29] S. 366.091(2)(c), F.S., defines the term "customer-owned renewable generation" as an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy.

[30] S. 366.091(5) and (6), F.S.

[31] S. 366.091(5), F.S.

[32] Municipal electric utilities and rural cooperatives are required to develop their own standardized interconnection agreements and net metering programs, but each year they must file a report detailing customer participation in such programs with the PSC. S. 366.91(6), F.S.

[33] This rule was initially promulgated by the PSC in 2002 for the purpose of standardizing and expediting the interconnection of small solar photovoltaic (PV) systems for customers of IOUs. PSC, *supra* note 10, at 1.

[34] *Id.* at 2.

[35] *Id.*

[36] PSC, *Florida Investor-Owned Electric Utilities Total Cost for 1,000 Kilowatt Hours – Residential Service*, available at http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/BillingAdjustments/ba_total-2022.pdf (last visited Feb. 1, 2022).

[37] *Id.*

by the utility.[38] The applicable rates and charges are dependent on the rate class the customer falls under, and these rates and charges can include a fixed monthly customer charge or base facility charge, volumetric rates based on consumption, demand rates based on the maximum electric demand in a monthly billing cycle, or a combination of the above.[39] Additionally, FPL and Duke were recently authorized to charge customers a monthly minimum bill of $25 and $30 respectively.[40]

In 2020, Florida electric utilities reported 90,552 customer-owned renewable generation interconnections, reflecting more than 30,000 new interconnections since the 59,508 interconnections reported in 2019.[41] Of the 90,552 customer-owned renewable generation interconnections reported in 2020, Florida's four IOUs accounted for 71,567 of those interconnections.[42] Almost all customer-owned renewable generation installations in Florida are solar.[43] As of year-end 2020, less than one percent of Florida's 10,504,960 electric utility customers had installed renewable generation equipment.[44]

Concerns of cross-subsidization of customers who partake in net metering by non-net metering customers have been raised before the PSC.[45] There is debate as to the components of the utility's cost of service that are offset by energy generated by net metering customers and, accordingly, the appropriate credit to provide for such energy.[46]

Net Billing

Net billing is similar to net metering in that the owner of a customer-owned renewable energy generation system can consume electricity generated by their system in real time and export any excess energy generated to the utility grid. However, net billing differs from net metering because customers who own renewable energy generation systems may not bank energy within a billing cycle to offset future consumption. Instead, all net energy exports are metered and credited to the customer at a predetermined rate at the moment the energy is sent to the grid.[47] At the end of a billing cycle, the total amount credited is netted against the total amount billed for service from the utility to establish the balance due from the customer.

Effect of the Bill

The bill establishes a revised net metering program that credits excess energy delivered to an IOU's system by customer-owned renewable generation in accordance with a graduated schedule as described below.

Under the bill, IOU net metering programs must provide that all electricity used by a customer in excess of the generation supplied by the customer's owned or leased renewable generation is billed by the IOU under normal billing practices. The value of credit a customer who owns or leases renewable generation receives will be determined by the date the customer-owned or leased renewable

[38] R. 25-6.065, F.A.C.
[39] PSC, *supra* note 10, at 2.
[40] Florida Power & Light Company, *Building a more resilient and sustainable energy future*, EnergyNews (January 2022), available at https://www.fpl.com/#home (last visited Feb. 1, 2022); Sam Sachs, *Duke Energy Florida customers to have minimum $30 bills*, News Channel 8 (Jan. 28, 2022), https://www.wfla.com/news/florida/duke-energy-florida-customers-to-have-minimum-30-bills/ (last visited Feb. 1, 2022).
[41] PSC, *Review of the 2021 Ten-Year Site Plans of Florida's Electric Utilities* (Oct. 2021), p. 29, available at http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2021/Review.pdf (last visited Jan. 20, 2022).
[42] PSC, *Interconnection and Net Metering of Customer-Owned Renewable Generation* (2020), available at https://www.floridapsc.com/Files/PDF/Utilities/Electricgas/CustomerRenewable/2020/2020%20Net%20Metering%20Summary%20Spreadsheet/2020%20Net%20Metering%20Report.pdf (last visited Jan. 20, 2022).
[43] PSC, *supra* note 42.
[44] PSC, *supra* note 10, at 3.
[45] *Id.* at 4.
[46] *See Id.* ("For example, questions have been raised as to whether the excess energy offsets the utility's cost of power plants, given that power plants must be available to meet a renewable energy customer's electric needs when their systems are not operating or when their demand exceeds the capability of their renewable energy system.").
[47] Owen Zinaman et al., *Grid-Connected Distributed Generation: Compensation Mechanism Basics*, National Renewable Energy Laboratory, https://www.nrel.gov/docs/fy18osti/68469.pdf (last visited Feb. 21, 2022).

generation was placed into service. Excess electricity produced by customer-owned or leased renewable generation delivered to the IOU's electric grid must be credited to the customer's energy consumption for the next month's billing cycle as follows:

- For energy credits produced from customer-owned or leased renewable generation placed in service before January 1, 2023, the customer's energy usage shall be offset by the entire amount credited.
- For energy credits produced from customer-owned or leased renewable generation placed in service between January 1, 2023, and December 31, 2025, the customer's energy usage shall be offset by 75 percent of the amount credited.
- For energy credits produced from customer-owned or leased renewable generation placed in service between January 1, 2026, and December 31, 2026, the customer's energy usage shall be offset by 60 percent of the amount credited.
- For energy credits produced from customer-owned or leased renewable generation placed in service between January 1, 2027, and December 31, 2028, the customer's energy usage shall be offset by 50 percent of the amount credited.

Under the bill, these customers who own or lease renewable generation placed into service before January 1, 2029, pursuant to a standard interconnection agreement with an IOU, will be granted 20 years to continue to use the net metering design and rates that applied at the time the renewable generation was placed into service. The bill provides that the 20-year period applies to customers who purchase or lease real property upon which customer-owned or leased renewable generation is installed for all or part of that 20-year period.

The bill requires the PSC to adopt new rules to establish a new program design to become effective January 1, 2029, for customers who own or lease renewable generation that is placed into service after that date. The new program design must ensure that:

- IOU customers who own or lease renewable generation pay their full cost of electric service and are not cross-subsidized by the general body of ratepayers;
- All energy delivered by the IOU is purchased at its applicable retail rate;
- All energy delivered by the customer-owned or leased renewable generation to the IOU is credited to the customer at the IOU's full avoided costs; and
- The program may include any combination of fixed charges, including base facilities charges, electric grid access fees, or monthly minimum bills that the commission determines are necessary to ensure that the IOU recovers the fixed costs of serving customers who own or lease renewable generation

The bill provides that if the PSC finds that the penetration rate of customer-owned or leased renewable generation across all IOU service territories in the state exceeds 6.5 percent, or the actual penetration rate of customer-owned or leased renewable generation across all IOU service territories in the state increases, on an absolute basis, by more than 1 percentage point over the course of a calendar year, the PSC must initiate rulemaking to adopt a new rule that complies with the program requirements the bill lays out for customers who own or lease renewable generation that is place into service after January 1, 2029. The bill states that the penetration rate shall be calculated by dividing the aggregate total summer peak demand of all IOUs in the state by the aggregate gross power rating (alternating current) of all in-service customer-owned or leased renewable generation across all IOU service territories.

The bill states that the above referenced program requirements are minimum requirements for IOU net metering programs, and that an IOU may petition the PSC at any time for approval to offer a net metering program that is not less favorable to customers who own or lease renewable generation.

The bill permits an IOU to petition the PSC for recovery, through the IOU's fuel and purchased power cost recovery charge, lost revenue resulting from the incremental addition of residential customer-owned or leased solar photovoltaic generation within the IOU's service territory between July 1, 2022, and December 31, 2023. In order to do so, this additional customer-owned or leased solar photovoltaic generation must be above the level that such generation was estimated to be installed within the IOU's service territory during the same period. The bill requires an IOU seeking recovery of lost revenues to

demonstrate that the relief requested does not cause the IOU to exceed the rate of return on equity authorized by the PSC in the IOU's most recent rate proceeding.

B. SECTION DIRECTORY:

Section 1: Amends s. 366.91, F.S., relating to renewable energy.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires the PSC to adopt new rules implementing and establishing new program designs for customers that own or lease renewable generation systems. However, the PSC can absorb the costs within existing resources.[48]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate impact on private businesses that install customer-owned or leased renewable generation systems.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to adopt a revised rules new rules implementing and establishing new program designs for customers that own or lease renewable generation systems. Existing section 366.91(5), F.S., provides PSC sufficient rulemaking authority.

[48] PSC, *supra* note 10, at 3.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to net metering; amending s. 366.91, F.S.; requiring the Public Service Commission to propose new net metering rules, by specified dates, that comply with specified criteria; authorizing certain customers who own or lease renewable generation to remain under the existing net metering rules that currently apply to those customers for a specified time; providing a schedule of reductions to net metering rate designs that apply to customers who install purchased or leased renewable generation after specified dates; providing conditions under which rules must be initiated if penetration rates of customer-owned or leased renewable generation meet specified thresholds; authorizing public utilities to recover specified lost revenues upon meeting certain requirements; providing applicability; providing an effective date.

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

Section 1. Subsection (5) of section 366.91, Florida Statutes, is amended to read:

366.91 Renewable energy.—

(5)(a) ~~On or before January 1, 2009,~~ Each public utility

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

V

shall develop a standardized interconnection agreement and net metering program for customer-owned or leased renewable generation. The commission shall establish requirements relating to the expedited interconnection and net metering of customer-owned or leased renewable generation by public utilities and shall ~~may~~ adopt new rules to administer this section.

(b) Public utility net metering programs for customer-owned or leased renewable generation must provide that:

1. Electricity used by the customer in excess of the generation supplied by customer-owned renewable generation is billed by the public utility in accordance with normal billing practices;

2. Excess customer-owned renewable generation delivered to the public utility's electric grid must be credited to the customer's energy consumption for the next month's billing cycle as follows:

a. For energy credits produced from customer-owned or leased renewable generation that is placed in service before January 1, 2023, the customer's energy usage shall be offset by the entire amount credited;

b. For energy credits produced from customer-owned or leased renewable generation that is placed in service between January 1, 2023, and December 31, 2025, the customer's energy usage shall be offset by 75 percent of the amount credited;

c. For credits produced from customer-owned or leased

renewable generation that is placed in service between January 1, 2026, and December 31, 2026, the customer's energy usage shall be offset by 60 percent of the amount credited;

d. For credits produced from customer-owned or leased renewable generation that is placed in service between January 1, 2027, and December 31, 2028, the customer's energy usage shall be offset by 50 percent of the amount credited.

(c) A public utility customer who owns or leases renewable generation that is placed in service before January 1, 2029, pursuant to a standard interconnection agreement offered by a public utility, shall be granted 20 years to continue to use the net metering rate design and rates that applied at the time the renewable generation was placed into service. This paragraph applies to customers who purchase or lease real property upon which customer-owned or leased renewable generation is installed for all or part of that 20-year period.

(d) The commission must adopt new rules to become effective January 1, 2029, that establish a new program design for customer-owned or leased renewable generation that is placed in service on or after January 1, 2029. The new program design must comply with the following criteria:

1. Public utility customers owning or leasing renewable generation must pay the full cost of electric service and may not be subsidized by the public utility's general body of ratepayers.

2. All energy delivered by the public utility must be purchased at the public utility's applicable retail rate and all energy delivered by the customer-owned or leased renewable generation to the public utility must be credited to the customer at the public utility's full avoided costs.

3. The program design must include any combination of fixed charges, which may include base facilities charges, electric grid access fees, and monthly minimum bills, that the commission determines are necessary to ensure that the public utility recovers the fixed costs of serving customers that own or lease renewable generation and that the general body of public utility ratepayers do not subsidize customer-owned or leased generation.

(e) The commission must initiate rulemaking to adopt a new program design that complies with subparagraphs (d)1.-3. if, before the commission initiates rulemaking under paragraph (d), the commission, upon petition or on its own motion, finds that:

1. The penetration rate of customer-owned or leased renewable generation across all investor-owned electric utility service territories in the state has reached or exceeded 6.5 percent within the preceding calendar year. A new program design adopted pursuant to this subparagraph becomes effective 180 days after rule adoption and shall apply to customer-owned or leased renewable generation placed in service after that effective date; or

2. The actual penetration rate of customer-owned or leased renewable generation across all investor-owned electric utility service territories in the state increased, on an absolute basis, by more than 1 percentage point over the course of a calendar year for any calendar year after 2024. A new program design adopted pursuant to this subparagraph becomes effective 1 year after rule adoption and shall apply to customer-owned or leased renewable generation placed in service after the effective date.

For purposes of this paragraph, the penetration rate shall be calculated by dividing the aggregate total summer peak demand of all investor-owned electric utilities in the state by the aggregate gross power rating (alternating current) of all in-service customer-owned or leased renewable generation across all investor-owned electric utility service territories in the state.

(f) This subsection establishes the minimum requirements for each public utility net metering program. A public utility may petition the commission at any time for approval to offer a net metering program on terms that are not less favorable to customers who own or lease renewable generation than the terms required by this subsection or commission rules adopted pursuant to this subsection.

(g)1. A public utility may recover, through its fuel and

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

purchased power cost recovery charge, its lost revenues resulting from the incremental addition of residential customer-owned or leased solar photovoltaic generation within the public utility's service territory between July 1, 2022 and December 31, 2023, above the level that such generation, for purposes of setting base rates in the public utility's most recent base rate proceeding, was estimated to be installed within the public utility's service territory during the same period.

2. A public utility seeking recovery of lost revenues under this paragraph must file with the commission a petition that:

a. Identifies the total capacity of residential customer-owned or leased solar photovoltaic generation that, for purposes of setting base rates in the public utility's most recent base rate proceeding, was estimated to be installed in the public utility's service territory between July 1, 2022, and December 31, 2023;

b. Identifies the total capacity of residential customer-owned or leased solar photovoltaic generation that was installed in the public utility's service territory between July 1, 2022, and December 31, 2023;

c. Demonstrates the difference in revenues collected by the public utility as a direct result of the incremental difference in the estimated and actual capacity additions identified in sub-subparagraphs a. and b. and identifies the

specific amount that the utility seeks to recover;

d. Demonstrates that the relief requested does not cause the public utility to exceed the rate of return on equity authorized by the commission in the public utility's most recent base rate proceeding; and

e. Includes such other information as the commission may require by rule.

3. Upon receipt of a petition that meets the requirements of subparagraph 2., the commission must determine the amount, if any, that the utility is entitled to recover under this paragraph.

4. A petition filed under this section may not be filed before December 31, 2023, or after March 31, 2024.

5. The Legislature provides the limited, extraordinary relief set forth in this paragraph to address the potential impact on a public utility of a previously unanticipated surge, unaccounted for in the utility's last rate case, in the installation of customer-owned or leased renewable generation over the period specified in this section. The Legislature makes no findings as to whether the recovery of lost revenues by a public utility is appropriate for any other purpose.

Section 2. This act shall take effect July 1, 2022.

COMMERCE COMMITTEE

PCS for CS/HB 741 by Rep. McClure
Net Metering

AMENDMENT SUMMARY
February 23, 2022

Amendment 1 by Rep. McClure (strike-all):

- Modifies the starting date for new net metering programs under the glide path specified in the bill.
- Authorizes a public utility to seek approval from the Public Service Commission (commission), on or after the starting date for new net metering programs under the glide path, to impose certain fixed charges.
- Requires the commission, upon petition or its own motion, to adopt a new program design, based on specified criteria, for customer-owned or leased renewable generation that is placed in service in an individual public utility's service territory after the penetration rate of customer-owned or leased generation in the utility's service territory reaches 6.5 percent.
- Provides that the commission, by rule, may require only information that is reasonably related to a public utility's petition for recovery of lost revenues.

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 McClure offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (5) of section 366.91, Florida Statutes, is amended to read:

366.91 Renewable energy.—

(5)(a) ~~On or before January 1, 2009,~~ Each public utility shall develop a standardized interconnection agreement and net metering program for customer-owned or leased renewable generation. The commission shall establish requirements relating to the expedited interconnection and net metering of customer-owned or leased renewable generation by public utilities and shall ~~may~~ adopt new rules to administer this section.

(b) Effective January 1, 2024, public utility net metering

programs for customer-owned or leased renewable generation must provide that:

1. Electricity used by the customer in excess of the generation supplied by customer-owned or leased renewable generation is billed by the public utility in accordance with normal billing practices;

2. Excess customer-owned or leased renewable generation delivered to the public utility's electric grid during the customer's regular billing cycle must be credited to the customer's energy consumption for the next month's billing cycle as follows:

a. For energy credits produced from customer-owned or leased renewable generation that is placed in service between January 1, 2024, and December 31, 2025, the customer's energy usage shall be offset by 75 percent of the amount credited;

b. For energy credits produced from customer-owned or leased renewable generation that is placed in service between January 1, 2026, and December 31, 2026, the customer's energy usage shall be offset by 60 percent of the amount credited;

c. For energy credits produced from customer-owned or leased renewable generation that is placed in service between January 1, 2027, and December 31, 2028, the customer's energy usage shall be offset by 50 percent of the amount credited.

(c) A public utility customer who owns or leases renewable generation that is placed in service before January 1, 2029,

pursuant to a standard interconnection agreement offered by a public utility, shall be granted 20 years to continue to use the net metering rate design and rates that applied at the time the renewable generation was placed into service. This paragraph applies to customers who purchase or lease real property upon which customer-owned or leased renewable generation is installed for all or part of that 20-year period.

(d) On or after the effective date of the net metering programs described in paragraph (b), a public utility may petition the commission for approval to impose any combination of fixed charges, which may include base facilities charges, electric grid access fees, and monthly minimum bills, necessary to ensure that the public utility recovers the fixed costs of serving customers that own or lease renewable generation and that the general body of public utility ratepayers do not subsidize customer-owned or leased generation. Within 180 days after a petition is filed by a public utility pursuant to this paragraph, the commission must issue a final order on the petition.

(e) The commission must adopt new rules to become effective January 1, 2029, that establish a new program design for customer-owned or leased renewable generation that is placed in service on or after January 1, 2029. The new program design must comply with the following criteria:

1. Public utility customers owning or leasing renewable

generation must pay the full cost of electric service and may not be subsidized by the public utility's general body of ratepayers.

2. All energy delivered by the public utility must be purchased at the public utility's applicable retail rate and all energy delivered by the customer-owned or leased renewable generation to the public utility must be credited to the customer at the public utility's full avoided costs.

(f)1. If at any time the penetration rate of customer-owned or leased renewable generation in a public utility's service territory is reasonably expected to exceed 6.5 percent within the succeeding 12 months, the commission, upon petition or on its own motion, must initiate rulemaking to adopt a new program design that complies with subparagraphs (e)1.-2. A new program design adopted pursuant to this subparagraph becomes effective 60 days after rule adoption or 60 days after the date the commission determines that the actual penetration rate has reached 6.5 percent, whichever is later, and shall apply to customer-owned or leased renewable generation placed in service after that effective date.

2. For purposes of this paragraph, the penetration rate shall be calculated by dividing the total summer peak demand of the public utility by the aggregate gross power rating (alternating current) of all in-service customer-owned or leased renewable generation in the public utility's service territory.

(f) This subsection establishes the minimum requirements for each public utility net metering program. A public utility may petition the commission at any time for approval to offer a net metering program on terms that are not less favorable to customers who own or lease renewable generation than the terms specified in this subsection or in commission rules adopted pursuant to this subsection.

(g)1. A public utility may recover, through its fuel and purchased power cost recovery charge, its lost revenues resulting from the incremental addition of residential customer-owned or leased solar photovoltaic generation within the public utility's service territory between July 1, 2022 and December 31, 2023, above the level that such generation, for purposes of setting base rates in the public utility's most recent base rate proceeding, was estimated to be installed within the public utility's service territory during the same period.

2. A public utility seeking recovery of lost revenues under this paragraph must file with the commission a petition that:

a. Identifies the total capacity of residential customer-owned or leased solar photovoltaic generation that, for purposes of setting base rates in the public utility's most recent base rate proceeding, was estimated to be installed in the public utility's service territory between July 1, 2022, and December 31, 2023;

b. Identifies the total capacity of residential customer-owned or leased solar photovoltaic generation that was installed in the public utility's service territory between July 1, 2022, and December 31, 2023;

c. Demonstrates the difference in revenues collected by the public utility as a direct result of the incremental difference in the estimated and actual capacity additions identified in sub-subparagraphs a. and b. and identifies the specific amount that the utility seeks to recover;

d. Demonstrates that the relief requested does not cause the public utility to exceed the rate of return on equity authorized by the commission in the public utility's most recent base rate proceeding; and

e. Includes such other reasonably related information as the commission may require by rule.

3. Upon receipt of a petition that meets the requirements of subparagraph 2., the commission must determine the amount, if any, that the utility is entitled to recover under this paragraph.

4. A petition filed under this section may not be filed before December 31, 2023, or after March 31, 2024.

5. The Legislature provides the limited, extraordinary relief set forth in this paragraph to address the potential impact on a public utility of a previously unanticipated surge, unaccounted for in the utility's last rate case, in the

installation of customer-owned or leased renewable generation over the period specified in this section. The Legislature makes no findings as to whether the recovery of lost revenues by a public utility is appropriate for any other purpose.

Section 2. This act shall take effect July 1, 2022.

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

Remove everything before the enacting clause and insert:
An act relating to net metering; amending s. 366.91, F.S.; providing the terms for public utility net metering programs after a specified date; providing a schedule of reductions to net metering rate designs that apply to customers who install purchased or leased renewable generation after specified dates; authorizing certain customers who own or lease renewable generation to remain under the existing net metering rules that currently apply to those customers for a specified time; authorizing public utilities to petition for approval of certain fixed charges designed to meet specified purposes; providing conditions under which rules must be initiated if the penetration rate of customer-owned or leased renewable generation meet a specified threshold; authorizing public utilities to recover specified lost revenues upon meeting

certain requirements; providing applicability; providing an effective date.