

Regulatory Reform & Economic Development Subcommittee

Tuesday, March 28, 2023
2:00 pm – 6:00 pm
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Tyler Sirois
Chair

The Florida House of Representatives

Commerce Committee

Regulatory Reform & Economic Development Subcommittee

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Meeting Agenda

Tuesday, March 28, 2023
2:00 pm – 6:00 pm
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 437 Homeowners' Right to Display Flags by Civil Justice Subcommittee, Buchanan
- HB 523 Individual Wine Containers by LaMarca
- HB 545 Fines Levied by Homeowners' Associations by Arrington
- HB 639 Issuance of Special Beverage Licenses by Esposito
- HB 671 Residential Building Permits by Esposito
- HB 715 Compensation of Lottery Ticket Retailers by Mooney
- HB 737 Secondhand Goods by Barnaby
- HB 833 Vacation Rentals by Duggan

- HB 959 Dosage Form Animal Health Products by Tuck
- HB 1241 Safety Standards for Amusement Rides by Bracy Davis
- HB 1243 Pub. Recs./Safety Standards for Amusement Rides by Bracy Davis
- HB 1341 Provision of Homeowners' Association Rules and Covenants by Arrington
- HB 1521 Facility Requirements Based on Sex by Plakon
- HB 1547 Technology Transparency by McFarland
- HB 1549 Pub. Rec./Investigations by the Department of Legal Affairs by McFarland

V. Consideration of the following proposed committee bill(s):

- PCB RRS 23-02 -- Tourism Development

VI. Consideration of the following proposed committee substitute(s):

- PCS for HB 919 – Homeowners’ Associations
- PCS for HB 1209 -- Rural Economic Development

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 437 Homeowners' Right to Display Flags
SPONSOR(S): Civil Justice Subcommittee, Buchanan
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1454

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 1 N, As CS	Jones	Jones
2) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
3) Judiciary Committee			

SUMMARY ANALYSIS

A homeowners' association (HOA) is a residential property owners association in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. An HOA is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Under current Florida law, regardless of any HOA covenants, restrictions, bylaws, rules, or requirements to the contrary, a homeowner may display, in a respectful manner, one United States flag or official State of Florida flag; and one official POW-MIA flag or a flag representing a specified branch of the United States Armed Forces. A homeowner may also set up a freestanding flagpole no more than 20 feet high on his or her property, and display from that flagpole, in a respectful manner, one United States flag or official State of Florida flag; and one POW-MIA flag or a flag representing a specified branch of the United States Armed Forces.

Further, under current law, an HOA may not include in its documents any clause preventing the display of a United States flag. A homeowner who is prevented from exercising the right to display a flag or set up a flagpole may bring a civil action to enjoin the enforcement of the offending HOA provision at issue.

HB 437 amends s. 720.304, F.S., to provide that notwithstanding any covenant, restriction, bylaw, rule, or requirement of an HOA, a homeowner may display up to two of the following flags in a respectful manner:

- The United States flag.
- A flag that utilizes the same emblems and proportions utilized by the United States flag, regardless of the colors used, without any additional emblems or text.
- The official flag of the State of Florida.
- A flag that represents the U.S. Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.
- A POW-MIA flag.

The bill also provides that a homeowner may fly one United States flag and one flag from the list above from a freestanding flagpole.

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

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Homeowners' Associations

A homeowners' association (HOA) is a residential property owners association in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[1] Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in ch. 720, F.S., and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.

Florida law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes, but no state agency has direct HOA oversight.

Statutorily Permitted Flags

Under current Florida law, regardless of any HOA covenants, restrictions, bylaws, rules, or requirements to the contrary, a homeowner may:

- Display, in a respectful manner:
  - One portable, removable United States flag or official State of Florida flag; and
  - One portable, removable official POW-MIA flag or a flag representing the United States:
    - Army.
    - Navy.
    - Air Force.
    - Marine Corps.
    - Space Force.
    - Coast Guard.
- Set up a freestanding flagpole no more than 20 feet high on his or her real property, subject to enumerated restrictions, and display from that flagpole, in a respectful manner:
  - One portable, removable United States flag or official State of Florida flag; and
  - One portable, removable official POW-MIA flag or a flag representing the United States:
    - Army.
    - Navy.
    - Air Force.
    - Marine Corps.
    - Space Force.
    - Coast Guard.[2]

A homeowner who is prevented from exercising these rights to display a flag or set up a flagpole may bring a civil action and obtain a court order enjoining the enforcement of the offending HOA provision at issue.[3]

[1] S. 720.301(9), F.S.
[2] S. 720.304(2), F.S.
[3] S. 720.304(3), F.S.

Further, s. 720.3075, F.S., provides that an HOA may not include in its documents any clause preventing the display of a United States flag.[4]

Strategic Lawsuits Against Public Participation

A "strategic lawsuit against public participation" ("SLAPP") is a lawsuit brought against a person who has spoken out on issues of public importance for the sole purpose of intimidating such person or driving him or her into silence from the sheer burden and expense of having to defend the lawsuit.[5] The Florida Legislature has recognized that SLAPP lawsuits "are inconsistent with the right of persons to exercise . . . constitutional rights of free speech in connection with public issues."[6]

To that end, Florida law prohibits both persons and governmental entities from filing a meritless lawsuit against another person or entity primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue, or right to peacefully assemble, to instruct government representatives, or to petition for redress of grievances before the various governmental entities of the state ("anti-SLAPP law").[7] A person or entity sued in violation of the anti-SLAPP law may ask the court for:

- An order dismissing the action or granting final judgment in favor of such person or entity; or
- Summary judgment seeking a determination that the lawsuit violates the anti-SLAPP law.[8]

The court must then set a hearing on the motion, to be held at the earliest possible time after the plaintiff files the required response.[9] If the plaintiff is a governmental entity, the court may award the defendant actual damages[10] arising from the governmental entity's violation of the anti-SLAPP law, and the court must award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of such law.[11]

Effect of Proposed Changes

HB 437 amends s. 720.304, F.S., to provide that notwithstanding any covenant, restriction, bylaw, rule, or requirement of an HOA, a homeowner may display up to two of the following flags in a respectful manner:

- The United States flag.
- A flag that utilizes the same emblems and proportions utilized by the United States flag, regardless of the colors used on the flag. Such flag must use the fifty stars and thirteen stripes and not contain any additional emblems or text.
- The official flag of the State of Florida.
- A flag that represents the U.S. Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.
- A POW-MIA flag.

The bill also:

- Provides that a homeowner may fly one United States flag and one flag from the list above from a freestanding flagpole.
- Amends s. 720.3075, F.S., to provide that an HOA document may not prevent a homeowner from displaying up to two flags in a respectful manner as listed above.

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[4] S. 720.3075(3), F.S.
[5] Samuel J. Morley, *Florida's Expanded Anti-SLAPP Law: More Protection for Targeted Speakers*, 90 Fla. Bar J.16 (Nov. 2016), https://www.floridabar.org/the-florida-bar-journal/floridas-expanded-anti-slapp-law-more-protection-for-targeted-speakers/ (last visited March 17, 2023).
[6] Ss. 720.304(4) and 768.295(1), F.S.
[7] Ss. 720.304(4) and 768.295(3), F.S.
[8] Ss. 720.304(4) and 768.295(4), F.S.
[9] *Id.*
[10] The court may treble the damages awarded to a prevailing defendant who is a parcel owner in a homeowners' association and was sued for exercising his or her right to speak on matters relating to the homeowners' association. Generally, the damages award is limited by the sovereign immunity limitations in s. 768.28, F.S., which cap tort recovery against the state and its political subdivisions at $200,000 per person and $300,000 per incident. S. 720.304(4), F.S.
[11] Ss. 720.304(4) and 768.295(4), F.S.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 720.304, F.S., relating to right of owners to peaceably assemble; display of flag; SLAPP suits prohibited.
Section 2: Amends s. 720.3075, F.S., relating to prohibited clauses in association documents.
Section 3: Provides an effective date of July 1, 2023.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 20, 2023, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed language allowing the use of a first responder flag and inserted language allowing the use of a flag that utilizes the same emblems and proportions utilized by the American flag.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to homeowners' right to display flags; amending s. 720.304, F.S.; authorizing homeowners to display no more than a certain number of specified flags regardless of certain prohibitions in the governing documents of the homeowners' association; defining the term "first responder flag"; amending s. 720.3075, F.S.; prohibiting certain homeowners' association documents from precluding property owners from displaying a certain number of specified flags; requiring that such flags be displayed in a specified manner; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (2) of section 720.304, Florida Statutes, are amended to read:

720.304 Right of owners to peaceably assemble; display of flags ~~flag~~; SLAPP suits prohibited.—

(2)(a) If any covenant, restriction, bylaw, rule, or requirement of an association prohibits a homeowner from displaying flags permitted under this paragraph, the ~~Any~~ homeowner may still display ~~one portable, removable United States flag or official flag of the State of Florida~~ in a respectful manner up to two of the following~~, and one~~ portable,

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

removable flags ~~official flag~~, ~~in a respectful manner,~~ not larger than 4 1/2 feet by 6 feet:~~, which represents~~

1. The United States flag.

2. The official flag of the State of Florida.

3. A flag that represents the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.~~, or~~

4. A POW-MIA flag.

5. A first responder flag. A first responder flag may incorporate the design of any other flag permitted under this paragraph to form a combined flag. For purposes of this subsection, the term "first responder flag" means a flag that recognizes and honors the services of any of the following:

a. Law enforcement officers as defined in s. 943.10(1).

b. Firefighters as defined in s. 112.191(1).

c. Paramedics or emergency medical technicians as those terms are defined in s. 112.1911(1).

d. Correctional officers as defined in s. 943.10(2).

e. 911 public safety telecommunicators as defined in s. 401.465(1).

f. Advanced practice registered nurses, licensed practical nurses, or registered nurses as those terms are defined in s. 464.003.

g. Persons participating in a statewide urban search and rescue program developed by the Division of Emergency Management under s. 252.35.

h. Federal law enforcement officers as defined in 18 U.S.C. s. 115(c)(1)~~, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association~~.

(b) Regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, a ~~Any~~ homeowner may erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner's real property as long as~~, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, if~~ the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The homeowner may further display in a respectful manner from that flagpole~~, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association,~~ one official United States flag, not larger than 4 1/2 feet by 6 feet, and may additionally display one other ~~official~~ flag permitted under paragraph (a) ~~of the State of Florida or the United States Army, Navy, Air Force, Marines, Space Force, or Coast Guard, or a POW-MIA flag~~. Such additional flag must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the county or municipality in which the flagpole is erected and all setback and locational criteria contained in the governing documents.

Section 2. Subsection (3) of section 720.3075, Florida

Statutes, is amended to read:

720.3075 Prohibited clauses in association documents.—

(3) Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude the display of up to two ~~one~~ portable, removable flags as described in s. 720.304(2)(a) ~~United States flag~~ by property owners. However, all flags ~~the flag~~ must be displayed in a respectful manner~~,~~ consistent with the requirements for the United States flag under ~~Title~~ 36 U.S.C. chapter 10.

Section 3. This act shall take effect July 1, 2023.

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HB 523

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 523 Individual Wine Containers
SPONSOR(S): LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Current law addressing limitations on the size of individual wine containers provides the following:

- The sale of wine in an individual container that holds more than one gallon of wine is prohibited.
- Wine may be sold in a reusable container of 5.16 gallons.
- Distributors and manufacturers are allowed to sell wine to other distributors and manufacturers in containers of any size.
- Except for restaurants in certain situations, wine sold or offered for sale by a licensed vendor to be consumed off the premises must be in the unopened original container.
- Violations are a second-degree misdemeanor.

The bill repeals the law relating to limitations on the size of individual wine containers.

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

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

"Alcoholic beverages" are defined as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[4]

The license and registration classifications used in the Beverage Law include the following:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.[5]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."[6]

Wine Container Limitations

"Wine" is defined as all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.[7]

Current law governing limitations of the size of wine containers:[8]

- Prohibits the sale of wine in an individual container that holds more than one gallon. However, allows wine to be sold in a reusable container of 5.16 gallons.
- Authorizes qualified distributors and manufacturers to sell wine to other qualified distributors and manufacturers in any size container.[9]

[1] Section 561.01(6), F.S., provides that the "The Beverage Law" includes chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] S. 561.02, F.S.
[4] S. 563.01, F.S.
[5] S. 561.01(5), F.S.
[6] S. 561.14, F.S.
[7] S. 564.01(1), F.S.
[8] S. 564.05, F.S.
[9] *Id.*

- Except for restaurants in certain situations,[10] requires wine sold or offered for sale by a licensed vendor to be consumed off-premises to be in the unopened original container.
- Provides that violations are a second-degree misdemeanor, punishable by a maximum $500 fine[11] and 60 days in prison.[12]

Effect of the Bill

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1 Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.
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 will allow the sale of wine in an individual container of any size. This may have a positive fiscal impact on businesses that sell wine.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[10] S. 564.09, F.S. The exception allows restaurant patrons to leave the premises with "one unsealed bottle of wine for consumption off the premises," provided certain conditions are met. The wine bottle must be partially consumed with a full course meal, securely resealed by the licensee or one of its employees, secured in a bag or container, wrapped in a way that shows it was previously opened, attached to a dated receipt indicating the full course meal, and transported in a locked vehicle glove compartment, locked trunk, or behind the last upright seat of a motor vehicle that is not equipped with a trunk.
[11] S. 775.083(1)(e), F.S.
[12] S. 775.082(4)(b), F.S.

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

A bill to be entitled

An act relating to individual wine containers; repealing s. 564.05, F.S., relating to the limitation of size of individual wine containers; providing an effective date.

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

Section 1. Section 564.05, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2023.

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HB 545

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 545 Fines Levied by Homeowners' Associations
SPONSOR(S): Arrington and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.

HOAs may levy fines for failing to comply with any provision in the HOA's governing documents. No fine may exceed $100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed **$1,000** in the aggregate. Fines may not become a lien on the property unless the fines exceed **$1,000.**

The bill lowers:

- The maximum aggregate fine amount to **$500**.
- The amount when a fine may become a lien on the property to **$500**.

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

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.[1]

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.[2]

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.[3]

HOA Fines

Owners, tenants, and guests must comply with an HOA's declaration, bylaws, and rules. HOAs may levy fines against or suspend the right of a parcel owner, occupant, or a guest of an owner or occupant, to use the common areas[4] or any other association property for failing to comply with any provision in the HOA's governing documents. A suspension for failing to comply with an HOA's declaration, bylaws, or rules may not be for an unreasonable amount of time.[5]

No fine may exceed $100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed **$1,000** in the aggregate. However, a fine may exceed $1,000 if the HOA's governing documents authorize it. Fines may not become a lien on the property unless the fines exceed **$1,000**.[6]

Before an HOA levies a fine or a suspension, it must give the person receiving the fine or suspension at least 14 days' notice of an opportunity for a hearing. A fine and suspension committee of at least three members selected by the board must hold a hearing to reject or approve the fine or suspension. Board directors, officers, and employees of the HOA and family of such people may not serve on the committee. The committee must approve the fine or suspension by majority vote otherwise the proposed fine or suspension may not be imposed.[7]

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[1] S. 720.301(9), F.S.
[2] *See generally* ch. 720, F.S.
[3] S. 720.311, F.S.
[4] This does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. S. 720.305(2)(a), F.S.
[5] S. 720.305, F.S.
[6] S. 720.305(2), F.S.
[7] *Id.*

A fine is due five days after written notice of the approved fine is provided to the parcel owner, occupant, or guest. Written notice of the fine or suspension must be provided to the person by mail or hand delivery.[8]

Effect of the Bill

The bill lowers:

- The maximum aggregate fine amount to **$500**.
- The amount when a fine may become a lien on the property to **$500**.

B. SECTION DIRECTORY:

Section 1: Amends s. 720.305, F.S.; relating to fines levied by homeowners' associations.
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 lower the amount that homeowners pay in fines to HOAs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

[8] *Id.*

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to fines levied by homeowners' associations; amending s. 720.305, F.S.; prohibiting fines imposed by homeowners' associations from exceeding $500 in the aggregate; conforming provision to change made by the act; providing an effective date.

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

Section 1. Subsection (2) of section 720.305, Florida Statutes, is amended to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

(2) An association may levy reasonable fines. A fine may not exceed $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $500 ~~$1,000~~ in the aggregate unless otherwise provided in the governing documents. A fine of less than $500 ~~$1,000~~ may not

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

become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed.

The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the proposed fine or suspension levied by the board is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner. The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner.

Section 2. This act shall take effect July 1, 2023.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 545 by Rep. Arrington
Fines Levied by Homeowners' Associations

AMENDMENT SUMMARY
March 28, 2023

Amendment 1 by Rep. Arrington (line 21):

- Returns the current minimum fine amount which may become a lien to $1,000.
- Allows an HOA member to designate an address other than the parcel address to be used for HOA notices of fine or suspension.
- Requires an HOA to dismiss a fine or suspension if the violation is cured within 14 days of receipt of a notice of fine or suspension.

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: Regulatory Reform & Economic Development Subcommittee
Representative Arrington offered the following:

Amendment (with title amendment)

Remove lines 21-25 and insert:

the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $500 ~~$1,000~~ in the aggregate unless otherwise provided in the governing documents. The notice must be sent to a member's designated mailing address, which is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for such notice. The notice must include a description of the alleged violation and the specific actions required to cure such

violation. If the member cures the alleged violation within 14 days of receiving such notice, a fine or suspension may not be imposed for such violation. A fine of less than $1,000 may not

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

Remove line 5 and insert:
exceeding $500 in the aggregate; providing notification requirements; allowing corrective action; conforming provision

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 639 Issuance of Special Beverage Licenses
SPONSOR(S): Esposito
TIED BILLS: **IDEN./SIM. BILLS:** SB 1262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

In Florida, alcoholic beverages are regulated by the Beverage Law, which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.

Florida law limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses.

A “special license” is an exception to the quota licensing scheme, which allows certain entities to serve liquor without a quota license. One such special license is a “special food service license” (SFS license), which applies to a food service establishment that:

- has 2,500 square feet,
- is equipped to serve 150 persons at one time, and
- derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages.

The bill removes the seating capacity and establishment size requirements to qualify for an SFS license. The only requirement a food establishment will need to meet in order to qualify for an SFS license is deriving 51 percent or more gross sales from food and nonalcoholic beverage sales.

The bill does not have a fiscal impact on local governments and has an indeterminate fiscal impact on state government.

The bill becomes effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Regulation of Alcoholic Beverages

In Florida, alcoholic beverages are regulated by the Beverage Law,[1] which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

Special Food Service License

Florida law limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation, if certain conditions are met.[4]

A "special license" is an exception to the quota licensing scheme, which allows certain entities to serve liquor without a quota license. One such special license is a "special food service license" (SFS license), which applies to a food service establishment that:[5]

- has 2,500 square feet,[6]
- is equipped to serve 150 persons at one time, and
- derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages.

The required revenue percentage is computed as the sum of gross food and nonalcoholic beverage revenue divided by the sum of gross food, alcoholic beverage, and non-alcoholic beverage revenue.[7] Records of each purchase and each sale of food, alcoholic beverages, and nonalcoholic beverages must be maintained for a period of 3 years.[8]

SFS licensees must be audited by the division for compliance with the food and nonalcoholic beverage sales percentage requirements during the first 120-day operating period, and every one to four years thereafter, depending on beverage revenue. Failure by an SFS licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverage sales results in revocation of the SFS license. An SFS licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.[9]

SFS licensees may sell or deliver alcoholic beverages in a sealed container for off-premises consumption, including liquor-based beverages prepared by the licensee and packaged in a container sealed by the licensee. Such licensees may not sell a bottle of distilled spirits sealed by a manufacturer. The sale or delivery of such beverages must be accompanied by the sale of food.[10]

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[1] S. 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] S. 561.02, F.S.
[4] S. 561.20(1), F.S.
[5] S. 561.20(2)(a)4., F.S.
[6] The service area includes only the food service establishment's buildings and other contiguous outside areas which are under the management and control of the licensed food service establishment. Rule R. 61A-3.0141(1), F.A.C.
[7] R. 61A-3.0141(4), F.A.C.
[8] R. 61A-3.0141(3), F.A.C.
[9] *Id*.
[10] *Id*.

There are several exceptions to the Beverage Law created by special laws, which are applicable to specific local areas. Many reduce certain licensing requirements for special zones in local jurisdictions. For example, ch. 2022-259, L.O.F., allows DBPR to issue an SFS license to restaurants within the Kings Avenue Commercial Corridor in Jacksonville that:

- have 1,000 square feet,
- are equipped to serve 50 persons at one time, and
- derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages.

Effect of the Bill

The bill removes the requirements that a food service establishment must have certain seating capacity and meet service area size requirements to qualify for an SFS license. However, a food service establishment will still need to derive 51 percent or more gross sales from food and nonalcoholic beverage sales in order to qualify for an SFS license.

B. SECTION DIRECTORY:

Section 1: Amends s. 561.20, F.S., revising requirements for a special restaurant license.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may allow more restaurants to obtain an SFS license, which would increase fees to the state.

2. Expenditures:

   The bill may allow more restaurants to obtain an SFS license, which would require more regulatory actions, such as inspections and audits, by DBPR.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more restaurants to obtain an SFS license, which may make it less expensive to own and operate a restaurant that sells alcoholic beverages and could lead to more restaurants opening. It could also increase beverage service options for consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the issuance of special beverage licenses; amending s. 561.20, F.S.; revising requirements for issuing special beverage licenses to certain food service establishments; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(20), with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer

than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(20), in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference

in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that ~~has 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and~~ derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day operating period and the first 12-month operating period thereafter. Subsequent audit timeframes must be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows: level 1, 51 percent to 60 percent, every year; level 2, 61 percent to 75 percent, every 2 years; level 3, 76 percent to 90 percent, every 3 years; and level 4, 91 percent to 100 percent, every 4 years. A licensee under this subparagraph may sell or deliver alcoholic beverages in a sealed container for off-premises consumption if the sale or delivery is accompanied by the sale of food within the same order. Such authorized sale or delivery includes wine-based and liquor-based beverages prepared by the licensee or its employee and packaged in a container sealed by the licensee or its employee. This subparagraph may not be construed to authorize public food service establishments licensed under this subparagraph to sell a bottle of distilled spirits sealed by a manufacturer. Any sale

or delivery of malt beverages must comply with the container size, labeling, and filling requirements imposed under s. 563.06. Any delivery of an alcoholic beverage under this subparagraph must comply with s. 561.57. An alcoholic beverage drink prepared by the vendor and sold or delivered for consumption off the premises must be placed in a container securely sealed by the licensee or its employees with an unbroken seal that prevents the beverage from being immediately consumed before removal from the premises. Such alcoholic beverage also must be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the alcoholic beverage and food must be provided by the licensee and attached to the bag or container. If transported in a motor vehicle, an alcoholic beverage that is not in a container sealed by the manufacturer must be placed in a locked compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle. It is a violation of the prohibition in s. 562.11 to allow any person under the age of 21 to deliver alcoholic beverages on behalf of a vendor. The vendor or the agent or employee of the vendor must verify the age of the person making the delivery of the alcoholic beverage before allowing any person to take possession of an alcoholic beverage for the purpose of making a delivery on behalf of a vendor under this section. A food service establishment granted a special

license on or after January 1, 1958, pursuant to general or special law may not operate as a package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered

event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure

under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph may not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. This section does not permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first $300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and

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

consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated under s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to

demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. This subparagraph does not permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law may not be moved to a new

location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately before the effective date of this act, if construction of such restaurant has commenced before the effective date of this act and is completed within 30

days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

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

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 639 by Rep. Esposito
Issuance of Special Beverage Licenses

AMENDMENT SUMMARY
March 28, 2023

Amendment 1 by Rep. Esposito (lines 55-57):

- Related to special food service alcoholic beverage licenses, reduces the service area size requirements from 2,500 square feet to 2,000 square feet, and seating capacity requirements from 150 persons to 120 persons.

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: Regulatory Reform & Economic Development Subcommittee

Representative Esposito offered the following:

Amendment

Remove lines 55-57 and insert:

4. A food service establishment that has 2,000 ~~2,500~~ square feet of service area, is equipped to serve meals to 120 ~~150~~ persons at one time, and derives at least 51 percent of its gross food and

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 671 Residential Building Permits
SPONSOR(S): Esposito and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Building Code (Building Code) must be applied and enforced uniformly and consistently across the state. Current law requires local governments to enforce the Building Code and issue building permits.

The bill:

- Requires local jurisdictions to reduce their permit fee by 75% when the property owner or contractor retains a private provider for plans review or building inspection services.
- Shortens timeframes for the submittal, process, and review of applications for a building permit.
- Specifies when a permit application is deemed complete and sufficient.
- Provides that a local government can request additional information from an applicant twice unless the applicant agrees otherwise.
- Provides that a local government can request additional information once for certain residential dwelling building permits.
- Requires local jurisdictions provide an opportunity for an in-person or virtual meeting before a second request for additional information may be made.
- Specifies that certain permit requirements apply to single-family residential units and single-family residential dwellings.
- Requires that local governments follow certain prescribed timeframes unless a local ordinance is more stringent.

The bill may have an indeterminate fiscal impact on state and local government.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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's commission 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 (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]

DBPR Surcharges

Current law requires all local governments to assess and collect a 1% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to DBPR to fund the activities of the Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.[7]

Current law also requires all local governments to assess and collect a separate 1.5% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local governments collect the assessment and remit the surcharge fees to DBPR, where it is

[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 Mar. 23, 2023).
[2] *Id.*
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Mar. 21, 2023).
[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 Mar. 23, 2023).
[6] S. 553.73(7)(a), F.S.
[7] S. 553.721, F.S.

divided equally to fund the activities of the Building Code Administrators and Inspectors Board (BCAIB) and the Florida Homeowners' Construction Recovery Fund.[8]

Local government building departments are permitted to retain 10% of the amount of the surcharges they collect to fund participation by their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Building Code.[9]

Building Permit Delays

Any delays in obtaining a building permit can delay the completion of a construction project. Delays in the completion of a construction project may:[10]

- Lead to increased costs for construction projects, which may be passed onto occupants of a completed project;
- Discourage construction, which can reduce the total supply of buildings in a community and may lead to higher rents in the community;
- Reduce property tax revenue to a local government and other taxing jurisdictions resulting from the delayed start and completion of a construction project; and
- Result in delayed occupancy of a project, including single-family residences and multi-family residences.

Streamlining the process to obtain a building permit can accelerate the completion of construction projects. The goal of streamlining is to remove overlap and duplication and create more efficient administrative procedures while not reducing a building department's ability to enforce the applicable construction codes. Streamlining the building permit process may:[11]

- Increase local government revenues by accelerating completion of a project and thus accelerating property tax collection;
- Create local construction jobs and other indirect jobs supported by local construction jobs, such as jobs at a material supplier, which may increase local tax revenue; and
- Encourage economic development by having an efficient permit system.

Building Permit Application Review

Time-Period to Review

Current law requires local governments to review certain building permit applications within a specific time-period of receiving the applications. Current law has established time-periods for local governments to review applications for the following building permits:[12]

- accessory structure;
- alarm permit;
- nonresidential buildings less than 25,000 square feet;
- electric;
- irrigation permit;
- landscaping;

[8] S. 468.631, F.S.; The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building and residential contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review. s. 489.1401(2), F.S.
[9] Ss. 468.631, and 553.721, F.S.
[10] City of Austin Development Services Department, *A Program for Expedited Permitting*, http://austintexas.gov/sites/default/files/files/8-9-2016_Report_on_Expedited_Permitting_Program.pdf (last visited March 23, 2023); PricewaterhouseCoopers, *The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues*, (Dec. 7, 2005).
[11] *Id.*; Institute for Market Transformation, *Streamlining Compliance Processes*, (Winter 2012) https://www.imt.org/wp-content/uploads/2018/02/CaseStudy5.pdf (last visited March 23, 2023).
[12] S. 553.792(2), F.S.

- 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; and
- lot grading and site alteration associated with the permit application.

When a local government receives an application for one of the above building permits, it must:[13]

- Inform the applicant within **10 days** of receiving the application, what information, if any, is needed to complete the application.
    - 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.
- Notify the applicant within **45 days** of the application being deemed complete, if additional information is necessary to determine the sufficiency of the application;
    - 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.
- Approve, approve with conditions, or deny the application within **120 days** following receipt of the completed application.
    - 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.

These time-periods 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.[14]

If a local government fails to meet the time-periods above without an agreement for an extension of time, a local government is required to reduce a permit fee for any building permit application, including for single-family residential dwellings, by 10% of the original permit fee for each business day that a local government fails to meet the current statutory time-period for reviewing a building permit application or a time-period established by the local government.

Local Government's Requests for Additional Information[15]

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.

[13] S. 553.792(1), F.S.
[14] S. 553.792(1)(a), F.S.
[15] S. 553.792(1)(b), F.S.

- 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.

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[16]:

- 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 complete and approve the application, approve the application with conditions, or deny the application **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% 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.

Time-Period to Review Single-Family Residential Dwelling Building Permit Applications

If any government entity with authority to enforce the Building Code receives an application for a building permit for a single-family residential dwelling, it must issue the permit within **30 business days** of receiving the application, unless the application fails to satisfy the Building Code or the enforcing agency's laws or ordinances, or unusual circumstances require a longer time-period for processing the application.[17]If the local enforcing agency does not issue a building permit for a single-family residential dwelling within **30 business days** after receiving the permit application, it must reduce the building permit fee by 10% for each **business day** that it fails to meet the deadline. Each 10% reduction is based on the original amount of the building permit fee. However, the enforcing agency does not have to reduce the building permit fee if it provides notice to the applicant, by e-mail or United States Postal Service, within **30 business days** after receiving the permit application, that specifically states the reasons the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances. In addition, the written notice must also include that the applicant has **10 business days** after receiving the written notice to submit revisions to correct the permit application and that failure to correct the application within **10 business days** will result in a denial of the application.[18]

[16] *Id.*
[17] S. 553.79(16), F.S.
[18] S. 553.79(16)(a)-(b), F.S.

After receiving the written notice, the applicant has **10 business days** to correct the specifications written by the local enforcing agency and submit revisions to correct the permit application. If the applicant submits the revisions within 10 business days, the local enforcing agency has **10 business days** after receiving such revisions to approve or deny the building permit unless the applicant agrees to a longer permit in writing.[19]

A government entity does not have to reduce the fee for a single-family residential dwelling building permit, if: [20]

- it provides written notice to the applicant, by email or USPS mail within **30 business days** of receiving the application; and
- The written notice specifically states how the application fails to satisfy the Building Code or the government entity's laws or ordinances, and that the applicant has **10 business days** after receiving the notice to remedy the deficiencies in their application or it will be denied.

An applicant for a single-family residential dwelling building permit has **10 business days** to address the reasons specified in the government entity's notice. If the applicant submits revisions to the government entity within **10 business days** of receiving the notice, the government entity must approve or deny the permit within **10 business days** of receiving the applicant's revisions.

If a government entity fails to approve or deny the single-family residential dwelling building permit within **10 business days** of receiving the applicant's revisions, it must: [21]

- reduce the permit fee by 20% of the original permit fee for the first business day that it fails to meet the deadline; and
- an additional 10% of the original permit fee for each business day that it fails to meet the deadline, for up to five business days.

A building permit for a single-family residential dwelling applied for by a contractor licensed in this state on behalf of a property owner who participates in a Community Development Block Grant-Disaster Recovery program administered by the Department of Economic Opportunity must be issued within **15 business days** after receipt of the application unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.[22]

If any permit fees are refunded because a local government fails to meet an established deadline for reviewing a building permit application, the Department of Business and Professional Regulation (DBPR) surcharges for funding the Commission, the Florida Building Code Administrators and Inspectors Board (BCAIB), and the Florida Homeowners' Recovery Fund must be recalculated based on the amount of the permit fees after the refund.[23]

Private Providers Alternative Plans Review

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.

[19] S. 553.79(16)(c), F.S.
[20] S. 553.79(16)(b), F.S.
[21] S. 553.79(16)(c), F.S.
[22] S. 553.79(16)(e), F.S.
[23] S. 553.79(16)(d), F.S.

"Private provider" means a 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.[24]

"Duly authorized representative" means 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.[25]

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.[26]

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 which is 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.[27]

Effect of the Bill

Building Permit Application Review (Section 3)

The bill shortens timeframes for building applications. The bill provides that:

- after an applicant submits an application to the local government, the local government must provide written notice to the applicant within **3 calendar days** after receipt of the application advising the applicant what information is needed to make the application properly complete.
    - The bill shortens the local government's timeframe to respond to the application from 10 days to 3 calendar days.
- within **9 calendar days** after receipt of the completed application, the local government must provide a written notice to an applicant that the application is insufficient to be approved and additional information is needed.
    - The bill shortens the local government's timeframe to notify the applicant from 45 days to 9 calendar days.

The bill removes the requirement that the applicant must submit the requested information from the local government within 30 days.

The bill provides that the local government cannot request additional information from the applicant more than **two times** instead of **three times**, unless the applicant waives such limitation in writing.

The bill removes the **120-day period** which is tolled while the applicant responds to the local government request for additional information.

The bill provides if a local government requests additional information from an applicant and the applicant submits the requested additional information to the local government, the local government must, within **9 calendar days** (instead of **15 days**) after receiving such information:

- Determine if the application is properly completed;
- Approve the application; or
- Advise the applicant **in writing** of information, if any, that is needed to determine the sufficiency of the application.
    - The bill removes the local government's decision to deny the application until after the second request for additional information from the local government.

[24] S. 553.791(1)(n) and (3), F.S.
[25] S. 553.791(1)(f) and (8), F.S.
[26] "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." S. 553.791(2)(b), F.S.
[27] S. 553.791(2)(b), F.S.

The bill provides that prior to making a **second request** for information the local government must offer to meet **in-person or virtually** with the permit applicant to attempt to resolve outstanding issues. The bill requires that the meeting occur **within 5 calendar days** after the applicant notifies the local government in writing that he or she wants an in-person or virtual meeting unless the applicant agrees to a longer time period in writing.

The bill provides that after the local government submits its **second request** and receives the information from the applicant, the local government must within **9 calendar days** (instead of **10 days**) determine whether the application is complete and:

- Approve the application;
- Approve the application with conditions; or
- Deny the application **and provide the applicant with sufficient reason for such detail**.

The bill provides that 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 within **9 calendar days after the receipt of the request** and approve, approve with conditions, or deny the application **and provide the applicant with sufficient reason for such denial.**

The bill states that if the local government does not notify the applicant that the application is approved, approved with conditions, or denied within **9 days** after the local government receives the additional information from the second request, the application is deemed approved.

The bill removes the ability for a law, agency rule, or an ordinance to specify a different timeframe for the applicable building permit applications except when the timeframes set by local ordinance are stricter than the ones prescribed in the bill.

Single-Family Residential Dwelling Building Permit Applications (Sections 1 and 3)

The bill removes a provision in Ch. 533, the Florida Building Code, which requires single-family residential dwelling permits to be issued within 30 days unless the application does not conform to the Florida Building Code or local laws or ordinances. However, the bill incorporates the time period to review single-family residential dwellings into the building permit application to local government section.[28]

The bill provides the following timeframes for single family or two-family dwellings or townhomes located within a master plan community for which the permit for the master plan has been approved under the local government residential master building permit program[29]:

- **1 calendar day** after a building permit application is submitted to the local government, the local government must provide the building permit applicant with what information is needed in order to deem the application complete and ready for processing. If the local government does not provide proper written notice of what information is needed for the application to be considered complete the building permit application is automatically deemed completed and approved.
- Within **5 calendar days** of receiving a completed building permit application the local government must determine if any additional information is needed to determine the sufficiency of a building permit application. The building permit applicant may submit the information or ask that the permit be processed without the additional information.
- A local government may only ask for additional information **once** unless the applicant waives such limitation in writing.
- If the local government requests additional information and the building permit applicant provides the additional information, the local government must act on the building permit application **within 5 calendar days** after receiving such information, unless the applicant waives this limitation in writing, determine that the application is complete and either approve,

[28] *See,* s. 553.792, F.S.
[29] *See*, s. 553.794, F.S.

approve with conditions, or deny the application and provide the applicant with sufficient reason for such detail.
    - If the local government does not notify the building permit applicant that it has acted on the application **within 5 calendar days** the building permit application is deemed approved.

The bill provides that a building permit for a single-family residential dwelling applied for by a contractor licensed in this state on behalf of a property owner who participates in a Community Development Block Grant-Disaster Recovery program administered by the Department of Economic Opportunity must be issued within **9 calendar days** (instead of **15 business days**) after receipt of the application unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

Private Providers Alternative Plans Review (Sections 2 and 3)

The bill provides that 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 **75%** for not having to perform such services.

The bill provides that if an owner or contractor retains a private provider for purposes of review, the following time periods apply:

- Within **3 calendar days** of receiving a completed building permit application the local government must determine if any additional information is needed to determine the sufficiency of a building permit application. The building permit applicant may submit the information or ask that the permit be processed without the additional information.
- If the local government requests additional information and the building permit applicant provides the additional information, the local government must act on the building permit application **within 3 calendar days after receiving** such information, unless the applicant waives this limitation in writing, determine that the application is complete and either approve, approve with conditions, or deny the application and provide the applicant with sufficient reason for such detail.
- If the local government does not notify the building permit applicant that it has acted on the application within **3 calendar days** the building permit application is deemed approved.

Reduction of Building Permit Fees (Section 3)

The bill provides that if the local government does not meet the deadlines set forth in this bill, it must reduce the building permit fee by 10% for each **calendar day** (as opposed to “business day”) that it fails to meet the deadline, **unless the parties agree in writing to a reasonable extension of time**.

Building Permits; identification of Minimum Premium Policy (Section 4)

The bill provides conforming changes based on the provisions amended in this bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 553.79, F.S., relating to permits; applications; issuance; inspections.

Section 2: Amends s. 553.791, F.S., relating to alternative plans review and inspection.

Section 3: Amends s. 553.792, F.S., relating to building permit application to local government.

Section 4: Amends s. 440.103, F.S., relating to building permits; identification of minimum premium policy.

Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR states that surcharge collections pursuant to section 553.791, F.S., and section 468.631, F.S., could be impacted by the bill.[30]

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

DBPR states that this bill may reduce the amount of permit fees that could be collected by local governments in certain circumstances.[31]

2. Expenditures:

This bill may impact local governments because they may have to hire more employees to meet the proscribed timeframes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DBPR states that the bill may reduce the cost of permit fees paid by the private sector to local governments based on the local governments failure to meet time requirements.[32] On the other hand, the local jurisdiction may raise permit fees so that they can hire employees to meet the time requirements in the bill.

D. FISCAL COMMENTS:

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 would require the Florida Building Commission to amend the Florida Building Code to reflect some of the bill's changes to building permit application processing requirements.[33]

[30] Department of Business & Professional Regulation, Agency Analysis of 2023 Senate Bill 682, p. 4 (February 14, 2023).
[31] *Id*., at 5.
[32] *Id*.
[33] *Id*., at 3; *see also* rule impacted, r. 61G20-1.001, F.A.C.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The short title is insufficient. It is currently called “residential building permits”, but the bill deals with all building permits.

These timeframes may be difficult for local governments to meet and permit fees may have to be raised in order to cover the costs of employees needed to meet such time frames.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to residential building permits; amending s. 553.79, F.S.; removing provisions relating to acquiring building permits for certain residential dwellings; amending s. 553.791, F.S.; requiring a local jurisdiction to reduce permit fees by a certain percentage under certain circumstances; amending s. 553.792, F.S.; revising the timeframes for approving or denying certain building permits; revising how many times a local government may request additional information from an applicant; specifying when a permit application is deemed complete and sufficient; requiring the opportunity for an in-person or virtual meeting before a second request for additional information may be made; reducing permit fees by a certain percentage if certain timeframes are not met; authorizing both parties to extend certain timeframes under certain circumstances; specifying that the permit requirements apply to single-family residential units and single-family residential dwellings; requiring that local governments follow the prescribed timeframes unless the local ordinance is more stringent; conforming provisions to changes made by the act; amending s. 440.103, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (16) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

~~(16) Except as provided in paragraph (c), a building permit for a single-family residential dwelling must be issued within 30 business days after receiving the permit application unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.~~

~~(a) If a local enforcement agency fails to issue a building permit for a single-family residential dwelling within 30 business days after receiving the permit application, 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.~~

~~(b) A local enforcement agency does not have to reduce the building permit fee if it provides written notice to the applicant, by e-mail or United States Postal Service, within 30 business days after receiving the permit application, that specifically states the reasons the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances. The written notice must also state that the~~

~~applicant has 10 business days after receiving the written notice to submit revisions to correct the permit application and that failure to correct the application within 10 business days will result in a denial of the application.~~

~~(c) The applicant has 10 business days after receiving the written notice to address the reasons specified by the local enforcement agency and submit revisions to correct the permit application. If the applicant submits revisions within 10 business days after receiving the written notice, the local enforcement agency has 10 business days after receiving such revisions to approve or deny the building permit unless the applicant agrees to a longer period in writing. If the local enforcement agency fails to issue or deny the building permit within 10 business days after receiving the revisions, it must reduce the building permit fee by 20 percent for the first business day that it fails to meet the deadline unless the applicant agrees to a longer period in writing. For each additional business day, but not to exceed 5 business days, that the local enforcement agency fails to meet the deadline, the building permit fee must be reduced by an additional 10 percent. Each reduction shall be based on the original amount of the building permit fee.~~

~~(d) If any building permit fees are refunded under this subsection, the surcharges provided in s. 468.631 or s. 553.721 must be recalculated based on the amount of the building permit~~

~~fees after the refund.~~

~~(c) A building permit for a single-family residential dwelling applied for by a contractor licensed in this state on behalf of a property owner who participates in a Community Development Block Grant-Disaster Recovery program administered by the Department of Economic Opportunity must be issued within 15 working days after receipt of the application unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.~~

Section 2. Paragraph (b) of subsection (2) of section 553.791, Florida Statutes, is amended to read:

553.791 Alternative plans review and inspection.—

(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 75 percent ~~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

must ~~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.

Section 3. Subsections (1) and (2) of section 553.792, Florida Statutes, are amended to read:

553.792 Building permit application to local government.—

(1)(a) After ~~Within 10 days of~~ an applicant submits ~~submitting~~ an application to the local government, the local government must provide written notice to the applicant within 3 calendar days after receipt of the application advising ~~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 timely written notice that the applicant has not submitted a ~~the~~ properly completed application, the application is ~~shall be~~ automatically deemed properly completed and sufficient ~~accepted~~.

(b) Within 9 calendar ~~45~~ days after receiving a completed application, a local government must provide written notice to ~~notify~~ an applicant if additional information is required for the local government to determine the sufficiency of the application, and the notice must ~~shall~~ specify the additional information that is required. The applicant may ~~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.~~

(c)1.~~(b)1.~~ When reviewing an application for a building permit, a local government may not request additional information from the applicant more than two ~~three~~ times, unless the applicant waives such limitation in writing.

2. If a local government requests additional information from an applicant and the applicant submits the requested additional information to the local government ~~within 30 days after receiving the request~~, the local government must, within 9 calendar ~~15~~ days after receiving such information:

a. Determine if the application is properly completed;

b. Approve the application;

c. Approve the application with conditions;

~~d. Deny the application;~~ or

d.~~e.~~ Advise the applicant in writing of information, if any, that is needed to ~~deem the application properly completed or to~~ determine the sufficiency of the application.

~~3. If a local government makes a second request for additional information from the applicant and the applicant submits the requested additional information to the local government within 30 days after receiving the request, the local government must, within 10 days after receiving such information:~~

~~a. Determine if the application is properly completed;~~

~~b. Approve the application;~~

~~c. Approve the application with conditions;~~

~~d. Deny the application; or~~

~~e. Advise the applicant of information, if any, that is needed to deem the application properly completed or to determine the sufficiency of the application.~~

3.~~4.~~ Before a second ~~third~~ request for additional information may be made, the local government must offer the applicant ~~must be offered~~ an opportunity to meet in person or virtually with the local government to attempt to resolve outstanding issues. The meeting must occur within 5 calendar days after the applicant notifies the local government in writing that he or she wants an in-person or virtual meeting unless the applicant agrees to a longer time period in writing.

4. If a local government makes a second ~~third~~ request for additional information from the applicant and the applicant submits the requested additional information to the local government ~~within 30 days after receiving the request~~, the local

government must, within 9 calendar ~~10~~ days after receiving such information unless the applicant waived the local government's time limitation in writing, determine that the application is complete and:

a. Approve the application;

b. Approve the application with conditions; or

c. Deny the application and provide the applicant with sufficient reason for such denial.

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 written request, must process the application within 9 calendar days after receipt of the request and ~~either~~ approve the application, approve the application with conditions, or deny the application and provide the applicant with sufficient reason for such denial.

6. If a local government does not notify the applicant that the application is approved, approved with conditions, or denied within 9 calendar days after the local government receives the additional information requested under subparagraph 4., the application is deemed approved.

(d) The following timeframes apply for single-family or two-family dwellings or townhomes located within a master plan community for which the permit for the master plan community has already been approved under s. 553.794:

1. After an applicant submits an application to the local government, the local government must provide written notice to the applicant within 1 calendar day after receipt of the application advising 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 timely written notice that the applicant has not submitted a properly completed application, the application is automatically deemed properly completed and approved.

2. Within 5 calendar days after receiving a completed application, a local government must provide written notice to an applicant if additional information is required for the local government to determine the sufficiency of the application, and the notice must specify the additional information that is required. The applicant may submit the additional information to the local government or request that the local government act without the additional information.

3. When reviewing an application under this paragraph, a local government may not request additional information from the applicant more than once, unless the applicant waives such limitation in writing.

4. If a local government requests additional information from the applicant and the applicant submits the requested additional information to the local government, the local

government must, within 5 calendar days after receiving such information unless the applicant waived the local government's time limitation in writing, determine that the application is complete and:

a. Approve the application;

b. Approve the application with conditions; or

c. Deny the application and provide the applicant with sufficient reason for such denial.

5. If a local government does not notify the applicant that the application is approved, approved with conditions, or denied within 5 calendar days after the local government receives the additional information requested under subparagraph 4., the application is deemed approved.

6. If an owner or contractor retains a private provider for purposes of plans review, the timeframes in subparagraphs 2., 4., and 5. are reduced to 3 calendar days.

(e) A building permit for a single-family residential dwelling applied for by a contractor licensed in this state on behalf of a property owner who participates in a Community Development Block Grant-Disaster Recovery program administered by the Department of Economic Opportunity must be issued within 9 calendar days after receipt of the application unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

(f) ~~(e)~~ If a local government fails to meet a deadline set

under this subsection ~~provided in paragraphs (a) and (b)~~, it must reduce the building permit fee by 10 percent for each calendar ~~business~~ day that it fails to meet the deadline, unless the parties agree in writing to a reasonable extension of time. 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.

(2)(a) The procedures set forth in subsection (1) apply to the following building permit applications: accessory structure; alarm permit; nonresidential buildings less than 25,000 square feet; electric; irrigation permit; landscaping; mechanical; plumbing; residential units including ~~other than~~ a single-family residential ~~single family~~ unit or a single-family residential dwelling; multifamily residential not exceeding 50 units; roofing; signs; site-plan approvals and subdivision plats not requiring public hearings or public notice; and lot grading and site alteration associated with the permit application set forth in this subsection. The procedures set forth in subsection (1) do not apply to permits for any wireless communications facilities ~~or when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications~~.

(b) ~~If~~ A local government must meet ~~has different timeframes than~~ the timeframes set forth in subsection (1) for reviewing building permit applications described in paragraph

(a) unless the timeframes set~~, the local government must meet the deadlines established~~ by local ordinance are more stringent than those prescribed in subsection (1). ~~If a local government does not meet an established deadline to approve, approve with conditions, or deny an application, 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. This paragraph does not apply to permits for any wireless communications facilities.~~

Section 4. Section 440.103, Florida Statutes, is amended to read:

440.103 Building permits; identification of minimum premium policy.—Every employer shall, as a condition to applying for and receiving a building permit, show proof and certify to the permit issuer that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation must be evidenced by a certificate of coverage issued by the carrier, a valid exemption certificate approved by the department, or a copy of the employer's authority to self-insure and shall be presented, electronically or physically, each time the employer applies for a building permit. As provided in s. 553.79(22) ~~s. 553.79(23)~~, for the purpose of inspection and record retention, site plans or building permits may be maintained at the worksite in the

original form or in the form of an electronic copy. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221. The words "minimum premium policy" or equivalent language shall be typed, printed, stamped, or legibly handwritten.

Section 5. This act shall take effect July 1, 2023.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 671 Residential Building Permits
by Rep. Esposito
AMENDMENT SUMMARY
March 28, 2023

Amendment 1 by Rep. Basabe (line 285):

- Allows residential property owners to elevate their homes up to 4 feet and up to 9 feet in certain coastal areas.
- Provides definitions for coastal high hazard area, freedboard (elevation), maximum allowable height, substantial improvement, and voluntary elevation.
- Prohibits the voluntary elevation from being used for the calculation of the maximum required height.
- Provides local governments flexibility to enact an ordinance to enable residential property owners to elevate their properties.
- Requires the Florida Building Commission to develop and adopt by rule minimum residential elevation requirements by November 1, 2023, to be incorporated into the next edition of the Florida Building Code.

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: Regulatory Reform & Economic Development Subcommittee
Representative Basabe offered the following:

Amendment (with title amendment)

Between lines 285 and 286, insert:

Section 4. Section 553.845, Florida Statutes, is created to read:

553.845 Flood damage prevention.—

(1) The Legislature finds that:

(a) The state is vulnerable to the adverse effects of flooding resulting from the frequency and intensity of rainfall and an increase in storm surge and sea level rise. These adverse effects pose a significant risk to existing and future residential structures in the state.

(b) Public and private investments in our communities are important for economic growth, and protecting residential structures from flooding is essential to maintaining resilient communities.

(c) The mitigation of property damage constitutes a valid and recognized objective of the Florida Building Code.

(d) It is important to develop a consistent, statewide approach to minimizing flooding in the state to mitigate property damage and encourage continued investment in our communities.

(e) Minimum freeboard requirements are critical to addressing the devastating effects of flooding, and delaying the adoption and implementation of such requirements constitutes a threat to the health, safety, and welfare of the state.

(2) For purposes of this section, the term:

(a) "Coastal high-hazard area" means a special flood hazard area along the coast, as delineated by a Flood Insurance Rate Map issued by the Federal Emergency Management Agency, that has additional hazards due to wind and wave action.

(b) "Freeboard" means the additional height, usually expressed as a factor of safety in feet, above the base flood elevation in determining the level at which a structure's lowest floor or the bottom of the lowest horizontal structural member must be elevated in accordance with floodplain management regulations and the Florida Building Code. If a base flood

elevation is not determined for a structure that is not located in a special flood hazard area as designated by a Flood Insurance Rate Map issued by the Federal Emergency Management Agency, the term "freeboard" means the highest adjacent grade at the foundation of a structure.

(c) "Maximum allowable height" means the maximum height allowed for a structure in the applicable zoning district.

(d) "Substantial improvement" has the meaning as in s. 161.54(12).

(e) "Voluntary freeboard" means the additional height above the freeboard required by floodplain management regulations and the Florida Building Code. If freeboard is not required by floodplain management regulations and the Florida Building Code, the term "voluntary freeboard" means the additional height above the highest adjacent grade at the foundation of a structure.

(3)(a) The maximum voluntary freeboard for all new residential construction and substantial improvements to existing residential construction is 4 feet.

(b) Within a coastal high-hazard area, the maximum voluntary freeboard for all new residential construction and substantial improvements to existing residential construction is 9 feet.

(4) For all new construction of a residential structure and substantial improvements to an existing residential

structure, voluntary freeboard may not be used in the calculation of the maximum allowable height for the structure.

(5) A local government may adopt by ordinance a minimum freeboard requirement or a maximum voluntary freeboard that exceeds the requirements in the Florida Building Code or established in this section.

(6) The commission shall develop and adopt by rule minimum residential freeboard requirements by November 1, 2023, which shall take immediate effect, and shall incorporate such requirements into the next edition of the Florida Building Code.

(7) Beginning in January 2028, and every 5 years thereafter, the commission shall review the residential freeboard requirements in the Florida Building Code and make recommendations to the Legislature regarding any necessary revisions to such requirements.

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

Remove line 24 and insert:

the act; creating s. 553.845, F.S.; providing legislative findings; providing definitions; providing specified maximum residential voluntary freeboard requirements for new residential construction and substantial improvements to existing residential construction; prohibiting voluntary freeboard from being used in the calculation of the maximum allowable height

for certain construction in applicable zoning districts; authorizing local governments to adopt by ordinance a minimum freeboard requirement or a maximum voluntary freeboard that exceeds the minimum requirements in the Florida Building Code or established in this act; requiring the Florida Building Commission to develop and adopt by rule minimum residential freeboard requirements by a specified date, which shall take immediate effect, and to incorporate such requirements into the next edition of the Florida Building Code; requiring the commission to review the residential freeboard requirements in the Florida Building Code every 5 years beginning on a specified date and make certain recommendations to the Legislature; amending s. 440.103, F.S.; conforming a

HB 715

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 715 Compensation of Lottery Ticket Retailers
SPONSOR(S): Mooney
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Gambling is generally prohibited and illegal in Florida. However, in 1986, Florida voters adopted a constitutional amendment authorizing the creation of the Florida Lottery (Lottery). Since that time, the Lottery has grown into one of the largest state-run lotteries in the country, with annual sales exceeding $9 billion. Lottery tickets can be purchased at over 13,000 retail locations throughout the state.

The Lottery is charged with supervising and operating the lottery in accordance with the provisions of the Florida Public Education Lottery Act. Gross revenues from the sale of lottery products are distributed to prizes, Lottery expenses, and transfers to the Educational Enhancement Trust Fund (EETF).

The Lottery contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets, and is authorized to adopt rules to establish the manner and amount of compensation of retailers. However, during the 2022 Legislative Session, the Legislature authorized for the 2022-2023 fiscal year only, effective July 1, 2022, the commission for Florida Lottery ticket sales to be 5.75 percent of the purchase price of each ticket sold or issued as a prize by a retailer. Any additional retailer compensation is limited to the Florida Lottery Retailer Bonus Commission program appropriated in the 2022-2023 General Appropriations Act.

The bill:

- Establishes a permanent commission to retailers for lottery ticket sales.
- Increases the commission from 5.75 percent to 6 percent of the purchase price of each ticket sold or issued as a prize by a retailer.
- Removes the requirement that additional retailer compensation be limited to the Florida Lottery Retailer Bonus Commission program.

The bill increases the commission paid to Florida lottery retailers by approximately $37 million annually. The Revenue Estimating Conference determined the bill will have a negative recurring impact to the EETF of $37.1 million in Fiscal Year 2023-2024.

The effective date of the bill is July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Overview of Lottery in Florida

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,[5] bingo,[6] cardrooms,[7] charitable drawings,[8] game promotions (sweepstakes),[9] and bowling tournaments.[10] In addition, Chapters 550 and 551, F.S., respectively, authorize pari-mutuel wagering at licensed facilities and slot machine gaming at specified locations.

Section 7 of Article X of the Florida Constitution provides, "Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state."[11]

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. Section 15 of Article X of the Florida Constitution provides as follows:

> Lotteries may be operated by the state…. On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.

In 1987, the Legislature created the Florida Public Education Lottery Act,[12] which established a state lottery system intended primarily to generate revenue for public education of the state.[13] The Department of the Lottery (Lottery) is charged with supervising and operating the lottery in accordance with the provisions of the Florida Public Education Lottery Act and rules adopted pursuant thereto.[14]

In 1988, the Lottery began offering lottery games with a $1 weekly drawing.[15] Since then, the Lottery has grown to include approximately 80 different scratch-off games available at over 13,000 retailer locations, with lottery ticket prices ranging from $1 to $50.[16]

Lottery Revenues

In sum, for Fiscal Year 2021-22, the Florida Lottery:

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[1] S. 849.08, F.S.
[2] S. 849.01, F.S.
[3] S. 849.09, F.S.
[4] S. 849.16, F.S.
[5] S. 849.085, F.S.
[6] S. 849.0931, F.S.
[7] S. 849.086, F.S.
[8] S. 849.0935, F.S.
[9] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[10] S. 546.10, F.S.
[11] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution (Nov. 5, 1968) include horseracing, greyhound racing and jai alai games.
[12] Ss. 24.101 to 24.124, F.S.
[13] S. 24.102, F.S.
[14] S. 24.105(2), F.S.
[15] Florida Lottery, *History*, http://www.flalottery.com/history (last visited Feb. 24, 2023).
[16] Florida Lottery, *Scratch Offs*, http://www.flalottery.com/scratch-offs?amount=30 (last visited Feb. 24, 2023).

- Prizes totaled $6.245 billion;
- Retailer commissions totaled $523.1 million;
- Ticket sales totaled $9.325 billion;
- Transfers to the EETF totaled $2.33 billion; and
- Ranked the highest among U.S. lotteries in total sales and sixth highest among U.S. lotteries in per capita sales.[17]

Gross revenues from the sale of lottery products are distributed to prizes, Lottery expenses, and transfer to the Educational Enhancement Trust Fund (EETF).[18] The Lottery determines the variable percentage of the gross revenue from the sale of draw and scratch-off tickets that is returned to the public in the form of prizes in a manner designed to maximize the amount of revenue earned to enhance education. Gross sales revenue also is used to pay the expenses associated with running the Lottery, including the cost of its retailer network, draw and scratch-off game vendors, advertising vendors, and its in-house operation. The remainder of gross sales revenue is transferred to the EETF.[19]

Lottery Retailers

The Lottery contracts with retailers[20] (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.[21] Lottery retailers receive support from the Lottery in the following ways, at no cost to the retailer:[22]

- In-store full service from a Lottery Sales Representative.
- Point-of-sale material.
- Ongoing training.
- In-store promotional opportunities.
- A dedicated Retailer Hotline for quick assistance.

The Lottery is authorized to adopt rules to establish the manner and amount of compensation of retailers.[23] A five percent sales commission was established in 1987[24] and remained until July 1, 2022. In addition, retailers also received a separate one percent commission for paying prizes of less than $600.[25]

For the 2022-2023 fiscal year only, effective July 1, 2022, the Florida Legislature adopted a specific commission for Florida Lottery ticket sales of 5.75 percent of the purchase price of each ticket sold or issued as a prize by a retailer. Any additional retailer compensation is limited to the Florida Lottery Retailer Bonus Commission program appropriated in Specific Appropriation 2759U of the 2022-2023 General Appropriations Act.[26]

According to the Lottery, the 5.75 percent is a flat sales commission on both draw and scratch-off ticket sales. Lottery retailers sell scratch-off tickets on consignment. Retailers receive full books of scratch-off tickets at no cost, and after selling the tickets, receive a commission for selling those tickets to players. After tickets are sold, the retailer reconciles the book of tickets through the Lottery terminal, which then charges their account, less a 5.75 percent commission. Draw game ticket sales are automatically registered on the Lottery terminal and retailers are charged according to what they sell, less a 5.75

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[17] Office of Program Policy Analysis and Gov't Accountability, *Review of the Florida Lottery, 2022*, Report No. 23-02, (Jan. 2023), https://oppaga.fl.gov/Documents/Reports/23-02.pdf at page 1, (last visited Feb. 24, 2023).
[18] S. 24.121(1), F.S.
[19] Office of Program Policy Analysis and Gov't Accountability, Government Program Summaries, *Department of the Lottery, 2022*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=2090 (last visited Feb. 27, 2023).
[20] S. 24.103(5), F.S., defines "retailer" as "a person who sells lottery tickets on behalf of the department pursuant to a contract."
[21] S. 24.105(16), F.S.
[22] Florida Department of the Lottery, Agency Analysis of House Bill 715, p. 2 (Mar. 3, 2023).
[23] S. 24.105(9)(i), F.S.
[24] R. 53ER87-44, F.A.C.
[25] *Id.*
[26] *Id.*

percent commission. There is no cap on the amount of sales commissions a retailer can receive, the more a retailer sells, the more they receive in commissions.[27]

According to reports, the top 10 lottery-selling locations for the 2019 fiscal year, including total net sales, included the following:[28]

- State Line Gift Shop, McDavid: $5,505,257.50
- Fortune Liquors, Campbellton: $5,384,016.50
- Friendly Mini Mart, Bonifay: $4,577,112
- Mercado Miami, Miami: $4,289,590
- Flora Bama Liquor, Pensacola: $3,558,104.50
- Publix, Clearwater: $3,503,670
- Edgewood Shell, Jacksonville: $3,484,808
- Circle K, Pensacola: $3,445,720.50
- Publix, West Palm Beach: $3,403,995.50
- Publix, Loxahatchee: $3,367,386.50

Proposed Changes

The bill establishes a permanent commission for Lottery ticket sales for retailers.

The bill increases the commission for lottery ticket sales from 5.75 percent to 6 percent of the purchase price of each ticket sold or issued as a prize by a retailer.

The bill removes the requirement that additional retailer compensation be limited to the Florida Lottery Retailer Bonus Commission program.

B. SECTION DIRECTORY:

Section 1: Amends s. 24.105, F.S., relating to powers and duties of the department.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Lottery, increasing the retailer commission rate from 5.75 percent to 6 percent will reduce EETF transfers by $23.6 million for FY 2023-24.[29]

The Revenue Estimating Conference (REC) determined the bill will negative impact to the EETF of $37.1 million in Fiscal Year 2023-2024, with a recurring impact of $38.2 million. According to the REC, an increase in the retailer commissions rate reduces the Lottery transfer to EETF from lottery ticket sales.[30]

2. Expenditures:

Expenditures related to the retailer commission rate will increase.

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[27] Florida Department of the Lottery, Agency Analysis of House Bill 715, p. 2 (Mar. 3, 2023).
[28] Dan Sweeney, *Where do the most Florida Lottery tickets get sold? Bet you can't guess.*, (Mar. 13, 2020), https://www.sun-sentinel.com/news/sound-off-south-florida/fl-ne-sosf-florida-lottery-retail-sales-20200313-vm4qu7ovyne4vgunovkhl4cyji-story.html (last visited Mar. 26, 2023).
[29] Florida Department of the Lottery, Agency Analysis of House Bill 715, p. 8 (Mar. 3, 2023).
[30] Revenue Estimating Conference, Proposed Fiscal Impact of the Educational Enhancement Trust Fund, Consensus Estimate (Mar. 17, 2023), http://edr.state.fl.us/content/conferences/revenueimpact/archives/2023/_pdf/impact0317.pdf (last visited Mar. 23, 2023).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Lottery, the increase in commission to retailers collectively will average $24.02 million over the next five years. However, the amount received on an individual basis is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

According to the Lottery, it would need to amend a current rule to account for the increased sales commissions. The Florida Public Education Lottery Act provides sufficient rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is not clear whether the commission rate established by the bill will allow the Lottery to continue to determine the amount of the commission for retailers or preclude the ability of the Lottery to make changes to the commission.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to compensation of lottery ticket retailers; amending s. 24.105, F.S.; providing retailer compensation for lottery ticket sales; providing an effective date.

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

Section 1. Paragraph (i) of subsection (9) of section 24.105, Florida Statutes, as amended by chapter 2022-157, Laws of Florida, is amended to read:

24.105 Powers and duties of department.—The department shall:

(9) Adopt rules governing the establishment and operation of the state lottery, including:

(i) The manner and amount of compensation of retailers. However, the commission for lottery ticket sales shall be 6 percent of the purchase price of each ticket sold or issued as a prize by a retailer.

Section 2. This act shall take effect July 1, 2023.

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

HB 737

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 737 Secondhand Goods
SPONSOR(S): Barnaby
TIED BILLS: **IDEN./SIM. BILLS:** SB 442

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
2) Commerce Committee			

SUMMARY ANALYSIS

Chapter 538, F.S., regulates secondhand dealers and secondary metal recyclers in the trade of secondhand goods. A secondhand dealer is a person, corporation, or other business organization or entity, that is not a secondary metals recycler, engaged in the business of purchasing, consigning, or trading secondhand goods. Secondhand goods are previously owned or used personal property that is purchased, consigned, or traded as used property.

The bill amends the definition of “secondhand goods” to exclude “money”; gold bullion, silver bullion, platinum bullion, palladium bullion, or rhodium bullion if such bullion has been assayed and is properly marked as to its weight and fineness.

The bill removes coins from the list of items which are expressly excluded from the definition of “secondhand goods” and replaces “coins” with “money”.

The bill does not appear to impact state or local governments.

The bill takes effect July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 538, F.S., regulates secondhand dealers and secondary metal recyclers in the trade of secondhand goods. A secondhand dealer[1] is defined as any person, corporation, or other business organization or entity that is not a secondary metals recycler and is engaged in the business of purchasing, consigning, or trading secondhand goods. The term also includes a secondhand dealer engaged in purchasing secondhand goods by means of an automated kiosk.[2]

"Secondhand goods" means personal property previously owned or used which is not regulated metals property regulated under part II of ch. 538, and which is purchased, consigned, or traded as used property. The term includes gift certificates and credit memos[3] as defined in s. 501.95 which are purchased, consigned, or traded by a secondhand dealer.

The term **does not** include:

- office furniture,
- pianos,
- books,
- clothing,
- organs,
- coins,
- motor vehicles,
- costume jewelry,
- cardio and strength training or conditioning equipment designed primarily for indoor use, an
- secondhand sports equipment that is not permanently labeled with a serial number. [4]
    - The term "secondhand sports equipment" does not include golf clubs.

Secondary metals recyclers may not sell "regulated metals property" without obtaining proof of ownership or permission from the owner if the person is an employee of such owner. Regulated metals property means any item composed primarily of any nonferrous metals. The term does not include aluminum beverage containers, used beverage containers, or similar beverage containers; however, the term includes stainless steel beer kegs and items made of ferrous metal obtained from any restricted regulated metals property.

Restricted regulated metals property is subject to restrictions and includes the following:

- A manhole cover.
- An electric light pole or other utility structure and its fixtures, wires, and hardware that are readily identifiable as connected to the utility structure.
- A guard rail.
- A street sign, traffic sign, or traffic signal and its fixtures and hardware.
- Communication, transmission, distribution, and service wire from a utility, including copper or aluminum bus bars, connectors, grounding plates, or grounding wire.

[1] A pawnbroker is different than a secondhand dealer. "Pawn" means any advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions contained in this section. *See* s. 539.001, F.S; Pawnshops must be registered and are regulated by the Florida Department of Agriculture and Consumer Services. *Pawnshops*, Florida Department of Agriculture & Consumer Services, https://www.fdacs.gov/Consumer-Resources/Consumer-Rights-and-Responsibilities/Pawnshops (last March 24, 2023).
[2] S. 538.03(1)(h), F.S.
[3] S. 501.95, F.S., defines "credit memo" as a certificate, card, stored value card, or similar instrument issued in exchange for returned merchandise when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction.
[4] S. 538.03(1)(i), F.S.

- A funeral marker or funeral vase.
- A historical marker.
- Railroad equipment, including, but not limited to, a tie plate, signal house, control box, switch plate, E clip, or rail tie junction.
- Any metal item that is observably marked upon reasonable inspection with any form of the name, initials, or logo of a governmental entity, utility company, cemetery, or railroad.
- A copper, aluminum, or aluminum-copper condensing or evaporator coil, including its tubing or rods, from an air-conditioning or heating unit, excluding coils from window air-conditioning or heating units and motor vehicle air-conditioning or heating units.
- An aluminum or stainless steel container or bottle designed to hold propane for fueling forklifts.
- A stainless steel beer keg.
- A catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a motor vehicle.
- Metallic wire that has been burned in whole or in part to remove insulation.
- A brass or bronze commercial valve or fitting, referred to as a "fire department connection and control valve" or an "FDC valve," that is commonly used on structures for access to water for the purpose of extinguishing fires.
- A brass or bronze commercial potable water backflow preventer valve that is commonly used to prevent backflow of potable water from commercial structures into municipal domestic water service systems.
- A shopping cart.
- A brass water meter.
- A storm grate.
- A brass sprinkler head used in commercial agriculture.
- More than two lead-acid batteries, or any part or component thereof, in a single purchase or from the same individual in a single day.

Regulation of Secondhand Dealers and Secondary Metals Recyclers

Local law enforcement and three state agencies have statutory obligations regarding Florida's secondhand dealers, mail-in secondhand dealers, and secondary metals recyclers.

The three state agencies include:[5]

- Florida Department of Revenue- Maintains the statewide registration system for secondhand dealers, mail-in secondhand dealers, and secondary metals recyclers.
- Florida Department of Highway Safety & Motor Vehicles (DHSMV) - Oversees recordkeeping, proof of ownership, reporting, and enforcement of state laws related to the dismantling or destruction of motor vehicles, recreational vehicles, and mobile homes by salvage motor vehicle dealers and secondary metals recyclers (Chapter 319, F.S.). Depending on the type of materials obtained, certain businesses may be required to register as a salvage motor vehicle dealer in addition to registration as a secondary metals recycler. (Section 320.27, F.S)
- Florida Department of Law Enforcement (FDLE) -Approves transaction forms that document the sale/purchase of secondary metals. Secondary metals recyclers must complete and maintain these forms for specified time periods (Chapter 538, F.S.).

Records and Reporting Requirements

A secondhand dealer must annually register his or her business with the Department of Revenue.[6]

Examples of businesses that must register as a secondhand dealer include:

- consignment stores (excluding stores that consign only clothes);
- secondhand stores;

[5] *Secondary Metal Information*, Florida Department of Law Enforcement, https://www.fdle.state.fl.us/SMI (last visited March 24, 2023).
[6] S. 538.09, F.S.; *What Businesses Are Required to Register as Secondhand Dealers?*, Florida Department of Revenue, https://floridarevenue.com/faq/Pages/FAQSearch.aspx?Cat=4&Subcat=59 (last visited March 24, 2023).

- music stores that buy or trade used music CDs;
- used tire dealers; and
- used furniture stores (other than office furniture).

Upon each acquisition of secondhand goods, a secondhand dealer must complete a transaction form that details the goods purchased and the seller's identity.

A "transaction" is defined as "any purchase, consignment, or trade of secondhand goods by a secondhand dealer."[7] The secondhand dealer must retain this document for at least three years and forward a copy to the appropriate law enforcement agency within 24 hours after the acquisition of the secondhand goods.[8] The secondhand dealer must also must keep copies on the registered secondhand dealer premises for at least one year after the transaction.[9]

In addition to the descriptive statements of the secondhand goods and the seller's identity, the transaction record must also include:

- A statement of the date, time, and place of the transaction;
- A summary of the goods acquired, including brand name, model number, serial number, and other unique identifiers;
- Digital photographs of the goods acquired in the report that is submitted to law enforcement; and
- A description of the person from whom the goods were acquired, including his or her right thumbprint, name and address, and a physical description.[10]

Holding Period

Secondhand dealers are required to hold all secondhand goods for **at least 15 days** after they acquire the property.

However, secondhand dealers are required to hold certain items for 30 days: [11]

- a precious metal,[12]
- gemstone,
- jewelry;
- antique furnishings,
- fixtures, or decorative objects; or
- an item of art as defined in s. 686.501, F.S.,[13]

Additionally, a secondhand good must be held for 30 days if the secondhand dealer uses an automated kiosk.[14]

Such holding period is not applicable, however, when the person known by the secondhand dealer to be the person from whom the goods were acquired desires to redeem, repurchase, or recover the

[7] S. 538.03(1)(j), F.S.
[8] S. 538.04(1), F.S.
[9] *Id.*
[10] *Id.*
[11] S. 538.06(1), F.S.
[12] S. 538.03(1)(f), F.S., defines "precious metals" as any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.
[13] S. 686.501, F.S., defines "art" as a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macramé, quilt, print, photograph, or craft work executed in materials including, but not limited to, clay, textile, paper, fiber, wood, tile, metal, plastic, or glass. The term includes a rare map which is offered as a limited edition or a map 80 years old or older; or a rare document or rare print which includes, a print, engraving, etching, woodcut, lithograph, or serigraph which is offered as a limited edition, or one 80 years old or older.
[14] S. 538.03(1)(c), F.S., defines an "automated kiosk" as an interactive device that is permanently installed within a secure retail space and that has the following technological functions: remotely monitored by a live representative during all business hours; verification of a seller's identity by government-issued photographic identification card; automated reading and recording of item serial numbers; ability to compare item serial numbers against databases of stolen items; secure storage of goods accepted by the kiosk; and capture and storage of images during the transaction.

goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.[15]

If a law enforcement officer has probable cause to believe that the goods held by a secondhand dealer are stolen, the officer may place a 90-day written hold order on the goods. This prevents the secondhand dealer from selling the goods and preserves them for use as evidence in a criminal trial.[16] Additionally, this allows for the possibility of the goods to be returned to their rightful owner.

Law enforcement agencies with jurisdiction enforce compliance with registration, record keeping, holding periods, and inspection requirements.[17] A person who knowingly violates the requirements governing secondhand dealers in ch. 538, F.S., commits a first-degree misdemeanor, punishable by up to 1 year in jail and a $10,000 fine.[18]

Methods for Return of Stolen Goods held by a Secondhand Dealer

A victim of a theft may recover his or her goods, or their value, through one of three methods:

- A victim may purchase his or her items back from the secondhand dealer, and then file a civil action against the thief for reimbursement of the cost expended.
- A court may order restitution or return of the goods to the secondhand dealer or victim of the crime.[19] If the court orders return of the goods or restitution to the victim, the court must also order restitution to the secondhand dealer from the person who sold the goods to the secondhand dealer.[20]
- A victim may file a civil action for replevin against the secondhand dealer.[21]

Replevin is an action for the repossession of personal property that was wrongfully taken or detained by the defendant, where the plaintiff secures a bond for and holds the property until the court decides the rightful owner.[22] Petitions for replevin must contain the following information:

- Proof of ownership or right of possession of the property in question and a description of the property;
- A description of how, to the best of plaintiff's knowledge, the property was wrongfully taken by the defendant; and
- A statement that the property was not taken under any legal basis such as execution, tax, or fine.[23]

In an action for replevin, a court is required to award the prevailing party attorney fees and costs. When the petitioner is the prevailing party, the court may also order payment of the filing and service fees.[24] Victims of theft and prevailing plaintiffs in an action for replevin are entitled to damages for loss of use, which are limited to no more than the value of the property before it was taken or damaged.[25]

A secondhand dealer commits a noncriminal violation, punishable by a fine of up to $2,500 if the following occurs:

- Owner or lienor makes a written demand for return of the property and provides proof of ownership or proof of the right of possession to the secondhand dealer at least five days before filing a replevin action;
- The secondhand dealer knows or should have known based on the proof provided above, the property belongs to the owner or lienor;

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[15] S. 538.06(1), F.S.
[16] S. 538.06(3), F.S.
[17] S. 538.05, F.S.
[18] S. 538.07(1), F.S.
[19] S. 538.07(2), F.S.
[20] S. 538.06(4), F.S.
[21] S. 538.08, F.S.
[22] BLACK'S LAW DICTIONARY (10th ed. 2014) (defining the term "replevin"); *see also*, ch. 78, F.S., "Replevin."
[23] Ss. 78.055 and 538.08, F.S.
[24] S. 538.08(2), F.S. Otherwise, the filing and services fees are waived.
[25] *Foresight Enterprises, Inc. v. Leisure Time Properties, Inc.,* 466 So.2d 283, 286 (Fla. 5th DCA 1985). The plaintiff is also entitled to the summary procedure provided in s. 51.011, F.S.

- The secondhand dealer fails to return the property and does not file an action for interpleader[26] to determine conflicting claims to the property; and
- The owner or lienor prevails in the replevin action against the secondhand dealer.[27]

Currently, there appears to be ambiguity about whether products, such as precious metals, money[28], or coins[29] are considered securities and potentially subject a retailer of such to a variety of other laws outside the secondhand goods regulatory scheme.[30]

Effect of Bill

The bill amends s. 538.03, F.S., to revise the definition of "secondhand goods" to exclude:

- money; and
- gold bullion[31],
- silver bullion,
- platinum bullion,
- palladium bullion, or
- rhodium bullion
    - If such bullion has been assayed[32] and is properly marked as to its weight and fineness.

The bill removes "coins" from the list of items which are expressly excluded from the definition of "secondhand goods".

The bill clarifies that all currency is exempt from the required holding period under Part I of ch. 538, F.S.

Thus, the holding period of 30 days for certain bullion as described above is eliminated.

B. SECTION DIRECTORY:

Section 1: Amends s. 538.03, F.S., relating to secondhand goods.
Section 2: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

The bill does not appear to have an impact on state expenditures.

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[26] Generally, interpleader is suit to determine a right to property held by a disinterested third party (called a stakeholder) who is in doubt about ownership and who therefore deposits the property with the court to permit interested parties to litigate ownership. BLACK'S LAW DICTIONARY (10th ed. 2014) (defining the term "interpleader").
[27] S. 538.08(5), F.S.
[28] Money" means a medium of exchange authorized or adopted by a domestic or foreign government as part of its currency. S. 538.18(5), F.S.
[29] "Coins" is not defined in the Florida Statutes. The dictionary defines "coins" as "usually flat piece of metal issued by governmental authority as money." *Coin Definition & Meaning*, Merriam-Webster, Merriam-Webster, https://www.merriam-webster.com/dictionary/coin (last visited March 26, 2023).
[30] David Cosgrove, *Retail Precious Metals Dealers Beware*, Cosgrove Law Group , https://www.cosgrovelawllc.com/12-02-13-retail-precious-metals-dealers-beware.html (last visited March 26, 2023).
[31] "Bullion is a physical precious metal in the form of a bar, coin, or round that is almost entirely valued by its precious metal melt value alone." What Is Bullion?, SD Bullion , https://sdbullion.com/what-is-bullion (last visited March 25, 2023).
[32] For example, "a gold assay is a process to measure the purity of items containing gold. It helps to ensure that gold coins or bullion bars produced by a mint meet the correct purity and content standards." Will Kenton, *What Is Assay?*, Investopedia, Investopedia, Nov. 21, 2022, https://www.investopedia.com/terms/a/assay.asp#:~:text=A%20gold%20assay%20is%20a,correct%20purity%20and%20content%20standards (last visited March 25, 2023).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Secondhand dealers who purchase bullion may see a cost benefit because these items are expressly excluded from the definition of a secondhand goods and therefore, are no longer required to be held for 30 days.

D. FISCAL COMMENTS:

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 requires nor authorizes administrative rulemaking by executive agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There may be potential issues with removing “coins” from the exception from the secondhand goods regulations. “Coins” potentially means and includes currency that is not currently in circulation. However, replacing such term with “money” broadens the applicability with unknown consequences.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to secondhand goods; amending s. 538.03, F.S.; revising the definition of "secondhand goods"; providing an effective date.

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

Section 1. Paragraph (i) of subsection (1) of section 538.03, Florida Statutes, is amended to read:

538.03 Definitions; applicability.—

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

(i) "Secondhand goods" means personal property previously owned or used which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as used property. The term includes gift certificates and credit memos as defined in s. 501.95 which are purchased, consigned, or traded by a secondhand dealer. The term does not include office furniture~~,~~ pianos~~,~~ books~~,~~ clothing~~,~~ organs~~,~~ money; ~~coins,~~ motor vehicles~~,~~ costume jewelry; gold, silver, platinum, palladium, or rhodium bullion that has been assayed and is properly marked as to its weight and fineness~~,~~ cardio and strength training or conditioning equipment designed primarily for indoor use~~,~~ and secondhand sports equipment that is not permanently labeled with a serial number. As used in this paragraph, the term "secondhand sports equipment" does not

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

include golf clubs.

Section 2. This act shall take effect July 1, 2023.

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

HB 833

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 833 Vacation Rentals
SPONSOR(S): Duggan
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) in the Department of Business and Professional Regulation (DBPR) licenses and inspects vacation rentals within the state. A vacation rental is classified as any unit or group of units in a condominium or cooperative or any individually or collectively owned home, not a timeshare project, which is rented to guests **more than three times in a calendar year for periods of less than 30 days** or 1 calendar month, or advertised to the public as a place regularly rented to guests. **Local governments may not prohibit vacation rentals or regulate the duration or frequency of such rentals**. Local regulations adopted before June 1, 2011, are not subject to this prohibition.

The bill:

- Adds to the scope of the state preemption of public lodging establishments and public food service establishments by **preempting "licensing"** regulations, and revises the scope of the express state preemption on vacation rentals to allow local jurisdictions to amend local regulations to:
  - Be less restrictive; or
  - Comply with local registration requirements.
- Allows local governments to create a local vacation rental registration program.
- Allows local governments to charge a registration fee not to exceed $50 for processing an individual registration application, or $100 for processing a collective registration application.
- Requires local governments to waive fines for failure to register if the vacation rental becomes registered within 30 days.
- Preempts to the state the regulation of advertising platforms, requires users of advertising platforms to provide license and registration information in a vacation rental listing, requires advertising platforms to collect and remit certain taxes and adopt an antidiscrimination policy.
- Grants the Division certain enforcement mechanisms relating to unlicensed activities.
- Specifically, does not supersede the authority of condominiums, cooperatives, or homeowners' associations to restrict the use of their properties.
- Requires vacation rental operators to display license and registration information.
- Requires sexual offenders and sexual predators who stay in a vacation rental to register with the local sheriff's office under certain circumstances.

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

Except as otherwise provided, the bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Vacation Rentals

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. DBPR licenses vacation rentals within the state and has the power to inspect a licensed vacation rental.[1]

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.[2]

The term "public lodging establishments" includes transient and nontransient public lodging establishments.[3] The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

The term "transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.[4]

The term "vacation rental" means any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.[5]

Current law exempts from licensing requirements living or sleeping facilities that do not fit within the classification of a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment.[6] Currently, the classification for "vacation rental" only applies to situations where the entire unit or dwelling is offered for rent; therefore the rental of individual rooms within a condominium unit or house is excluded from the licensure and regulation of public lodging establishments by the Division.[7]

Licensure

The Division is authorized to issue vacation rental licenses as follows:

- Single license: issued to an individual person or entity, but not a licensed agent, and may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity.
- Group license: issued to a licensed agent to cover all units within a building or group of buildings in a single complex and only covers units held out to the public as a place regularly rented to guests.

[1] S. 509.241, F.S.
[2] S. 509.242(1), F.S.
[3] S. 509.013(4)(a), F.S.
[4] S. 509.013(4)(a)1., F.S.
[5] S. 509.242(1)(c), F.S.
[6] S 509.013(4)(b)9., F.S.
[7] *See* 18-06 Fla. Op.Att'y Gen. (2018).

- Collective license: issued to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses per license.[8]

Applicants for licensure must submit the appropriate application and required fee to the Division. The license fees are based on the number of rental units in the establishment. A current license must be conspicuously displayed in the office or lobby of the licensed establishment.[9] If no office or lobby is present on the premises of the licensed establishment, the license must be readily available for inspection upon request.[10]

Currently, there are 63,690 public lodging establishments licensed by the Division. These licenses are distributed as follows:[11]

- Hotels: 2,308 licenses;
- Motels: 2,397 licenses;
- Non-transient apartments: 18,315 licenses;
- Transient apartments: 913 licenses;
- Bed and Breakfast Inns: 261 licenses;
- Vacation rental condominiums: 12,716 licenses;
- Vacation rental dwellings: 26733,306 licenses; and
- Vacation rental timeshare projects: 47 licenses.

License Fees

The Division provides the following fee schedule relating to vacation rentals:[12]

- Vacation rentals/collective license.

BASIC FEE	PER UNIT FEE	HEP FEE[13]	TOTAL FEE
$150	$10	$10	VARIES

- Vacation rentals/group and single license.

NUMBER OF UNITS	BASIC FEE	INCREMENTAL UNIT FEE	HEP FEE	TOTAL FEE
SINGLE UNIT	$150	$10	$10	$170
2-25	$150	$20	$10	$180
26-50	$150	$35	$10	$195
51-100	$150	$50	$10	$210
101-200	$150	$75	$10	$235
201-300	$150	$105	$10	$265
301-400	$150	$135	$10	$295
401-500	$150	$160	$10	$320
OVER 500	$150	$190	$10	$350

Applicants for initial licensure are required to pay the full license fee if the application is made during, or more than six months before, the annual renewal period. A half-year fee is authorized if such application is made 6 months or less before the renewal period. A $50 application fee is required when making the initial application or an application for change of ownership. Renewal fees are based upon the number of units under the license when the license was either issued or last renewed, whichever is

[8] S. 509.241, F.S.
[9] S. 509.241(3), F.S.
[10] R. 61C-1.002(1), F.A.C.
[11] DBPR, *Division of Hotels and Restaurants Annual Report for FY 2021-2022*, p. 8, http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2021_22.pdf (last visited Mar. 24, 2023).
[12] R. 61C-1.008, F.A.C.
[13] S. 509.302, F.S., establishes the Hospitality Education Program. All public lodging establishments and all public food service establishments licensed under ch. 509, F.S., are required to pay an annual fee of no more than $10, which shall be included in the annual license fee and used for the sole purpose of funding the Hospitality Education Program.

most recent. A $50 delinquency fee is required to renew a delinquent license filed with the Division after the expiration date.

Sanitation and Safety

Current law requires each public lodging establishment to meet requirements and standards relating to sanitation and safety.[14] These requirements and standards apply to the following:

- Water, plumbing and waste;
- Public bathrooms (vacation rentals are exempt from this requirement);
- Towels;
- Glassware, tableware, and utensils (vacation rentals are exempt from federal and state standards but must sanitize with household cleaning supplies and provide notice of such in guest rooms);
- Kitchens;
- Ice making machines;
- Locking devices;
- Vermin control;
- Storage and labeling of toxic items;
- Structural components, attachments, and fixtures; and
- Attics, basements, boiler rooms, meter rooms, laundry rooms, and storage rooms.

Ventilation and Fire Safety

Each bedroom in a public lodging establishment must be properly ventilated with windows or mechanical ventilation.[15] Specialized smoke detectors for the deaf and hearing-impaired must be made available upon request by guests in transient public lodging establishments without charge.[16]

In addition, smoke alarms must be installed in every living unit,[17] and automatic fire sprinklers may be required in public lodging establishments if the rental units are located within a building with three or more stories or greater than 75 feet in height.[18] All local fire authority requirements must be met. Electrical wiring must be in good repair.

Conduct on Premises

The operator of a public lodging establishment is authorized to refuse accommodations or service to undesirable guests.[19] Subject to proper notification, an operator may remove guests who:

- Illegally possess or deal controlled substances;
- Are intoxicated;
- Are profane, lewd, or brawling;
- Disturb the peace and comfort of other guests;
- Injure the reputation, dignity, or standing of the establishment;
- Fail to pay rent on time;
- Fail to check out on time;
- Are generally detrimental to the establishment.[20]

The admission to, or the removal from, a public lodging establishment cannot be based upon race, creed, color, sex, physical disability, or national origin.[21]

[14] *See generally* s. 509.221, F.S., and R. 61C-1&3, F.A.C.
[15] S. 509.221(3), F.S.
[16] R. 61C-1.004, F.A.C.
[17] S. 509.215(1)(b), F.S.
[18] S. 509.215(1), F.S.
[19] S. 509.142, F.S.
[20] S. 509.141(1), F.S.
[21] S. 509.141(1), F.S.

Violations for remaining or attempting to remain in an establishment after being requested to leave are a second-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.[22]

In addition, an operator is authorized to take a person into custody and detain that person for disorderly conduct that creates a threat to the life or safety of the person or others.[23]

Inspections

The Division is required to inspect all public lodging establishments as often as necessary for the enforcement of the law and protection of the public health, safety and welfare. **Each licensed public lodging establishment must be inspected at least biannually (twice per year)**, except for transient and non-transient apartments, which must be inspected at least annually.[24]

Vacation rentals are not subject to this requirement, but must be available for inspection upon a request by the Division. For inspection purposes, the licensee or operator must, upon request, meet the inspector at the site of a specified establishment with keys to the licensed house or unit being inspected.[25]

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways from a person competent to conduct such inspections.[26]

The Division also may inspect a vacation rental in response to a consumer complaint related to sanitation issues or unlicensed activity. In Fiscal Year 2021-2022, the Division received 325 consumer complaints related to vacation rentals, of which 34 were confirmed as a violation by the Division.[27]

Registry

The licensee or operator of a vacation rental must notify the Division of any and all houses or units represented for inclusion in the license application. Anytime a change occurs in the street or unit address or number of houses or units included under the license, the licensee or operator must notify the Division of any and all houses or units included in the license at least 60 days prior to the expiration date of the license. In addition, a list of the included houses or units must be maintained in a written form for inspection by request.[28]

Each operator of a transient establishment must maintain a register showing the dates each rental unit was occupied by a guest as well the rates charged to the occupants. This register must be maintained in chronological order and available for inspection by the Division at any time. Operators must maintain two years of register data.[29]

Violations

Any public lodging establishment found to be in violation of ch. 509, F.S., or rules adopted by the Division, may be subject to administrative actions including the following penalties:

- Fines not to exceed $1,000 per offense; and
- Suspension, revocation, or refusal of a license.[30]

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[22] S. 509.141(3), F.S.
[23] S. 509.143(1), F.S.
[24] *See generally* s. 509.032, F.S., r. 61C-1.002, F.A.C.
[25] *Id.*
[26] *See* ss. 509.211(3), 509.2112, F.S., and r. 61C-3.001, F.A.C.
[27] DBPR, *Division of Hotels and Restaurants Annual Report for FY 2021-2022*, at 21.
[28] R. 61C-1.002, F.A.C.
[29] S. 509.101(2), F.S.
[30] S. 509.261(1), F.S.

Preemption Authority

Prior to June 1, 2011, local governments regulated vacation rentals (also referred to as resort dwellings in many local ordinances). Local governments could restrict or prohibit vacation rentals up to, and including, banning the use of residential properties as vacation rentals.

Legislation in 2011 preempted the authority to regulate vacation rentals to the state.[31] The preemption prevented local governments from enacting any new law, ordinance, or regulation that:

- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.

The 2011 preemption also "grandfathered" any local law, ordinance, or regulation of vacation rentals enacted on or prior to June 1, 2011.[32]

Prior to the 2011 preemption, several municipalities had created regulations specifically relating to vacation rentals.[33] As an example, one ordinance prohibited owners of single-family residences in residential zones from renting their properties for durations of less than 30 days, although it grandfathered certain vacation rentals that had already obtained all applicable state and local licenses and permits.[34] Subsequent to the enactment of the 2011 legislation, the vacation rental market experienced growth.[35]

In 2014, the Legislature narrowed the scope of the preemption to preempt only those local regulations that:

- Prohibit vacation rentals; or
- Regulate the duration or frequency of vacation rentals.

Thus, local governments can regulate vacation rentals to the extent those regulations do not prohibit vacation rentals, or restrict the duration or frequency of vacation rentals. The grandfather provision for regulations adopted on or before June 1, 2011, was retained.[36]

This preemption does not apply to local regulations exclusively relating to "property valuation as a criterion for vacation rental if the local regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern."[37]

In addition, the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. However, local governments or local enforcement districts are still allowed to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code.[38]

Recent Activity

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[31] Ch. 2011-119, Laws of Fla., codified in s. 509.032(7), F.S.
[32] *Id.*
[33] *See* City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. *See also* Monroe County Code, No. 004-1997 (2013); Bal Harbour Village Code of Ordinances, s. 21-363.
[34] City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. *See also City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla. 2nd DCA 2011).
[35] Melissa Maynard, *As Short-Terms Rentals Boom, Regulation an Issue*, THE PEW CHARITABLE TRUST (June, 6, 2013), http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/06/06/as-shortterms-rentals-boom-regulation-an-issue (last visited Mar. 23, 2023).
[36] Ch. 2014-71, Laws of Fla., codified in s. 509.032(7)(b), F.S.
[37] S. 509.032(7)(c), F.S.
[38] S. 509.032(7)(a), F.S.

Homeowners found to be in conflict with ordinances regulating vacation rentals have taken legal action against their respective local governments through the Bert J. Harris, Jr., Private Property Rights Protection Act.[39] The act provides a cause of action for private property owners whose real property has been inordinately burdened by a specific action of a governmental entity that may not rise to the level of a "taking" under the State or Federal Constitutions. The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.[40]

In November 2015, the City of Anna Maria passed and adopted an ordinance that provides a general framework for the regulation of vacation rentals, including maximum occupancy requirements. According to the city's website, since April 2016, approximately 113 Bert Harris Act claims relating to the ordinance have been filed that could amount to approximately $38 million in damages.[41]

In March 2016, Miami Beach, which bans all short term rentals, passed an ordinance making the fine for a first violation for a resident caught renting short-term $20,000. Each subsequent fine increases by $20,000 and can be as high as $100,000. Vacation/short-term rentals that are permitted in certain zoning districts of Miami Beach are required to provide and conspicuously display the city-issued business tax receipt number and the resort tax certificate number in every advertisement or listing of any type in connection with the rental of the residential property.[42]

In June 2018, it was reported that Miami Beach had issued $12.1 million in fines, only $174,000 of which had been paid. Some vacation rental owners were reported to have accumulated up to $60,000 in fines.[43] Since then, the Third District Court of Appeals invalidated the city's fine structure after determining the regulations conflict with state law that caps violation fines between $1,000 and $5,000.[44] As a result, the city has left the regulations in place and simply revised the fine structure. First-time offenders are fined $1,000 a day, and repeat offenders are fined $5,000 per day. According to a memo from the City Attorney, the new fine structure complies with the ruling against Miami Beach.[45]

Condominiums, Cooperatives, and Homeowners' Associations

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common elements.[46] A condominium is created by recording a declaration in the public records of the county in which the condominium will be located.[47] A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws governing the administration of the association. The declaration as originally recorded or as amended may include covenants and restrictions concerning the use, occupancy, and transfer of the units in the association.

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[39] Kathy Prucnell, *2 more Holmes Beach Bert Harris claims proceed to courthouse*, THE ISLANDER (Feb. 20, 2018), https://www.islander.org/2018/02/2-more-holmes-beach-bert-harris-claims-proceed-to-courthouse/ (last visited Mar. 23, 2023).
[40] S. 70.001, F.S.
[41] CITY OF ANNA MARIA, *Bert J. Harris, Jr., Private Property Rights Protection Act Claim Filings*, http://www.cityofannamaria.com/residents/bert_harris_claim.php (last visited Mar. 23, 2023).
[42] *See* Miami Beach City Code, Sec. 142-1111 and 142-905(b).
[43] Chabeli Herrera, *Miami Beach has the country's highest short-term rental fines. It just got sued,* MIAMI HERALD (June 28, 2018), https://www.miamiherald.com/news/business/article213954174.html.
[44] Francisco Alvarado, *Miami-Dade judge strikes down Miami Beach short-term rental ban*, TheRealDeal South Florida Real Estate News (Oct. 8, 2019), https://therealdeal.com/miami/2019/10/08/miami-dade-judge-strikes-down-miami-beach-short-term-rental-ban/ (last visited Mar. 23, 2023).
[45] Francisco Alvarado, *Miami Beach slashes fines for illegal short-term rentals*, TheRealDeal South Florida Real Estate News (Oct. 14, 2019), https://therealdeal.com/miami/2020/10/14/miami-beach-slashes-fines-for-illegal-short-term-rentals/ (last visited Mar. 23, 2023).
[46] S. 718.103(11), F.S.
[47] S. 718.104(2), F.S.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S., where real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[48] The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are similar in many ways. A cooperative is created using "cooperative documents" which include articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any. The documents may include restrictions, which affect the use of the property.

A homeowners' association (HOA) is an association of residential property owners, created pursuant to ch. 720, F.S., where voting membership consists of parcel owners, membership is a mandatory condition of parcel ownership, and which may impose assessments that, if unpaid, can become a lien on the parcel.[49] Chapter 720, F.S., only regulates HOAs whose covenants and restrictions include mandatory assessments. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes those provided in ch. 720, F.S., and contained in the governing documents of the association. The governing documents include the recorded covenants and restrictions, bylaws, articles of incorporation, and duly adopted amendments to those documents. The documents may include restrictive covenants governing the use and occupancy of properties.

Based on these laws, condominium, cooperative, and homeowners' associations may enact provisions that restrict the ability of the property owners to rent their properties.[50] This includes actions such as prohibiting owners from renting their properties, restricting the duration of the rental term, or limiting the frequency owners are allowed to rent their properties.

Florida Sexual Predators Act

Current law requires all sexual offenders and sexual predators to comply with a number of statutory registration requirements. A sexual offender must report in person to the sheriff's office to register within 48 hours of:

- Establishing permanent, temporary, or transient residence in Florida; or
- Being released from the custody, control, or supervision of the Department of Corrections (DOC) or from the custody of a private correctional facility.[51]

A sexual predator must register:

- With DOC if the sexual predator is in DOC's custody or control, under DOC's supervision, or in the custody of a private correctional facility; [52]
    - If the sexual predator is under DOC's supervision but not in custody, he or she must register within 3 days of the court designating him or her as a sexual predator;[53]
- With the custodian of the local jail, within 3 days of the court designating him or her as a sexual predator, if the sexual predator is in the custody of a local jail;[54]
- In person at the sheriff's office in the county where:
    - The sexual predator establishes or maintains a residence within 48 hours of establishing or maintaining a residence in Florida;[55] or
    - The sexual predator was designated a sexual predator within 48 hours after such finding is made.[56]

Residence

[48] S. 719.103(2)(26), F.S.
[49] S. 720.301(9), F.S.
[50] Motley Fool, *Can an HOA Restrict Rentals? (Spoiler Alert: Yes)*, https://www.fool.com/millionacres/real-estate-investing/rental-properties/can-hoa-restrict-rentals-spoiler-alert-yes/# (last visited Jan. 21, 2022).
[51] S. 943.0435(2)(a)1., F.S.
[52] S. 775.21(6)(b), F.S.
[53] Id.
[54] S. 775.21(6)(c), F.S.
[55] S. 775.21(6)(e)a., F.S.
[56] S. 775.21(6)(2)b., F.S.

Residence, for the purposes of registration for both sexual offenders and sexual predators, is defined as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for 3 or more consecutive days.
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination in or out of this state for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.
- "Transient residence" means a county where a person lives, remains, or is located for a period of 3 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address. [57]

Continuing Reporting Requirements

A sexual offender or sexual predator must report the following updates within 48 hours:

- Change in the offender's permanent, temporary, or transient residence;
- Change in the offender's name, by reason of marriage or other legal process;
- When the offender vacates a permanent, temporary, or transient residence, or when the offender remains in a permanent, temporary, or transient residence after reporting his or her intent to vacate such a residence;
- Use of a new electronic mail address or Internet identifier;
- Change in vehicles owned;
- Change to home or cellular telephone numbers;
- Change to employment information;
- Change in status related to enrollment, volunteering, or employment at institutions of higher education; and
- International and out-of-state travel information.[58]

Effect of the Bill

Preemptions

The bill adds to the scope of the state preemption of public lodging establishments and public food service establishments, by also preempting "licensing."

The bill revises the scope of the express state preemption on vacation rentals to allow local jurisdictions to adopt local regulations:

- As long as the regulation is less restrictive; or
- To comply with local registration requirements.

The bill also preempts the regulation of advertising platforms to the state.

The bill maintains the exemption to the preemption that allows only local ordinances adopted on or before June 1, 2011, to remain in effect. Additionally, the bill allows a local government to pass such regulations after June 1, 2011, if they are less restrictive than what was in effect on June 1, 2011.

The bill maintains the exemption to the preemption for areas of critical state concern so that these areas remain fully exempted from the preemption, and may have existing ordinances that were adopted after June 1, 2011.

[57] S. 775.21, F.S.
[58] Ss. 943.0435(4)(e)2. & 775.21(6)(a)1.a., F.S.

Local Vacation Rental Registration Program

The bill authorizes local laws, ordinances, or regulations to require the registration of vacation rentals with a local vacation rental registration program.

The bill authorizes local governments to adopt such a program and impose a fine for failure to register under the program. However, the bill requires a local government to waive the fine if the vacation rental is registered under a vacation rental registration program within 30 days after receiving notice of the fine and deficiency.

The bill allows local governments to charge a registration fee not to exceed $50 for processing an individual registration application, or $100 for processing a collective registration application.

The bill prohibits a local law, ordinance, or regulation from requiring the renewal of a registration more than once per year. However, if there is a change of ownership, the new owner may be required to submit a new application for registration.

The bill provides that as a condition of registration, the local law, ordinance, or regulation may only require the owner or operator of a vacation rental to:

- Submit identifying information about the owner or the owner's agents and the subject vacation rental property.
- Obtain a license as a transient public lodging establishment issued by the Division within 60 days after local registration.
- Obtain all required tax registrations, receipts, or certificates issued by DOR, a county, or a municipal government.
- Update required information on a continuing basis to ensure it is current.
- Comply with parking standards and solid waste handling and containment requirements, so long as such standards and requirements are not imposed solely on vacation rentals.
- Designate and maintain at all times a responsible party who is capable of responding to complaints and other immediate problems related to the vacation rental, including being available by telephone at a listed phone number.
- Pay in full all recorded municipal or county code liens against the subject property.
    - The local government may withdraw its acceptance of a registration on the basis of an unsatisfied recorded municipal or county code lien.

The bill requires that within 15 business days after receiving an application for registration of a vacation rental, the local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice specifying with particularity any areas that are deficient, which may be provided by U.S. mail or electronically.

The bill provides that a vacation rental owner or operator and the local government may agree to a reasonable request to extend the timeframes, particularly in the event of a force majeure or other extraordinary circumstance.

The bill requires a local government that denies an application for registration of a vacation rental to give written notice to the applicant as follows:

- The notice may be provided by United States mail or electronically.
- The notice must specify with particularity the factual reasons for the denial and include a citation to the applicable portions of an ordinance, a rule, a statute, or other legal authority for the denial of the registration.

The bill:

- Prohibits local governments from denying an applicant from reapplying if the applicant cures the identified deficiencies.
- Provides that if the local government fails to accept or deny the registration within the timeframes provided, the application is deemed accepted.

- Provides that upon an accepted registration of a vacation rental, a local government must assign a unique registration number to the vacation rental or other indicia of registration and provide the registration number or other indicia of registration to the owner or operator of the vacation rental in writing or electronically.
- Authorizes local governments to terminate or refuse to issue or renew a vacation rental registration when:
  - The operation of the subject premises violates a registration requirement authorized pursuant to this paragraph or a local law, ordinance, or regulation that does not apply solely to vacation rentals; or
  - The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

Vacation Rental Licenses

Effective January 1, 2024, the bill makes the following revisions to the license application process for vacation rentals:

- Requires all applications for a vacation rental license to, if applicable, include the local registration number or other proof of registration required by local law, ordinance, or regulation.
- Authorizes the Division upon receiving an application for a vacation rental license to grant a temporary license that authorizes the vacation rental to begin operation while the application is pending and to post the information required under s. 509.243(1)(c), F.S.
  - The temporary license automatically expires upon final agency action regarding the license application.
- Requires any license issued by the Division to be displayed conspicuously to the public inside the licensed establishment, instead of "in the office or lobby."
- Requires the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental license number and the applicable local registration number.

Advertising Platforms Definition

The bill defines the term "advertising platform" as a person as defined in s. 1.01, F.S.,[59] who:

- Provides an online application, software, a website, or a system: through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;
- Provides or maintains a marketplace: for the renting of a vacation rental for transient occupancy; and
- Provides a reservation or payment system: that facilitates a transaction for the renting of a vacation rental for transient occupancy and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for the rental transaction.

Advertising Platform Requirements

Effective January 1, 2024, the bill provides that advertising platforms must:

- Require that a person who places an advertisement for the rental of a vacation rental to:
  - Include in the advertisement the vacation rental license number and, if applicable, the local registration number; and
  - Attest to the best of the person's knowledge that the license number for the vacation rental property and the local registration are current, valid, and accurately stated in the advertisement.
- Display the vacation rental license number and, if applicable, the local registration number.
- By July 1, 2024, check that the vacation rental license number provided by the owner or operator appears as current in the information posted by the division and applies to the subject

[59] S. 1.01(3), F.S., defines the word "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

vacation rental before publishing the advertisement on its platform and again on a quarterly basis.
- Remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by the Division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the Division.
- Adopt an anti-discrimination plan to help prevent discrimination, and inform its users of the public lodging discrimination prohibition found in s. 509.092, F.S.

Advertising Platform Tax Requirements

The bill requires advertising platforms to collect and remit taxes due under certain provision of Florida's tax code resulting from the reservation and payment of a vacation rental property through an advertising platform.

The bill requires advertising platforms to collect and remit taxes due under ss. 125.0104,[60] 125.0108,[61] 205.044,[62] 212.03,[63] 212.0305,[64] and 212.055, F.S.,[65] resulting from the reservation of a vacation rental property and payment therefor through an advertising platform.

The bill also includes the tax collection and remittance requirements for advertising platforms within ch. 212, F.S., and to:
- Provide that the taxes an advertising platform must collect and remit are based on the total rental amount charged by the owner or operator for use of the vacation rental.
- Exclude service fees from the calculation of taxes remitted by an advertising platform to the Department of Revenue (DOR), unless the advertising platform owns, is related to, operates, or manages the vacation rental.
- Require the DOR and other jurisdictions to allow advertising platforms to register, collect, and remit such taxes.

The bill provides that advertising platforms that comply with the requirements are deemed to be in compliance. The bill also provides that it does not create and is not intended to create a private cause of action against advertising platforms, and an advertising platform may not be held liable for any action it takes voluntarily in good faith in relation to its users to comply with ch. 509, F.S., or the advertising platform's terms of service.

Division Requirements

By July 1, 2024, the bill requires the Division to maintain vacation rental license information in a readily accessible electronic format.

The bill provides enforcement processes for the Division to issue a cease and desist order for any person who violates ch. 509, F.S., the chapter of law governing "lodging and food service establishments." The bill authorizes the Division to seek an injunction or a writ of mandamus to enforce a cease and desist order. If the Division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, F.S., it is entitled to collect its attorney fees and costs, together with any cost of collection.

The bill:

[60] Section 125.0104, F.S., relates to the local option tourist development tax.
[61] Section 125.0108, F.S., relates to the tourist impact tax in areas within a county designated as an area of critical state concern.
[62] Section 205.044, F.S., relates to the merchant business tax measured by gross receipts.
[63] Section 212.03, F.S., relates to the transient rentals tax.
[64] Section 212.0305, F.S., relates to convention development taxes.
[65] Section 212.055, F.S., relates to discretionary sales taxes.

- Authorizes the Division to fine an advertising platform up to $1,000 per offense for violations of its new requirements or of the rules of the Division.
- Authorizes the Division to regard as a separate offense each day or portion of a day in which an advertising platform is operated in violation.
- Requires the Division to issue a written warning or notice and provide the advertising platform 15 days to cure such violation before commencing any legal proceeding.

The bill authorizes the Division to revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a vacation rental license when:

- The operation of the subject premises violates the terms of an applicable lease or property restriction, including any property restriction adopted pursuant to chs. 718, 719, or 720, F.S., as determined by a final order of a court of competent jurisdiction or a written decision by an arbitrator authorized to arbitrate a dispute relating to the subject property and a lease or property restriction;
- The owner or operator fails to provide proof of registration, if required by local law, ordinance, or regulation;
- The registration of the vacation rental is terminated by a local government as provided in s. 509.032(7)(b)5., F.S.; or
- The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

The bill authorizes the Division to suspend, for a period of not more than 30 days, a vacation rental license when the owner or operator has been cited for two or more code violations related to the vacation rental during a period of 90 days. The Division is required issue a written warning or notice and provide an opportunity to cure a violation before commencing a legal proceeding.

Condominiums, Cooperatives, and Homeowners' Associations

The bill specifies that the application of the provisions in the bill shall not supersede any current or future declaration or declaration of condominium adopted pursuant to ch. 718, F.S., cooperative documents adopted pursuant to ch. 719, F.S., or declaration or declaration of covenants adopted pursuant to ch. 720, F.S.

Department of Revenue Rulemaking

The bill grants DOR emergency rulemaking authority to implement the changes made by the bill relating to the collection of taxes, including establishing procedures to facilitate the remittance of taxes. The emergency rules will be effective for 6 months after adoption and may be renewed while DOR adopts permanent rules. The section of the bill authorizing the emergency rules will expire January 1, 2025.

Sexual Offenders and Predators

The bill amends s. 775.21, F.S., to require sexual offenders and sexual predators to register with the local sheriff's office if they stay in a vacation rental for 24 hours or more (currently set at stays of 3 days or more).

Effective Date

The bill becomes effective upon becoming law, except for the provisions otherwise expressly provided in the bill. The requirements for vacation rental owners or operators to display license and registration information become effective January 1, 2024. The bill requires the Division to maintain vacation rental license information in a readily accessible electronic format by July 1, 2024. The provisions governing advertising platforms become effective January 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.03, F.S., relating to transient rentals tax collection and remittance by advertising platforms.

Section 2: Amends s. 509.013, F.S., defining the term "advertising platform."

Section 3: Amends s. 509.032, F.S., revising preemption authority, making conforming changes.

Section 4: Amends s. 509.241, F.S., revising display of vacation rental license requirements.

Section 5: Creates s. 509.243, F.S., governing advertising platforms.

Section 6: Amends s. 509.261, F.S., relating to revocation or suspension of licenses, fines, procedure.

Section 7: Amends s. 775.21, F.S., revising “The Florida Sexual Predators Act.”

Section 8: Amends s. 159.27, F.S., conforming a cross reference.

Section 9: Amends s. 212.08, F.S., conforming a cross reference.

Section 10: Amends s. 316.1955, F.S., conforming a cross reference.

Section 11 Amends s. 404.056, F.S., conforming a cross reference.

Section 12: Amends s. 477.0135, F.S., conforming a cross reference.

Section 13: Amends s. 509.221, F.S., conforming a cross reference.

Section 14: Amends s. 553.5041, F.S., conforming a cross reference.

Section 15: Amends s. 559.955 conforming a cross reference.

Section 16: Amends s. 705.17, F.S., conforming a cross reference.

Section 17: Amends s. 705.185, F.S., conforming a cross reference.

Section 18: Amends s. 705.1355, F.S., conforming a cross reference.

Section 19: Amends s. 877.24, F.S., conforming a cross reference.

Section 20: Creates an unnumbered section providing for applicability.

Section 21: Creates an unnumbered section authorizing DOR emergency rulemaking authority.

Section 22: Provides for effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On March 3, 2023, the Revenue Estimating Conference (REC) adopted the middle estimate, which shows a zero impact for the proposed language.[66]

[66] Revenue Estimating Conference, Revenue Impact Results, Mar. 3, 2023, http://edr.state.fl.us/content/conferences/revenueimpact/archives/2023/_pdf/impact0303.pdf p. 50, (last visited Mar. 24, 2023).

Indeterminate. The bill may result in an increase in licensing revenue to DBPR, but it is unknown how many advertising platforms which are currently exempt from licensing would require licensure. The bill may also result in an indeterminate increase in fines due to noncompliance.

2. Expenditures:

Indeterminate. There may be an increase in expenditures for DBPR and FDLE to implement the bill.

FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The bill may create an increase in tourism taxes and revenue related to local registration fees and fines.

2. Expenditures:

Indeterminate. According to FDLE, the bill:[67]

- Requires sexual predators and offenders to register in person at the sheriff's office in the county of the vacation rental if they are lodging in the vacation rental for 24 hours or more. This will lead to a substantial increase in the number of sexual predators and offenders required to complete a registration in person at sheriffs' offices throughout the state, potentially requiring an increase in registration staff to accommodate the growth in registrants who must appear in person to register.
- May also require increased hours of availability for the sheriffs' offices to allow for the substantially decreased time to establish a residency in a vacation rental. For example, at least 14 sheriffs' offices have three or more consecutive days where registration is unavailable. Eight registration offices require appointments to register, and only four are open for registration 24 hours a day. As written, the bill offers no monetary provisions for sheriffs' offices and may require that sheriffs' offices seek additional funds from their own local government to expand registration hours and hire additional registration staff.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may provide a more predictable and uniform regulatory framework for vacation rentals in Florida.

C. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

[67] Florida Department of Law Enforcement, Agency Analysis of House Bill 833 (2023).

B. RULE-MAKING AUTHORITY:

The bill provides emergency rulemaking authority for DOR to implement the bill's provisions.

The Division will need to update its rules based on the provision that authorizes the Division to fine an advertising platform. Current law appears to provide sufficient rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

FDLE has indicated concerns as follows:[68]

- The amended language of "temporary residence" in s. 775.21(2)(n), FS, as it will have a significant impact on the Florida Sexual Offender and Predator Registry and will certainly lead to litigation challenging the statutes (and registry). The department recommends removing the language amending the definition of "temporary residence."
- Affords no direction, responsibilities, mechanisms or timelines regarding the distribution of such "Vacation Rental registration information." If the intent is to provide updated information on sexual offenders and predators in vacation rentals immediately upon registration, this is not attainable for persons coming into Florida that have not previously registered in the state (which is expected to be a large proportion of registrations received under this bill). Registrants coming to Florida from other states require research and information from out-of-state criminal justice partners prior to their information being disseminated to the public. Those partners, such as other state registries and clerks of court, are generally open on regular weekday business hours and therefore may not provide the information required for the department to notify the public that a registrant is in a vacation rental until they have already vacated it.
- Takes effect upon becoming law, which allows no time for any of the requisite technological updates, notice and training to law enforcement partners or notice to offenders and predators regarding the change to registration requirement. Such a circumstance will place registrants at risk of a second or third-degree felony arrest for failure to register.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[68] *Id.* at 5 and 6.

A bill to be entitled

An act relating to vacation rentals; amending s. 212.03, F.S.; requiring advertising platforms to collect and remit taxes for certain transactions; reordering and amending s. 509.013, F.S.; defining the term "advertising platform"; amending s. 509.032, F.S.; revising the regulated activities of public lodging establishments and public food service establishments preempted to the state to include licensing; revising an exemption to the prohibition against certain local regulation of vacation rentals; expanding the authority of local laws, ordinances, or regulations to include requiring vacation rentals to register with local vacation rental registration programs; authorizing local governments to adopt vacation rental registration programs and impose fines for failure to register; authorizing local governments to charge fees for processing registration applications; specifying requirements, procedures, and limitations for local vacation rental registration programs; authorizing local governments to terminate or refuse to issue or renew vacation rental registrations under certain circumstances; preempting the regulation of advertising platforms to the state; conforming a cross-reference; amending s. 509.241,

F.S.; requiring applications for vacation rental licenses to include certain information; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to issue temporary licenses upon receipt of vacation rental license applications; providing for expiration of temporary vacation rental licenses; requiring licenses issued by the division to be displayed conspicuously to the public inside the licensed establishment; requiring the owner or operator of certain vacation rentals to also display its vacation rental license number and applicable local registration number; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements and attest to certain information; requiring advertising platforms to display and check such information; requiring the division to maintain certain information in a readily accessible electronic format by a certain date; requiring advertising platforms to remove an advertisement or listing under certain conditions and within a specified timeframe; requiring advertising platforms to collect and remit taxes for certain transactions; authorizing the division to issue and

deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which certain hearings may be sought; authorizing the division to file certain proceedings; authorizing the division to seek certain remedies for the purpose of enforcing a cease and desist notice; authorizing the division to collect attorney fees and costs under certain circumstances; authorizing the division to impose a fine on advertising platforms for certain violations; requiring the division to issue written warnings or notices before commencing certain legal proceedings; requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of the policy's provisions; providing construction; amending s. 509.261, F.S.; authorizing the division to revoke, refuse to issue or renew, or suspend vacation rental licenses under certain circumstances; amending s. 775.21, F.S.; revising the definition of the term "temporary residence"; amending ss. 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.221, 553.5041, 559.955, 705.17, 705.185, 717.1355, and 877.24, F.S.; conforming cross-references to changes made by the act; providing applicability; authorizing the Department of Revenue to adopt emergency rules;

providing requirements and an expiration for the emergency rules; providing for the expiration of such rulemaking authority; providing effective dates.

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

Section 1. Effective January 1, 2024, subsection (2) of section 212.03, Florida Statutes, is amended to read:

212.03 Transient rentals tax; rate, procedure, enforcement, exemptions.—

(2)(a) The tax provided for herein shall be in addition to the total amount of the rental, shall be charged by the lessor or person receiving the rent in and by said rental arrangement to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in this chapter, who receives said rental or payment. The owner, lessor, or person receiving the rent shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who

manage or operate hotels, apartment houses, roominghouses, tourist and trailer camps, and the rental of condominium units, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter.

(b) If a guest uses a payment system on or through an advertising platform, as defined in s. 509.013, to pay for the rental of a vacation rental located in this state, the advertising platform shall collect and remit taxes as provided in this paragraph.

1. An advertising platform, as defined in s. 509.013, which owns, operates, or manages a vacation rental or which is related within the meaning of ss. 267(b), 707(b), or 1504 of the Internal Revenue Code of 1986 to a person who owns, operates, or manages the vacation rental shall collect and remit all taxes due under this section and ss. 125.0104, 125.0108, 205.044, 212.0305, and 212.055 which are related to the rental.

2. An advertising platform to which subparagraph 1. does not apply shall collect and remit all taxes due from the owner, operator, or manager under this section and ss. 125.0104, 125.0108, 205.044, 212.0305, and 212.055 which are related to the rental. Of the total amount paid by the lessee or rentee, the amount retained by the advertising platform for reservation or payment service is not taxable under this section or ss. 125.0104, 125.0108, 205.044, 212.0305, and 212.055.

In order to facilitate the remittance of such taxes, the department and counties that have elected to self-administer the taxes imposed under chapter 125 must allow advertising platforms to register, collect, and remit such taxes.

Section 2. Section 509.013, Florida Statutes, is amended to read:

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

(1) "Advertising platform" means a person as defined in s. 1.01 who:

(a) Provides an online application, software, a website, or a system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;

(b) Provides or maintains a marketplace for the renting of a vacation rental for transient occupancy; and

(c) Provides a reservation or payment system that facilitates a transaction for the renting of a vacation rental for transient occupancy and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for the rental transaction.

(2) "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(3) ~~(1)~~ "Division" means the Division of Hotels and

Restaurants of the Department of Business and Professional Regulation.

~~(2) "Operator" means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.~~

(4)~~(3)~~ "Guest" means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

(5) "Nontransient" means a guest in nontransient occupancy.

(6) "Nontransient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

(7) "Nontransient occupancy" means occupancy when it is the intention of the parties that the occupancy will not be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

(8) "Operator" means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

~~(4)(a) "Public lodging establishment" includes a transient~~

~~public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.~~

~~1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.~~

~~2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month. License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.~~

~~(b) The following are excluded from the definitions in paragraph (a):~~

~~1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.~~

~~2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072.~~

~~3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.~~

~~4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.~~

~~5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.~~

~~6. Any establishment inspected by the Department of Health and regulated by chapter 513.~~

~~7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.~~

~~8. Any apartment building inspected by the United States~~

~~Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.~~

~~9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.~~

(9)(a)~~(5)(a)~~ "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared before ~~prior to~~ being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or

private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, or athletic contests.

Upon request by the division, a church or a religious, nonprofit fraternal, or nonprofit civic organization claiming an exclusion under this subparagraph must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

3. Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization. Upon request by the division, the event host must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

4. Any eating place located on an airplane, train, bus, or watercraft that ~~which~~ is a common carrier.

5. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

6. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

7. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

10. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

~~(6) "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and~~

~~Professional Regulation.~~

(10)(a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in

paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072.

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

(11) ~~(7)~~ "Single complex of buildings" means all buildings or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

(12) ~~(8)~~ "Temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.

(13) ~~(9)~~ "Theme park or entertainment complex" means a complex comprised of at least 25 contiguous acres owned and

controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

(14) ~~(10)~~ "Third-party provider" means, for purposes of s. 509.049, any provider of an approved food safety training program that provides training or such a training program to a public food service establishment that is not under common ownership or control with the provider.

(15) "Transient" means a guest in transient occupancy.

(16) ~~(11)~~ "Transient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.

(17) ~~(12)~~ "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

~~(13) "Transient" means a guest in transient occupancy.~~

~~(14) "Nontransient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.~~

~~(15) "Nontransient occupancy" means occupancy when it is the intention of the parties that the occupancy will not be~~

~~temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.~~

~~(16) "Nontransient" means a guest in nontransient occupancy.~~

Section 3. Paragraph (c) of subsection (3) and paragraphs (a) and (b) of subsection (7) of section 509.032, Florida Statutes, are amended, and paragraph (d) is added to subsection (7) of that section, to read:

509.032 Duties.—

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food

service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of the food-recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013 ~~s. 509.013(5)(b)~~, a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and

testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b)1. A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is amended to be less restrictive or to comply with the local registration requirements provided in this paragraph, or when a law, ordinance, or regulation adopted after June 1, 2011, regulates vacation rentals, if such law, ordinance, or regulation is less restrictive than a law, ordinance, or regulation that was in effect on June 1, 2011. Notwithstanding paragraph (a), a local law, ordinance, or regulation may require the registration of vacation rentals with a local vacation rental registration program. Local governments may adopt a vacation rental registration program pursuant to subparagraph 3. and impose a fine for failure to register under the vacation rental registration program.

2. Local governments may charge a fee of no more than $50 for processing an individual registration application or $100 for processing a collective registration application. A local law, ordinance, or regulation may not require renewal of a registration more than once per year. However, if there is a change of ownership, the new owner may be required to submit a new application for registration.

3. As a condition of registration, the local law, ordinance, or regulation may only require the owner or operator of a vacation rental to:

a. Submit identifying information about the owner or the owner's agents and the subject vacation rental property.

b. Obtain a license as a transient public lodging establishment issued by the division within 60 days after local registration.

c. Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue, a county, or a municipal government.

d. Update required information on a continuing basis to ensure it is current.

e. Comply with parking standards and solid waste handling and containment requirements, so long as such standards and requirements are not imposed solely on vacation rentals.

f. Designate and maintain at all times a responsible party who is capable of responding to complaints and other immediate

problems related to the vacation rental, including being available by telephone at a listed phone number.

g. Pay in full all recorded municipal or county code liens against the subject property. The local government may withdraw its acceptance of a registration on the basis of an unsatisfied recorded municipal or county code lien.

4.a. Within 15 business days after receiving an application for registration of a vacation rental, the local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice specifying with particularity any areas that are deficient. Such notice may be provided by United States mail or electronically.

b. The vacation rental owner or operator and the local government may agree to a reasonable request to extend the timeframes provided in this subparagraph, particularly in the event of a force majeure or other extraordinary circumstance.

c. When a local government denies an application for registration of a vacation rental, the local government must give written notice to the applicant. Such notice may be provided by United States mail or electronically. The notice must specify with particularity the factual reasons for the denial and include a citation to the applicable portions of an ordinance, a rule, a statute, or other legal authority for the denial of the registration. A local government may not deny any

applicant from reapplying if the applicant cures the identified deficiencies.

d. If the local government fails to accept or deny the registration within the timeframes provided in this subparagraph, the application is deemed accepted.

e. Upon an accepted registration of a vacation rental, a local government shall assign a unique registration number to the vacation rental or other indicia of registration and provide the registration number or other indicia of registration to the owner or operator of the vacation rental in writing or electronically.

5. The local government may terminate or refuse to issue or renew a vacation rental registration when:

a. The operation of the subject premises violates a registration requirement authorized pursuant to this paragraph or a local law, ordinance, or regulation that does not apply solely to vacation rentals; or

b. The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

(d) The regulation of advertising platforms is preempted to the state as provided in this chapter.

Section 4. Effective January 1, 2024, subsections (2) and (3) of section 509.241, Florida Statutes, are amended to read:

509.241 Licenses required; exceptions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division before ~~prior to~~ the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive a public lodging establishment license. All applications for a vacation rental license must, if applicable, include the local registration number or other proof of registration required by local law, ordinance, or regulation. Upon receiving an application for a vacation rental license, the division may grant a temporary license that authorizes the vacation rental to begin operation while the application is pending and to post the information required under s. 509.243(1)(c). The temporary license automatically expires upon final agency action regarding the license application.

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all advertising for catering services. The owner or operator of a vacation rental offered for transient occupancy through an advertising platform must also display the vacation rental license number and, if

applicable, the local registration number.

Section 5. Effective January 1, 2024, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement the vacation rental license number and, if applicable, the local registration number; and

2. Attest to the best of the person's knowledge that the license number for the vacation rental property and the local registration are current, valid, and accurately stated in the advertisement.

(b) An advertising platform must display the vacation rental license number and, if applicable, the local registration number. Effective July 1, 2024, the advertising platform must check that the vacation rental license number provided by the owner or operator appears as current in the information posted by the division pursuant to paragraph (c) and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) By July 1, 2024, the division shall maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with

the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

(2) An advertising platform must remove from public view an advertisement or a listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

(3) If a guest uses a payment system on or through an advertising platform to pay for the rental of a vacation rental located in this state, the advertising platform must collect and remit all taxes due under ss. 125.0104, 125.0108, 205.044, 212.03, 212.0305, and 212.055 related to the rental as provided in s. 212.03(2)(b).

(4) If the division has probable cause to believe that a person not licensed by the division has violated this chapter or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under s. 120.569 or s. 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a

writ of mandamus against any person who violates any provision of the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, it is entitled to collect attorney fees and costs, together with any cost of collection.

(5) The division may fine an advertising platform an amount not to exceed $1,000 per offense for violations of this section or of the rules of the division. For the purposes of this subsection, the division may regard as a separate offense each day or portion of a day in which an advertising platform is operated in violation of this section or rules of the division. The division shall issue a written warning or notice and provide the advertising platform 15 days to cure a violation before commencing any legal proceeding under subsection (4).

(6) Advertising platforms shall adopt an antidiscrimination policy to help prevent discrimination among their users and shall inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092.

(7) Advertising platforms that comply with the requirements of this section are deemed to be in compliance with the requirements of this chapter. This section does not create and is not intended to create a private cause of action against advertising platforms. An advertising platform may not be held

liable for any action it takes voluntarily in good faith in relation to its users to comply with this chapter or the advertising platform's terms of service.

Section 6. Subsections (10) and (11) are added to section 509.261, Florida Statutes, to read:

509.261 Revocation or suspension of licenses; fines; procedure.—

(10) The division may revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a vacation rental license when:

(a) The operation of the subject premises violates the terms of an applicable lease or property restriction, including any property restriction adopted pursuant to chapter 718, chapter 719, or chapter 720, as determined by a final order of a court of competent jurisdiction or a written decision by an arbitrator authorized to arbitrate a dispute relating to the subject property and a lease or property restriction;

(b) The owner or operator fails to provide proof of registration, if required by local law, ordinance, or regulation;

(c) The registration of the vacation rental is terminated by a local government as provided in s. 509.032(7)(b)5.; or

(d) The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

(11) The division may suspend, for a period of not more than 30 days, a vacation rental license when the owner or operator has been found by the code enforcement board, pursuant to s. 162.06, to have two or more code violations related to the vacation rental during a period of 90 days. The division shall issue a written warning or notice and provide an opportunity to cure a violation before commencing any legal proceeding under this subsection.

Section 7. Paragraph (n) of subsection (2) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.—

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

(n) "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. The term also includes a vacation rental, as defined in s. 509.242(1)(c), where a person lodges for 24 hours or more.

Section 8. Subsection (12) of section 159.27, Florida Statutes, is amended to read:

159.27 Definitions.—The following words and terms, unless

the context clearly indicates a different meaning, shall have the following meanings:

(12) "Public lodging or restaurant facility" means property used for any public lodging establishment as defined in s. 509.242 or public food service establishment as defined in s. 509.013 ~~s. 509.013(5)~~ if it is part of the complex of, or necessary to, another facility qualifying under this part.

Section 9. Paragraph (jj) of subsection (7) of section 212.08, Florida Statutes, is amended 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, 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.

(jj) *Complimentary meals.*—Also exempt from the tax imposed by this chapter are food or drinks that are furnished as part of a packaged room rate by any person offering for rent or lease any transient living accommodations as described in s. 509.013 ~~s. 509.013(4)(a)~~ which are licensed under part I of chapter 509 and which are subject to the tax under s. 212.03, if a separate charge or specific amount for the food or drinks is not shown. Such food or drinks are considered to be sold at retail as part of the total charge for the transient living accommodations. Moreover, the person offering the accommodations is not considered to be the consumer of items purchased in furnishing such food or drinks and may purchase those items under conditions of a sale for resale.

Section 10. Paragraph (b) of subsection (4) of section 316.1955, Florida Statutes, is amended to read:

316.1955 Enforcement of parking requirements for persons who have disabilities.—

(4)

(b) Notwithstanding paragraph (a), a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ which provides parking in designated areas for persons who have disabilities may allow any vehicle that is transporting a person who has a disability to remain parked in a space reserved for persons who have disabilities throughout the period the theme park is open to the public for that day.

Section 11. Subsection (5) of section 404.056, Florida Statutes, is amended to read:

404.056 Environmental radiation standards and projects; certification of persons performing measurement or mitigation services; mandatory testing; notification on real estate documents; rules.—

(5) NOTIFICATION ON REAL ESTATE DOCUMENTS.—Notification shall be provided on at least one document, form, or application executed at the time of, or before ~~prior to~~, contract for sale and purchase of any building or execution of a rental agreement for any building. Such notification must ~~shall~~ contain the following language:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state

guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

The requirements of this subsection do not apply to any residential transient occupancy, as described in s. 509.013 ~~s. 509.013(12)~~, provided that such occupancy is 45 days or less in duration.

Section 12. Subsection (6) of section 477.0135, Florida Statutes, is amended to read:

477.0135 Exemptions.—

(6) A license is not required of any individual providing makeup or special effects services in a theme park or entertainment complex to an actor, stunt person, musician, extra, or other talent, or providing makeup or special effects services to the general public. The term "theme park or entertainment complex" has the same meaning as in s. 509.013 ~~s. 509.013(9)~~.

Section 13. Paragraph (b) of subsection (2) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(2)

(b) Within a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, the bathrooms are not required to be in the same building as the public food service

establishment, so long as they are reasonably accessible.

Section 14. Paragraph (b) of subsection (5) of section 553.5041, Florida Statutes, is amended to read:

553.5041 Parking spaces for persons who have disabilities.—

(5) Accessible perpendicular and diagonal accessible parking spaces and loading zones must be designed and located to conform to ss. 502 and 503 of the standards.

(b) If there are multiple entrances or multiple retail stores, the parking spaces must be dispersed to provide parking at the nearest accessible entrance. If a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ provides parking in several lots or areas from which access to the theme park or entertainment complex is provided, a single lot or area may be designated for parking by persons who have disabilities, if the lot or area is located on the shortest accessible route to an accessible entrance to the theme park or entertainment complex or to transportation to such an accessible entrance.

Section 15. Paragraph (b) of subsection (5) of section 559.955, Florida Statutes, is amended to read:

559.955 Home-based businesses; local government restrictions.—

(5) The application of this section does not supersede:

(b) Local laws, ordinances, or regulations related to

transient public lodging establishments, as defined in s. 509.013 ~~s. 509.013(4)(a)1.~~, that are not otherwise preempted under chapter 509.

Section 16. Subsection (2) of section 705.17, Florida Statutes, is amended to read:

705.17 Exceptions.—

(2) Sections 705.1015-705.106 do not apply to any personal property lost or abandoned on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with s. 705.185.

Section 17. Section 705.185, Florida Statutes, is amended to read:

705.185 Disposal of personal property lost or abandoned on the premises of certain facilities.—When any lost or abandoned personal property is found on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with this section, any lost or abandoned property must be

delivered to such owner or operator, who must take charge of the property and make a record of the date such property was found. If the property is not claimed by its owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the owner or operator of the premises, the owner or operator of the premises may not sell and must dispose of the property or donate it to a charitable institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code for sale or other disposal as the charitable institution deems appropriate. The rightful owner of the property may reclaim the property from the owner or operator of the premises at any time before the disposal or donation of the property in accordance with this section and the established policies and procedures of the owner or operator of the premises. A charitable institution that accepts an electronic device, as defined in s. 815.03(9), access to which is not secured by a password or other personal identification technology, shall make a reasonable effort to delete all personal data from the electronic device before its sale or disposal.

Section 18. Section 717.1355, Florida Statutes, is amended to read:

717.1355 Theme park and entertainment complex tickets.—This chapter does not apply to any tickets for admission to a theme park or entertainment complex as defined in s. 509.013 ~~s.~~

~~509.013(9)~~, or to any tickets to a permanent exhibition or recreational activity within such theme park or entertainment complex.

Section 19. Subsection (8) of section 877.24, Florida Statutes, is amended to read:

877.24 Nonapplication of s. 877.22.—Section 877.22 does not apply to a minor who is:

(8) Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~.

Section 20. The application of this act does not supersede any current or future declaration or declaration of condominium adopted pursuant to chapter 718, Florida Statutes, cooperative document adopted pursuant to chapter 719, Florida Statutes, or declaration or declaration of covenant adopted pursuant to chapter 720, Florida Statutes.

Section 21. (1) The Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing s. 212.03, Florida Statutes, including establishing procedures to facilitate the remittance of taxes.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) 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 expires January 1, 2026.

Section 22. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 833 by Rep. Duggan
Vacation Rentals

AMENDMENT SUMMARY
March 28, 2023

Amendment 1 by Rep. Duggan (lines 113-127):
Makes technical and conforming changes related to the advertising platform tax provisions, as follows:

- Adds “as amended” after "Internal Revenue Code of 1986";
- Removes references to s. 205.044, F.S., which relates to a tax that is not collected by the Department of Revenue; and
- Deletes the reference to “department,” i.e., the Department of Revenue, in the flush left provision because this is a provision that is only relevant to counties that self-administer the taxes imposed or authorized in ch. 125, F.S., including the local option tourist development tax.

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: Regulatory Reform & Economic Development Subcommittee
Representative Duggan offered the following:

Amendment

Remove lines 113-127 and insert:

Internal Revenue Code of 1986, as amended, to a person who owns, operates, or manages the vacation rental shall collect and remit all taxes due under this section and ss. 125.0104, 125.0108, 212.0305, and 212.055 which are related to the rental.

2. An advertising platform to which subparagraph 1. does not apply shall collect and remit all taxes due from the owner, operator, or manager under this section and ss. 125.0104, 125.0108, 212.0305, and 212.055 which are related to the rental. Of the total amount paid by the lessee or rentee, the amount retained by the advertising platform for reservation or payment

service is not taxable under this section or ss. 125.0104, 125.0108, 212.0305, and 212.055.

In order to facilitate the remittance of such taxes, the counties that have elected to self-administer the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 959 Dosage Form Animal Health Products
SPONSOR(S): Tuck
TIED BILLS: **IDEN./SIM. BILLS:** SB 1056

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Commercial Feed Law (Commercial Feed Law) authorizes the Department of Agriculture and Consumer Services (DACS) to regulate the distribution of commercial feed and feedstuff in Florida to ensure these products are safe for human consumption. The DACS Division of Animal Industry (Division) is responsible for enforcing the state's animal industry law, which provides animal health regulations and protects the state from animal pests and diseases.

Dosage form animal health supplements are animal health supplements that are similar to dietary supplements for humans. According to the National Library of Medicine (NLM), such supplements are widely used but have limited oversight and regulation. According to DACS, manufacturers and distributors of dosage form animal products in Florida are currently governed by the state Commercial Feed Law due to the non-nutritional character of these products. As a result, these entities are "required to comply with the registration, labeling, and sampling requirements followed by distributors of other no- or low-nutritive value products allowed for use as, or for mixing in, animal feed."

Under federal law, the Dietary Supplement and Health Education Act (DSHEA) affects the way the Food and Drug Administration (FDA) Center for Veterinary Medicine (CVM) regulates "food for humans." Among other things, it restricts substances from being food additives or drugs if the product meets the definition of a dietary supplement. However, FDA's assessment of DSHEA is that it was not intended to, and does not, apply to animal feed, including pet food. Thus, products marketed as dietary supplements or "feed supplements" for animals fall under Title 21, the Federal Food, Drug, & Cosmetics Act. These items are considered "foods" or "drugs" depending on the intended use, or in some instances the articles may be, simultaneously, a food and a drug.

The bill:

- Requires a manufacturer or distributor of dosage form animal health products to register biennially with DACS.
- Authorizes DACS to waive the registration requirement under certain conditions and requires specified information for registration applications.
- Provides conditions under which dosage form animal health products are considered misbranded or adulterated.
- Specifies that dosage form animal health products may not be considered commercial feed, a drug, or feedstuff as those terms are defined in the Commercial Feed Law.

The fiscal impact of the bill is indeterminate.

The effective date of the bill is July 1, 2023.

FULL ANALY\SIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Commercial Feed and Feedstuff

The Florida Commercial Feed Law (Commercial Feed Law)[1] authorizes the Department of Agriculture and Consumer Services (DACS) to regulate commercial feed and feedstuff for quality, safety, labeling requirements, and standards.[2] A distributor of commercial feed is required to obtain a master registration[3] and place on file a copy of the label for each brand of feed to be distributed in Florida.[4]

Distributors are required to pay a licensing fee that is based on the weight of feed distributed in the state.[5] The Commercial Feed Law preempts to DACS all authority in the state to regulate, inspect, sample, and analyze any commercial feed or feedstuff, including assessment of penalties for violations.[6]

Samples of feed distributed in Florida must be periodically tested by a certified laboratory to determine compliance with state standards.[7] The minimum standards for feed and feedstuff are those set forth in the "Official Publication 2001" published by the Association of American Feed Control Officials.[8]

DACS is authorized to adopt rules to enforce the Commercial Feed Law, which must be consistent with the rules and standards of the United States Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA). The rules must include:

- Establishing definitions and reasonable standards for commercial feed or feedstuff and permissible tolerances for pesticide chemicals, chemical additives, nonnutritive ingredients, or drugs in or on commercial feed or feedstuff in such amounts as will ensure the safety of livestock and poultry and the products thereof used for human consumption.
- Adopting standards for the manufacture and distribution of medicated feed.
- Establishing definitions and reasonable standards for the certification of laboratories for the conduct of testing and analyses as required.
- Establishing product labeling requirements for distributors.
- Limiting the use of drugs in commercial feed and prescribing feeding directions to be used to ensure safe usage of medicated feed.
- Establishing standards for evaluating quality-assurance/quality-control plans, including testing protocols, for exemptions to certified laboratory testing requirements.
- Establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal safety and well-being and, to the extent that meat, poultry, and other animal products for human consumption may be affected by commercial feed or feedstuff, to ensure that these products are safe for human consumption.
    - Such standards must be developed in consultation with the Agricultural Feed, Seed, and Fertilizer Advisory Council created under s. 570.451, F.S.

[1] *See* ch. 580, F.S.
[2] S. 580.036, F.S.
[3] S. 580.041, F.S.
[4] S. 580.051, F.S.
[5] S. 580.041, F.S.
[6] S. 580.0365, F.S.
[7] S. 580.091, F.S.
[8] R. 5E-3.013, F.A.C. The Association of American Feed Control Officials (AAFCO) is an independent organization that has been guiding state, federal and international feed regulators with ingredient definitions, label standards and laboratory standards for more than 110 years, while supporting the health and safety of people and animals. AAFCO members are charged by their local, state or federal laws to regulate the sale and distribution of animal feeds and animal drug remedies.

DACS is required to establish the standards that a laboratory must meet to become certified in any of the following areas of testing:[9]

- Nutrient.
- Mycotoxins.
- Microbiological organisms.
- Pesticide residues.
- Drugs.

DACS is guided by the methods published by the Association of Official Analytical Chemists, the United States Environmental Protection Agency (EPA), the FDA, or other generally recognized authorities in developing the standards for the laboratory certifications.[10]

The Commercial Feed Law prohibits distribution of an adulterated commercial feed or feedstuff. Commercial feed or feedstuff is deemed adulterated if it includes any of the following:[11]

- Any poisonous, deleterious, or nonnutritive substance that may render it injurious to animal or human health.
    - However, if the substance is not an additive, the feed shall not be considered adulterated if the quantity of the substance does not ordinarily render it injurious to animal or human health.
- Any food additive or added poisonous, deleterious, or nonnutritive substance that is unsafe within the meaning of s. 406 of the Federal Food, Drug, and Cosmetic Act, other than a pesticide chemical in or on a raw agricultural commodity.
- Any food additive or color additive that is unsafe within the meaning of s. 409 or s. 512 of the Federal Food, Drug, and Cosmetic Act.
- A raw agricultural commodity that bears or contains a pesticide chemical that is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act.
    - However, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under s. 408 of the Federal Food, Drug, and Cosmetic Act and that raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the processed feed will result, or is likely to result, in pesticide residue in the edible product of the animal which is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act.
- Any new animal drug that is unsafe within the meaning of s. 512 of the Federal Food, Drug, and Cosmetic Act.
- Any filthy, putrid, or decomposed substance or is otherwise unfit for feed.
- If it is prepared, packaged, or held under unsanitary conditions in which it may have become contaminated with filth or rendered injurious to health.
- If it is the product of a diseased animal or of an animal that has died by a means other than slaughter which is unsafe within the meaning of s. 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act.

The Commercial Feed Law prohibits misbranded commercial feed or feedstuff. A commercial feed or feedstuff is deemed misbranded, as follows:[12]

- If its labeling is false or misleading in any particular.
- If it is distributed under the name of another commercial feed or feedstuff.
- If it is not labeled as required by this chapter or the rules promulgated hereunder.
- If it does not conform to the definition of identity and standard of quality as prescribed by rule.
- If any word, statement, or other information required by this chapter to appear on the label or labeling is not prominently and conspicuously placed thereon in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

[9] S. 580.065, F.S.
[10] *Id.*
[11] S. 580.071, F.S.
[12] S. 580.081, F.S.

- If it is not appropriate for its intended or purported use.
- If a nutrient test, conducted by a laboratory certified in nutrient testing, shows the presence of any ingredient not listed on the label or the absence of any ingredient shown on the label.

The following acts are prohibited by the Commercial Feed Law:[13]

- Distribution of any commercial feed or feedstuff that is adulterated or misbranded.
- Adulteration or misbranding of any commercial feed or feedstuff.
- Distribution of commercial feed or feedstuff that has not been sampled or analyzed by a department-certified laboratory.
- Distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls which are adulterated.
- Dissemination of any false advertisement with reference to the distribution of any commercial feed or feedstuff.
- Refusal to permit entry, inspection, or collection of samples of commercial feed or feedstuff by authorized department personnel.
- Removal or disposal of a lot of commercial feed or feedstuff that has had a stop-sale, stop-use, removal, or hold order issued, prior to release by the department or the court.
- Use of any label that does not comply with the provisions of this chapter.
- Forging, counterfeiting, simulating, or false representing of any label.
- Placing or permitting to be placed any false advertisement or misleading statement on a label.
- Redistribution of a customer-formula commercial feed.
- Using or placing of fasteners that may be injurious to animals on any commercial feed or feedstuff or bags of any commercial feed or feedstuff, except those distributed exclusively for poultry.
- Failure or refusal to register, pay inspection fees, or file reports, or perform any other affirmative act required by this chapter or rule promulgated hereunder.
- Distribution of a feed or feedstuff which is prohibited by federal law or regulation.

DACS is authorized to impose one or more of the following penalties against any person who violates the Commercial Feed Law:[14]

- Issuance of a warning letter.
- A Class I fine for each occurrence.[15]
- Revocation or suspension of the master registration, laboratory certification, or quality-assurance/quality-control plan approval.
- Probation for up to six months.

The severity of the penalty imposed must be commensurate with the degree of risk to human or animal safety or the level of financial harm to the consumer that is created by the violation.[16]

Violations of the Commercial Feed Law are a second degree misdemeanor, punishable by a 60 day term in prison and a $500 fine.[17]

The Commercial Feed Law defines "**commercial feed**" as all materials or combinations of materials that are distributed or intended to be distributed for use as feed or for mixing in a **feed for animals other than humans**, except:[18]

- Unmixed whole seeds, including physically altered entire unmixed seeds, when such seeds are not chemically changed or are not adulterated;

[13] S. 580.112, F.S.
[14] S. 580.121, F.S.
[15] S. 570.971, F.S., provides that for each violation in the Class I category, a fine not to exceed $1,000 may be imposed.
[16] S. 580.121, F.S.
[17] Ss. 775.082, and 775.083, F.S.
[18] S. 580.031(2), F.S.

- Unground hay, straw, stover, silage, cobs, husks, and hulls, and individual chemical compounds or substances, when such commodities, compounds, or substances are unmixed with other substances and are not adulterated; and
- Feed mixed by the consumer for the consumer's own use made entirely or in part from products raised on the consumer's farm.

"**Feedstuff**" is defined as edible materials, other than commercial feed, that are distributed **for animal consumption** and that contribute energy or nutrients, or both, to an animal diet.[19]

Animal Industry

The DACS Division of Animal Industry (Division) is responsible for enforcing the state's animal industry law, which provides animal health regulations and protects the state from animal pests and diseases.[20]

District veterinarians and animal health inspectors throughout the state work with producers, animal owners and private veterinarians to monitor and enhance the health and welfare of Florida's animals.[21]

Under Florida's Comprehensive Emergency Management Plan, the Division serves as the lead agency for animal and agricultural issues, planning and coordinating the state's response to emergencies ranging from hurricanes to animal disease outbreaks.[22]

The animal industry law authorizes the Division to:[23]
- Establish, maintain, and enforce quarantine areas within the state, or the entire state.
- Restrict, regulate, or prohibit the movement or transportation of animals found, determined, or suspected to be carriers of certain contagious, infectious, or communicable disease.

The animal industry law authorizes the Division to adopt rules to:[24]
- Govern the introduction of animals into or within the state.
- Govern the disposal or destruction of carcasses of animals to prevent the spread or continuance of the contagion or infection.
- Condemn and destroy any barn, yard, shed, corral, or pen that may convey infection or contagion.

Violations of the animal feed law are subject to a Class I fine for each occurrence.[25] For repeated violations, DACS is authorized to seek administrative enforcement, including declaratory relief or a maximum fine of $1,000.[26]

Unless otherwise provided, violations of the animal industry law are a second degree misdemeanor, punishable by a 60 day term in prison and a $500 fine.[27]

Dosage Form Animal Products

The humanization of certain species, including horses, dogs, and cats, has resulted in the emergence of animal health supplements, referred to as "dosage form supplements." These supplements are

[19] S. 580.031(10), F.S.
[20] *See* ch. 585, F.S.
[21] Department of Agriculture and Consumer Services, *Division of Animal Industry*, https://www.fdacs.gov/Divisions-Offices/Animal-Industry (last visited Mar. 25, 2023).
[22] *Id.*
[23] S. 585.08(1), F.S.
[24] S. 585.08(2), F.S.
[25] S. 570.971, F.S., provides that for each violation in the Class I category, a fine not to exceed $1,000 may be imposed.
[26] S. 585.007, F.S.
[27] Ss. 775.082, and 775.083, F.S.

similar to dietary supplements for humans.[28] In dogs and cats, the most popular supplements include joint and digestive health supplements, followed by supplements to aid with cognition, skin/coat and heart health. For horses, owners can use supplements to treat or prevent osteoarthritis, joint disease, digestion, hoof growth, coat, and behavior.[29]

According to the National Library of Medicine (NLM), such pet supplements and nutraceuticals are widely used and generate millions of dollars in revenue for manufacturers. Despite the widespread use of these veterinary products, oversight and regulation remain limited as compared to human dietary supplement regulations. The NLM also provides that scientific information on veterinary pet supplements and nutraceuticals is increasing; however, there is a lack of quality control, safety and efficacy data for the majority of the substances marketed in pet supplements and the resulting products for purchase currently available. Despite this lack of evidence, the use of veterinary supplements and nutraceuticals continues to increase."[30]

Food and Drug Administration

The U.S. Food and Drug Administration (FDA) Center for Food Safety and Applied Nutrition (CFSAN)[31] regulates the safety of dietary supplements in humans. The term "dietary supplement" is defined in the Dietary Supplement Health and Education Act (DSHEA) of 1994,[32] as a product taken by mouth in humans that contains a "dietary ingredient" intended to supplement the diet. A "dietary ingredient" can include vitamins, minerals, herbs or other botanicals, amino acids and substances such as enzymes, organ tissues and metabolites. The definition of ''dietary supplement'' does not explicitly state whether it includes or excludes products intended for use in animals other than man.[33]

The FDA Center for Veterinary Medicine (CVM)[34] is responsible for the regulation of animal food products. The CVM has mechanisms for food additive approval, which apply to any product unless it is generally recognized as safe for that intended use (i.e. forages, grains and most mineral and vitamins). This regulation applies to animal food additives that could affect the target animal's safety.

Under Section 201(s) of the Federal Food, Drug, and Cosmetic Act (FD&C Act),[35] the definition of a food additive does not include any ingredient in or intended for use in a dietary supplement. Although the dietary ingredient used in the dietary supplement must not adulterate the supplement, it does not have to be Generally Recognized As Safe (GRAS) for its intended use in the supplement. However, non-dietary ingredients (binders, fillers, etc.) are not exempt from the food additive definition. If any product claims to cure, treat, prevent or mitigate disease, the product should be considered a "new animal drug."

Pet food, including pet treats but not pet supplements, falls under the Association of American Feed Control Officials (AAFCO) and is regulated on a federal and state level. For now, AAFCO only regulates labeling of "food-type" supplements, although it will monitor for any ingredient misrepresentation of all animal supplements. Seven states, including Texas, Oregon, Michigan, North

[28] State of Wisconsin Department of Agriculture, Trade and Consumer Protection, *Labeling of Dosage Form Animal Health Supplements for Non-human Food Producing Animals*, https://datcp.wi.gov/Documents/Feed-DosageFormAnimalHealthSuppPolicy.pdf (last visited Mar. 25, 2023).
[29] National Library of Medicine, *Veterinary Pet Supplements and Nutraceuticals*, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7802882/ (last visited Mar. 25, 2023).
[30] *Id.*
[31] U.S. Food and Drug Administration, *Center for Food Safety and Applied Nutrition*, https://www.fda.gov/about-fda/fda-organization/center-food-safety-and-applied-nutrition-cfsan (last visited Mar. 25, 2023).
[32] Pub. L. No. 103-417.
[33] National Library of Medicine, *Veterinary Pet Supplements and Nutraceuticals*, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7802882/ (last visited Mar. 25, 2023).
[34] U.S. Food and Drug Administration, *Center for Veterinary Medicine*, https://www.fda.gov/about-fda/fda-organization/center-veterinary-medicine (last visited Mar. 25, 2023).
[35] 21 U.S.C. § 301-399.

Dakota, South Dakota, Virginia and Wyoming have enacted “remedy laws” to regulate pet supplements that do not qualify as “foods” according to the AAFCO definition.[36]

The DSHEA controls the way the FDA regulates “food for humans.” Among other things, it restricts substances from being food additives or drugs if the product meets the definition of a dietary supplement. Supplements intended for companion animals (i.e. not food animals for human consumption) do not fall under the DSHEA and therefore undergo less regulatory oversight than human dietary supplements.[37]

According to the FDA, the DSHEA does not apply to animal products.[38] Thus, products marketed as dietary supplements or “feed supplements” for animals still fall under the FD&C Act. These items are considered “foods” or “drugs” depending on the intended use, or in some instances the articles may be, simultaneously, a food and a drug. The FD&C Act defines the term "food" as an article used for food or drink for man or other animals including components of such articles. Thus, any nutrient ingredient (e.g., vitamins, minerals, and amino acids) which is added to a food is also a food by definition. The FD&C Act also defines the term "drug" as including any article intended for use as a component of a drug. A nutrient ingredient used as a component of a dosage form drug must meet the requirements for a drug. A nutrient ingredient used as a component of all other medicated products must meet the requirements for a food. While a nutrient ingredient of a non-dosage form product is also a drug when it is intended for use as a component of a drug, the nutrient will be primarily regulated as a food and need not be shown to serve an active drug purpose provided no drug claims are made or implied for the nutrient.[39]

The regulatory status of an article is determined by CVM on a case-by-case basis. Under the FD&C Act, "animal feeds/foods" refers to feed for livestock, poultry, or other animals, and pet food. These articles may ordinarily be thought of as foods under the Act, and also, in some cases, as food additives. However, based upon the claims made for these articles, their intended uses may bring them within the definition of a drug under the Act. In such instances, the articles may, as a matter of law, be both a food and a drug simultaneously.[40]

According to DACS, manufacturers and distributors of dosage form animal products in Florida are currently being regulated under the Commercial Feed Law due to the products’ non-nutritional character. As a result, marketers of “dosage form animal health products” are required to comply with the registration, labeling, and sampling requirements followed by distributors of other no- or low-nutritive value products allowed for use as, or for mixing in, animal feed.[41]

Proposed Changes

The bill provides biennial registration and labelling requirements for manufacturers of dosage form animal products with DACS, including responsibilities regarding application, labelling, misbranding, adulteration, and rulemaking authority.

The bill requires a manufacturer or distributor that manufactures or distributes the finished form of a dosage form animal health product in the state to submit a registration application to DACS every two years as prescribed by DACS rule.

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[36] National Library of Medicine, *Veterinary Pet Supplements and Nutraceuticals*, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7802882/ (last visited Mar. 25, 2023).
[37] State of Wisconsin Department of Agriculture, Trade and Consumer Protection, *Labeling of Dosage Form Animal Health Supplements for Non-human Food Producing Animals*, https://datcp.wi.gov/Documents/Feed-DosageFormAnimalHealthSuppPolicy.pdf (last visited Mar. 25, 2023).
[38] 61 C.F.R. § 17706.
[39] U.S. Food and Drug Administration, Nutritional Ingredients in Animal Drugs and Feeds, https://fda.report/media/70108/Guide-1240.3420-Nutritional-Ingredients-in-Animal-Drugs-and-Feeds.pdf (last visited Mar. 25, 2023).
[40] U.S. Food and Drug Administration, *FDA/CVM Program Policy and Procedures Manual Guide 1240.3605*, https://www.fda.gov/media/69982/download (last visited Mar. 25, 2023).
[41] Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 959, pgs. 1 and 2 (Mar. 9, 2023).

The bill authorizes DACS to waive the registration requirement if a manufacturer or distributor is registered under another federal or state law in compliance with DACS rule.

The bill authorizes DACS to require a registration application to include a copy of the label and labeling for each dosage form animal health product.

The bill requires a dosage form animal health product label to contain, at a minimum, all of the following information:

- The net weight or count of the product.
- The product name and brand name, if any, under which the product is manufactured or distributed.
- The established name of each active ingredient in the product and the amount of each active ingredient per serving in descending order by predominance of the ingredient in the product.
- The established name of each inactive ingredient in the product and the amount of each inactive ingredient per serving in alphabetical order.
- Adequate directions and precautionary statements and warnings necessary to ensure safe and effective use of the product.
- The name and principal mailing address of the manufacturer or distributor.
    - Only the name, city, state, and zip code are required for a manufacturer or distributor listed in a local telephone directory.
- A structure-function claim stating the intended non-nutritional benefit of the product.
- The expiration date.

The bill provides that a dosage form animal health product is considered misbranded if the product label or labeling:

- Does not provide the required labeling information in a prominent and conspicuous manner which can be easily identified and understood under customary conditions of purchase and use.
- Includes the term "guaranteed analysis."
- Is false or misleading.

The bill provides that a dosage form animal health product is considered adulterated if:

- The product contains any poisonous or deleterious substance that may be injurious to animal health.
- Any valuable ingredient of the product has been in whole or in part omitted or removed.
- Any valuable ingredient of the product has been in whole or in part substituted by any less valuable ingredient.
- The composition or quality of the product falls below or differs from what the label or labeling purports or represents.
- The methods or controls used to manufacture or package the product do not conform to current good manufacturing practice.

The bill prohibits dosage form animal health products from being considered commercial feed, a drug, or feedstuff as those terms are defined in s. 580.031, F.S., of the Commercial Feed Law.

The bill provides the following definitions:

- "Brand name" means any distinguishing word, name, symbol, or device, or combination thereof, identifying the dosage form animal health product of a manufacturer or distributor.
- "Distribute" means to offer for sale, sell, barter, or exchange a dosage form animal health product or to supply, furnish, or otherwise provide such a product for use by any consumer or customer in the state.
- "Distributor" means a person or entity that distributes dosage form animal health products.
- "Dosage form animal health product" means any product, including oils, tinctures, capsules, tablets, liquids, soft chews, and chewable limited dose products, intended to affect the structure or function of an animal's body other than by providing nutrition to the animal. The term does not include animal feed supplements, products represented as a primary meal for the intended

animal species, products intended as a snack treat or behavioral reward treat, or dental products providing mechanical or abrasive action.

- "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a dosage form animal health product is distributed, or on the invoice or delivery slip with which the product is distributed.
- "Labeling" means all labels and other written, printed, or graphic matter upon a dosage form animal health product or any of its containers; all wrappers accompanying the product; and all advertisements, brochures, posters, or television or radio announcements used in promoting the sale of the product.
- "Manufacture" means the grinding, mixing, blending, or further processing of a dosage form animal health product for distribution.
- "Manufacturer" means a person or entity that manufactures dosage form animal health products.
- "Product name" means the name of a dosage form animal health product which identifies the kind, class, or specific use of the product.

The effective date of the bill is July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 585.012, F.S.; requiring manufacturers and distributors of dosage form animal health products to register with DACS; providing requirements for registration; providing conditions under which products are considered misbranded or adulterated.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require certain manufacturers of dosage form animal products to register and comply with labelling requirements with DACS. According to DACS, the department will need to charge a fee not to exceed $200 for registration. See Fiscal Comments.

Dosage form animal health products that are currently on sale may need to be recalled to be accurately labelled, which may have a negative fiscal impact to the distributors and business owners of those products.

D. FISCAL COMMENTS:

According to DACS, "the bill would require the registration of manufactures and distributors of dosage form animal health products. Additionally, enforcement and inspection activities relating to registration requirements, Feed Marketplace inspections, label evaluations, and consumer complaints would necessitate additional inspection and lab staff. Associated cost for lab analysis would be expected to run around $350 per sample depending on the screen. Revenues associated with violations of the proposed bill cannot be estimated at this time. Current law allows for the imposition of a Class III, up to $10,000 fine per violations of the chapter."[42]

"The specific process for registration, to include cost, will need to be established through rulemaking and in accordance with s. 585.002, F.S., but would not exceed $200 per registration. It is estimated approximately 100 entities will be affected by the proposed legislation. The bill does not contain any penalty provisions, but Chapter 585, allows for the imposition of an administrative fine of up to $10,000 per violation of the chapter or associated rules."[43]

"Registration fees imposed on manufacturers and distributors of "dosage form animal health products" that are currently registered under Ch. 580, F.S., would be eliminated. Ch. 580, F.S,. registration fees are based on volume of distribution; therefore, most affected entities are required to pay $40 annually."[44]

"Cost of registration under proposed HB 959 is not contemplated but fee authority under Chapter 585, F.S., allows for the department, by rule, to establish a fee schedule to cover the approximate costs associated with carrying out the provisions of the chapter, not to exceed $200."[45]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Article VII, Section 19 of the Florida Constitution requires a supermajority vote to impose or raise a tax or fee. Under this provision, "Raise" means:
   a. "To increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
   b. To increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
   c. To decrease or eliminate a state tax or fee exemption or credit."

The bill allows DACS to implement the provisions of the bill by rule. DACS has indicated that this will necessitate the imposition of a $200 registration fee. It is unclear as to whether this would constitute the "raising" of a fee as defined in Art. VII s. 19.

B. RULE-MAKING AUTHORITY:

The bill authorizes DACS to prescribe rules to administer the registration of certain manufacturers of dosage form animal health products pursuant to the animal industry law. According to DACS, these entities are currently being regulated under the Commercial Feed Law, and r. 5E-3, F.A.C.

[42] Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 959, p. 2 (Mar. 9, 2023).
[43] *Id.*
[44] *Id.*
[45] *Id.*

However, the animal industry law provides the department with sufficient rulemaking authority to implement the bill.[46]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[46] S. 585.002, F.S.

A bill to be entitled

An act relating to dosage form animal health products; creating s. 585.012, F.S.; providing definitions; requiring a manufacturer or distributor of dosage form animal health products to register with the Department of Agriculture and Consumer Services; authorizing the department to waive the registration requirement under certain conditions and to require specified information for registration applications; providing requirements for product labels; providing conditions under which dosage form animal health products are considered misbranded or adulterated; providing construction; providing an effective date.

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

Section 1. Section 585.012, Florida Statutes, is created to read:

585.012 Dosage form animal health products.—

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

(a) "Brand name" means any distinguishing word, name, symbol, or device, or combination thereof, identifying the dosage form animal health product of a manufacturer or distributor.

(b) "Distribute" means to offer for sale, sell, barter, or

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

exchange a dosage form animal health product or to supply, furnish, or otherwise provide such a product for use by any consumer or customer in the state.

(c) "Distributor" means a person or entity that distributes dosage form animal health products.

(d) "Dosage form animal health product" means any product, including oils, tinctures, capsules, tablets, liquids, soft chews, and chewable limited dose products, intended to affect the structure or function of an animal's body other than by providing nutrition to the animal. The term does not include animal feed supplements, products represented as a primary meal for the intended animal species, products intended as a snack treat or behavioral reward treat, or dental products providing mechanical or abrasive action.

(e) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a dosage form animal health product is distributed, or on the invoice or delivery slip with which the product is distributed.

(f) "Labeling" means all labels and other written, printed, or graphic matter upon a dosage form animal health product or any of its containers; all wrappers accompanying the product; and all advertisements, brochures, posters, or television or radio announcements used in promoting the sale of the product.

(g) "Manufacture" means the grinding, mixing, blending, or

further processing of a dosage form animal health product for distribution.

(h) "Manufacturer" means a person or entity that manufactures dosage form animal health products.

(i) "Product name" means the name of a dosage form animal health product which identifies the kind, class, or specific use of the product.

(2)(a) A manufacturer or distributor that manufactures or distributes the finished form of a dosage form animal health product in the state must submit a registration application to the department every 2 years as prescribed by department rule. The department may waive the registration requirement if a manufacturer or distributor is registered under another federal or state law in compliance with department rule.

(b) The department may require a registration application to include a copy of the label and labeling for each dosage form animal health product.

(3) A dosage form animal health product label must contain, at a minimum, all of the following information:

(a) The net weight or count of the product.

(b) The product name and brand name, if any, under which the product is manufactured or distributed.

(c) The established name of each active ingredient in the product and the amount of each active ingredient per serving in descending order by predominance of the ingredient in the

product.

(d) The established name of each inactive ingredient in the product and the amount of each inactive ingredient per serving in alphabetical order.

(e) Adequate directions and precautionary statements and warnings necessary to ensure safe and effective use of the product.

(f) The name and principal mailing address of the manufacturer or distributor. Only the name, city, state, and zip code are required for a manufacturer or distributor listed in a local telephone directory.

(g) A structure-function claim stating the intended non-nutritional benefit of the product.

(h) The expiration date.

(4) A dosage form animal health product is considered misbranded if the product label or labeling:

(a) Does not provide the information required in subsection (3) in a prominent and conspicuous manner which can be easily identified and understood under customary conditions of purchase and use.

(b) Includes the term "guaranteed analysis."

(c) Is false or misleading.

(5) A dosage form animal health product is considered adulterated if:

(a) The product contains any poisonous or deleterious

substance that may be injurious to animal health.

(b) Any valuable ingredient of the product has been in whole or in part omitted or removed.

(c) Any valuable ingredient of the product has been in whole or in part substituted by any less valuable ingredient.

(d) The composition or quality of the product falls below or differs from what the label or labeling purports or represents.

(e) The methods or controls used to manufacture or package the product do not conform to current good manufacturing practice.

(6) Dosage form animal health products may not be considered commercial feed, a drug, or feedstuff as those terms are defined in s. 580.031.

Section 2. This act shall take effect July 1, 2023.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 959 by Rep. Tuck
Dosage Form Animal Health Products

AMENDMENT SUMMARY
March 28, 2023

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

- Removes the requirement that manufacturers of dosage form animal products register with Department of Agriculture and Consumer Services (DACS) under the Florida animal industry law.
- Includes dosage form animal products as a regulated feedstuff under the Florida Commercial Feed Law thus requiring such products to be subject to regulation by DACS.

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: Regulatory Reform & Economic Development Subcommittee
Representative Tuck offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (9) through (24) of section 580.031, Florida Statutes, are renumbered as subsections (10) through (25), respectively, and subsection (9) is added to that section, to read:

580.031 Definitions of words and terms.—As used in this chapter, the term:

(9) "Dosage form animal product" means a feedstuff that includes any product intended to affect the structure or function of the animal's body other than by providing nutrition to the animal. The term includes oils, tinctures, capsules,

tablets, liquids, and chewables. The term does not include a mineral or vitamin, a product represented as a primary meal for the intended animal species, any other product intended as a treat, or a dental product providing mechanical or abrasive action or both. This term also does not include drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), as amended, by the United States Department of Agriculture under the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), as amended, or by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.), as amended.

Except as provided by law or rule, all terms used in connection with commercial feed or feedstuff have the meanings ascribed to them by the Association of American Feed Control Officials.

Section 2. Subsection (1) of section 580.051, Florida Statutes, is amended to read:

580.051 Labels; requirements; penalty.—

(1) Any commercial feed or feedstuff distributed in this state, except a customer-formula feed and feed distributed through an integrated poultry operation or by a cooperative to its members, shall be accompanied by a legible label bearing all

information required by the federal Food and Drug Administration and the following information:

(a) An accurate statement of the net weight.

(b) The name and principal address of the registrant.

(c) The brand name and product name, if any, under which the commercial feed is distributed. The word "medicated" shall be incorporated as part of the brand or product name if the commercial feed contains a drug.

1. The department may require feeding directions and precautionary statements to be placed on the label for the safe and effective use of medicated and other feed as deemed necessary.

2. Labels on medicated feed shall include all of the following:

a. Any feeding directions prescribed by the department to ensure safe usage.

b. The stated purpose of the medication contained in the feed as stated in the claim statement.

c. The established name of each active drug ingredient.

d. The level of each drug used in the final mixture expressed in metric units as well as the required avoirdupois.

(d) The date of manufacture or expiration date of commercial feed sold at retail as the department may by rule require.

(e) The guaranteed analysis stated in terms that advise the consumer of the composition of the feed or feedstuff or support claims made in the labeling. In all cases, the elements or compounds listed in the analysis must be determinable by laboratory methods approved by the department.

1. The guaranteed analysis, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber and, when more than 10 percent mineral ingredients are present, the minimum or maximum percentages of mineral elements or compounds as provided by rule.

2. Vitamin ingredients, when guaranteed, shall be shown in amounts and terms provided by rule. For mineral feed, the list shall include the following: maximum or minimum percentages of calcium (Ca), phosphorus (P), salt (NaCl), iron (Fe), copper (Cu), cobalt (Co), magnesium (Mg), manganese (Mn), potassium (K), selenium (Se), zinc (Zn), and fluorine (F) if ingredients used as sources of any of these constituents are declared. All mixtures that contain mineral or vitamin ingredients generally regarded as dietary factors essential for the normal nutrition of animals and that are sold or represented for the primary purpose of supplying these minerals or vitamins as additions to rations in which these same mineral or vitamin factors may be deficient shall be classified as mineral or vitamin supplements. Products sold solely as mineral or vitamin supplements and

guaranteed as specified in this section need not show guarantees for protein, fat, and fiber.

3. Other nutritional substances or elements determinable by laboratory methods may be guaranteed by permission of, or shall be guaranteed at the request of, the department as may be provided by rule.

4. Products sold solely as a dosage form animal product and guaranteed as specified in this section need to not show a guaranteed analysis.

(f) The common or usual name of each ingredient used in the manufacture of the commercial feed; however, for all commercial feed except horse feed, the department by rule may permit the use of collective terms for a group of ingredients which perform a similar nutritional function.

(g) A label on a dosage form animal product must contain the following:

1. An accurate statement of the net weight.

2. The name and principal address of the registrant.

3. The brand name and product name, if any, under which the dosage form animal product is distributed.

4. The date of manufacture or expiration date of the dosage form animal product sold at retail as the department may by rule require.

5. The amount of each active ingredient per serving.

6. The common or usual name of each inactive ingredient contained in the dosage form animal product.

7. A statement that identifies how the product supports the structure or function of the animal.

8. Precautionary statements and warnings required to ensure the safe and effective use of the dosage form animal product.

9. Recommended dosage by animal weight.

10. The statement "Not for human consumption."

Section 3. This act shall take effect October 1, 2023.

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

Remove lines 3-13 and insert:

amending s. 501.174, F.S.; providing definitions; amending s. 580.051, F.S.; providing an exception from certain analysis requirements for products sold solely as a dosage form animal product; providing requirements for product labels; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1241 Safety Standards for Amusement Rides
SPONSOR(S): Bracy Davis and others
TIED BILLS: HB 1243 **IDEN./SIM. BILLS:** CS/SB 902

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) is required to inspect all amusement rides in Florida, except those at large parks with more than 1,000 employees and inspectors on staff. All temporary amusement rides are inspected each time they are moved or set up at a new location, and permanent rides are inspected semiannually. All amusement rides are required to be permitted annually, required to undergo nondestructive testing for structural integrity, and must have an annual inspection by a professional engineer or qualified inspector. DACS can investigate accidents, impose sanctions for violations, and close and impound amusement rides that are a danger to the public.

The bill:

- Renames the act related to safety standards for amusement rides, “The Tyre Sampson Act”.
- Requires permanent amusement rides operated for the first time in this state after a specified date to have a ride commissioning and certification report on file with the DACS within a specified timeframe.
- Revises nondestructive testing and affidavit requirements.
- Provides authority for DACS to inspect certain rides that are exempt from inspection, at the request of DACS.
- Revises safety standards for safety equipment, sensors, and limiting devices.
- Revises requirements for posting signs relating to rider qualifications.
- Revises the circumstances under which the owner or manager of an amusement ride is required to report an accident and under which DACS may impound an amusement ride involved in an accident.
- Authorizes DACS to impound rides with similar operating characteristic to other rides involved in an accident investigation.
- Requires DACS to produce a written report of all accident investigations.
- Revises circumstances under which an amusement ride may be considered an immediate serious danger to the public.
- Requires that amusement ride owners record maintenance and training data at the time the maintenance or training was performed.
- Directs DACS to create rules for operator training/retraining standards

The bill will have an indeterminate negative fiscal impact on the DACS.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tyre Sampson

In March 2022, 14-year-old Tyre Sampson, who was visiting Orlando, Florida with his football team, fell to his death from an amusement ride, the 400-foot (122-meter) drop tower ride, operated by Orlando Slingshot[1]. The teenager was described as great athlete, hard worker, a very good and generous person, and "a big teddy bear, a gentle giant."[2]

After an investigation, outside engineers reported that sensors on the ride had been adjusted manually to double the size of the opening for restraints on two seats, resulting in the teen not being properly secured.[3] The attendant who strapped Sampson into the ride was newly hired. The ride has since been shut down and the company has been fined by the DACS.

Amusement Ride Inspections

DACS is required to inspect all amusement rides in Florida, except those at large parks with more than 1,000 employees and an inspector on staff. The Bureau of Fair Rides Inspection within the department is required to inspect, investigate, and enforce the regulations related to amusement rides.[4]

Amusement rides regulated in the state of Florida fall into two major groups:

- Temporary amusement rides (those that are regularly relocated with or without assembly);
- Permanent facility amusement rides (those that are not regularly relocated and operate as a lasting part of the premises).[5]

All temporary amusement rides are inspected each time they are moved or set up at a new location, and permanent rides are inspected semiannually. All amusement rides are required to be permitted annually, are required to undergo nondestructive testing for structural integrity, and must have an annual inspection by a professional engineer or qualified inspector.[6]

DACS also inspects go-kart tracks, water-related amusement rides, and zip-line courses operating in the state.[7]

In addition, DACS investigates accidents involving amusement rides and has the authority to impose sanctions on amusement ride owners for violation of the law. DACS can close and impound amusement rides that pose an immediate serious danger to public health, safety, and welfare.[8]

Adoption of Standards

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[1] Curt Anderson, *Florida Amusement Park Where Tyre Sampson Fell to His Death Fined $250,000*, ABC Channel 7, Nov. 22, 2022, https://www.mysuncoast.com/2022/11/22/florida-amusement-park-where-tyre-sampson-fell-his-death-fined-250000/ (last visited March *22, 2023).*

[2] *CNN, Alisha Ebrahimji, Teen who died at Florida amusement park was a football standout and a 'gentle giant' with a kind heart, loved ones say, Mar. 28, 2022, https://www.cnn.com/2022/03/28/us/tyre-sampson-icon-park-teen-death/index.html*

[3] *Id.*

[4] S. 616.242, F.S.

[5] Florida Department of Agriculture and Consumer Services, Fair Rides Inspection, https://fdacs.gov/Business-Services/Fairs/Fair-Rides-Inspection (last visited March 22, 2023).

[6] *Id.*

[7] *Id.*

[8] *Id.*

The DACS is required to adopt by rule standards for amusement rides which are the same as or similar to the following national standards:

- American Society for Testing and Materials (ASTM) Committee F-24 Standards on Amusement Rides and Devices;
- National Electric Code Handbook, Article 525;
- National Fire Protection Code 101 (chapters 8-4.6 and 9-4.6);
- ASTM Standards: E543 Practice for Determining the Qualification of Nondestructive Testing Agencies; and
- American Society for Nondestructive Testing (ASNT) Document Recommended Practice for Nondestructive Testing Personnel Qualification and Certification (SNT-TC-1A).[9]

DACS is authorized to adopt rules necessary to effectuate its statutory duties in the interest of public health, safety, and welfare and to promote patron safety in the design, construction, assembly, disassembly, maintenance, and operation of amusement rides in this state.[10]

There are no mandatory national safety standards for U.S. amusement rides, but the amusement ride industry has developed safety standards through the ASTM F-24 committee. The ASTM F-24 committee is responsible for standards related to amusement rides and devices. This includes waterslides, inflatables, go-karts, zip lines and challenge courses, trampoline courts, and a growing list of commercially-operated amusement experiences.[11]

Annual Permits

Amusement rides may not operate without an annual permit. To apply, an owner must submit to the DACS a written application on a form prescribed by department rule, and include:

- The legal name, address, and primary place of business of the owner;
- A description, manufacturer's name, serial number, model number, and, if previously assigned, the United States Amusement Identification Number of the amusement ride;
- A valid certificate of insurance for each amusement ride;
- An affidavit of compliance (AOC) that the amusement ride was inspected and in general conformance with the law and applicable rules;
- The AOC must be executed by a professional engineer or a qualified inspector no earlier than 60 days before, but not later than, the date of filing of the application with DACS;
- The owner is required to request inspection and permitting of the amusement ride within 60 days of the date of filing the application with DACS;
- DACS is required to inspect and permit the amusement ride within 60 days after the filing of the application with DACS;
- If required, an affidavit of nondestructive testing dated and executed no earlier than 60 days before, but not later than, the date of the filing of the application with DACS;
- The owner is required to request inspection and permitting of the amusement ride within 60 days of the date of filing the application with DACS;
- DACS is required to inspect and permit the amusement ride within 60 days after the filing of the application with DACS; and
- A request for inspection.[12]

Upon request, the owner must, at no cost to DACS, provide DACS with a copy of the manufacturer's current recommended operating instructions in the possession of the owner, the owner's operating fact sheet, and any written bulletins in the possession of the owner concerning the safety, operation, or maintenance of the amusement ride.[13]

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[9] S. 616.242(4), F.S.
[10] *Id.*
[11] ASTM International, *Committee F24 on Amusement Rides and Devices*, https://www.astm.org/get-involved/technical-committees/committee-f24 (last visited March 22, 2023).
[12] S. 616.242(5), F.S.
[13] *Id.*

An annual permit must be issued to the owner when a completed application has been received, the amusement ride has passed DACS inspection, and all applicable fees, as set by department rule,[14] have been paid.[15]

The annual permit:
- Is valid for one year from the date of issuance;
- Is not transferable; and
- Must be displayed on the amusement ride in a place that is visible to patrons.[16]

Nondestructive Testing

Background

Nondestructive testing is a means by which a person can evaluate the strength and integrity of a device without altering or destroying it.[17] The purpose of nondestructive testing to make sure that the device is safe. The two types of nondestructive testing are visual and nonvisual testing.

Visual testing is used to look at the device to determine whether there are any signs of corrosion, cracks, welding defects, deformation, and so forth.[18]

Nonvisual nondestructive testing consists of multiple kinds of methods that evaluate whether a latent defect or issue exists.[19]

Nondestructive Testing Affidavit

In order to operate an amusement ride the owner must at all times have a current affidavit of nondestructive testing from a professional engineer or qualified inspector. The affidavit provides that the amusement ride has undergone nondestructive testing for metal fatigue at least annually.[20] Nondestructive testing must be performed by a technician who meets the national standards for amusement rides provided in department rule.[21]

Nondestructive testing for metal fatigue must include visual and nonvisual testing and can be conducted more often than annually if required by any rule adopted under this section, the manufacturer of the amusement ride, or the professional engineer or qualified inspector executing the affidavit of nondestructive testing.[22]

An affidavit of nondestructive testing must provide:
- That the amusement ride was inspected in person by the affiant;

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[14] R. 5J-18.012, F.A.C.
[15] S. 616.242(5), F.S.
[16] *Id.*
[17] *Nondestructive Testing Overview: A Comprehensive Guide to NDT*, Zetec, May 5, 2020, https://www.zetec.com/resources/nondestructive-testing-overview/ (last visited March 22, 2023); *see also*, Siim Sild, *Non-Destructive Testing (NDT): Process, Types & Applications*, Fractory, Nov. 9, 2022, https://fractory.com/non-destructive-testing/ (last visited March 22, 2023).
[18] Siim Sild,*Non-Destructive Testing (NDT): Process, Types & Applications*, Fractory, Nov. 9, 2022, https://fractory.com/non-destructive-testing/ (last visited March 22, 2023); *see also*, Thomas R. Hay, "Non-Destructive Testing (NDT) of Amusement Park Rides." TechKnowServ, Feb. 27, 2020, https://www.techknowserv.com/post/non-destructive-testing-ndt-of-amusement-park-rides (last visited March 22, 2023).
[19] Nonvisual nondestructive test methods include ultrasonic testing, eddy-current testing, or magnetic flux leakage testing. Thomas R. Hay, *Non-Destructive Testing (NDT) of Amusement Park Rides*, TechKnowServ, Feb. 27, 2020, https://www.techknowserv.com/post/non-destructive-testing-ndt-of-amusement-park-rides (last visited March 22, 2023).
[20] S. 616.242(6), F.S.
[21] *Id.*
[22] *Id.*

- That all nondestructive testing requirements are current;
- That the nondestructive testing was performed by a qualified nondestructive testing technician.
- The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing;
- The type of nondestructive testing required or recommended by the manufacturer;
- The frequency of the nondestructive testing required or recommended by the manufacturer;
- The components of the amusement ride for which the affiant has recommended or required nondestructive testing;
- The type of nondestructive testing required or recommended by the affiant;
- The frequency of the nondestructive testing as required or recommended by the affiant; and
- That visual nondestructive testing is adequate for the amusement ride to be in general conformance with the requirements of this section, and all applicable rules, if only visual nondestructive testing is required or recommended by either the manufacturer or the affiant.[23]

Nondestructive testing is not required for:
- Fun houses;
- Houses of mirrors;
- Haunted houses;
- Mazes;
- Wave pools;
- Wave-making devices;
- Kiddie pools;
- Slides that are fully supported by an earthen mound;
- Non-motorized playground equipment that requires a manager; or
- Lazy-river type non-motorized floating carriers propelled by water.[24]

Inspections

In order to obtain an annual permit, amusement rides must be inspected by DACS and receive an inspection certificate. In addition, the following requirements must be met:
- Permanent amusement rides must be inspected semiannually and receive an inspection certificate; and
- Temporary amusement rides must be inspected and receive an inspection certificate each time the ride is set up or moved to a new location in this state unless the ride is:
    - Used at a private event;
    - A simulator, the capacity of which does not exceed 16 persons; or
    - A kiddie ride used at a public event, provided that there are no more than three amusement rides at the event, none of the kiddie rides at the event exceeds a capacity of 12 persons, and the ride has an inspection certificate that was issued within the preceding 6 months.[25]

To obtain a DACS inspection, the owner must submit a written request on a department prescribed form providing the following information:
- The legal name, address, and primary place of business of the owner;
- A description, manufacturer's name, serial number, model number, and the United States Amusement Identification Number, if previously assigned, of the amusement ride; and
- For a temporary amusement ride, for each time the amusement ride is set up or moved to a new location, the date of first intended use at the new location and the address or a description of the new location.[26]

[23] *Id.*
[24] *Id.*
[25] S. 616.242(5), F.S.
[26] *Id.*

For permanent amusement rides, a request for inspection must be received by DACS at least 15 days before the:

- Owner's planned opening date; or
- Expiration of the prior inspection certificate. [27]

For temporary amusement rides, the request for inspection must be received by DACS each time the amusement ride is set up or moved to a new location at least 14 days before the date of first intended use at the new location.[28]

In both cases, if the request for inspection is received late, DACS is authorized to inspect the amusement ride and charge a late fee. In addition, if the owner fails to timely cancel a Request for Inspection, requests holiday or weekend inspections, or is required to have a replacement United States Amusement ID Program (USAID) plate issued by DACS, then the owner may be charged an appropriate fee.[29]

Inspections are assigned on a first come, first served basis, and overflow requests will be scheduled on the closest date to the date for which the inspection was requested. Upon failure of an amusement ride to pass an inspection, the owner may request in writing a re-inspection. DACS is required to re-inspect the ride as soon as practical following receipt of the written request and applicable re-inspection fees. [30]

Upon passage of inspection and payment of the applicable fee, DACS must issue an inspection certificate containing the following information:

- Date of inspection;
- Site of the inspection; and
- Name of the inspector.[31]

Inspection certificates are valid only for the site stated on the certificate, for a period of not more than 6 months from the date of issuance. They are not transferable and must be displayed on the amusement ride at a place readily visible to patrons.[32]

Fees

DACS is required by rule to establish fees to cover the costs and expenditures associated with the fair rides inspection program, including all direct and indirect costs. If there is not sufficient general revenue appropriated by the Legislature, the industry is required to pay for the remaining cost of the program.[33]

Fees must be deposited in the General Inspection Trust Fund. Any owner of an amusement ride who has not paid all the fees required under this section or who has any unpaid fine outstanding under this section, are prohibited from operating any amusement ride in this state until the fees and fines have been paid to DACS.[34]

DACS has adopted the following fees:[35]

Type of Fee	Permanent Ride	Temporary Ride
Annual permit fee for each kiddie amusement ride	$300	$150

[27] *Id.*
[28] S. 616.242(6), F.S.
[29] S. 616.242(8)(d), F.S.
[30] S. 616.242(8)(b)-(c), F.S.
[31] *Id.*
[32] *Id.*
[33] S. 616.242(9), F.S.
[34] *Id.*
[35] R. 5J-18.012, F.A.C.

Annual permit fee for each non-kiddie amusement ride	$400	$200
Annual permit fee for each super amusement ride	$600	$300
Inspection fee per go kart, in addition to the track inspection fee	$10	$10
Reinspection fee (return to site)	$500	$500
Reinspection fee (return on-site)	$100	$100
Fee to replace a lost U.S. Amusement Identification (USAID) plate	$100	$100
Fee per amusement ride for late inspection request	$100	$100
Fee per amusement ride for failure to cancel inspection request	$100	$100
Additional fee per amusement ride for inspection on weekend or state holiday	$75	$75
Inspection fee per harness, in addition to the ropes course/zipline permit fee	$5	$5

In order to obtain a permit to operate an amusement ride in Florida, the ride owner must obtain injury liability insurance in the following amounts:
- One million dollars minimum per occurrence; and
- One million dollars in the aggregate.[36]

The policies must be procured from an insurer that is:
- Licensed to transact business in this state; or
- Approved as a surplus lines insurer.[37]

The insurance requirements do not apply to a governmental entity that is covered by the provisions of s. 768.28(16), F.S., which authorizes the state and its agencies and subdivisions to:
- Be self-insured;
- Enter into risk management programs;
- Purchase liability insurance for whatever coverage they may choose; or
- Have any combination thereof.[38]

Exemptions

The regulations[39] related to amusement rides do not apply to the following:
- Permanent facilities that employ at least 1,000 full-time employees and that maintain full-time, in-house safety inspectors;
- Any playground operated by a school, local government, or business licensed under chapter 509, F.S., if the playground is an incidental amenity and the operating entity is not primarily engaged in providing amusement, pleasure, thrills, or excitement;
- Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts;
- Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on display or exhibition, and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show;
- Skating rinks, arcades, laser or paint ball war games, bowling alleys, miniature golf courses, mechanical bulls, inflatable rides, trampolines, ball crawls, exercise equipment, jet skis, paddle boats, airboats, helicopters, airplanes, parasails, hot air or helium balloons whether tethered or untethered, theatres, batting cages, stationary spring-mounted fixtures, rider-propelled merry-go-rounds, games, side shows, live animal rides, or live animal shows;
- Go-karts operated in competitive sporting events if participation is not open to the public;
- Non-motorized playground equipment that is not required to have a manager;

[36] S. 616.242(10), F.S.
[37] *Id.*
[38] *Id.*
[39] S. 616.242, F.S. does not apply to these exemptions.

- Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less;
- Motorsports facilities described in s. 549.09(1)(a), F.S., when such facilities are operating cars, trucks, or motorcycles only;
- Battery-powered cars or other vehicles that are designed to be operated by children seven years of age or under and that cannot exceed a speed of four miles per hour;
- Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of 4 miles per hour;
- Water-related amusement rides operated by a business licensed under chapter 509, F.S., if the water-related amusement ride is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates;
- Amusement rides at a private, membership-only facility if the amusement ride is an incidental amenity and the facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates; and
- Nonprofit permanent facilities registered under ch. 496, F.S., which are not open to the general public.[40]

DACS is authorized to establish by rule exemptions from the regulations on amusement rides for "non-motorized or human-powered amusement rides or coin-actuated amusement rides."[41]

Inspection Standards

Amusement rides are required to adhere to the following inspection standards:

- All mechanical, structural, and electrical components that affect patron safety must be in good working order.
- All control devices, speed-limiting devices, brakes, and safety equipment designated by the manufacturer must be in good working order.
- Parts must be properly aligned and not be bent, distorted, cut, or otherwise injured to force a fit. Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed where required for safe operation.
- Before being used by the public, an amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means so as to be stable under all operating conditions.
- Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.
- Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.
- An amusement ride powered so as to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.
- The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be smooth and rounded and free from sharp, rough, or splintered edges and corners, with no projecting studs, bolts, screws, or other projections which might cause injury.
- Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use restrictions required or recommended for the amusement ride by the manufacturer must be prominently displayed at the patron entrance of each amusement ride.
- All amusement rides must comply with the section of law governing amusement rides and related rules.[42]

[40] S. 616.242(11), F.S.
[41] *Id.*
[42] S. 616.242(12), F.S.

Major Modifications

After an amusement ride has undergone a major modification, and prior to the time it is placed in operation, a Florida Licensed professional engineer must certify that the amusement ride is in compliance with the entire section of law governing amusement ride safety, and all related rules.[43]

Entry for Inspections

Authorized DACS employees may enter unannounced and inspect amusement rides at any time in a reasonable manner and DACS is authorized to impose fees for unannounced inspections and recover the cost of related tests.[44] DACS employees are authorized to:

- Question any owner or manager;
- Inspect, investigate, photograph, and sample all pertinent places, areas, and devices; and
- Conduct all appropriate tests including nondestructive testing.[45]

Reporting and Investigating Accidents and Defects

Accidents that the owner or manager have knowledge or, through the exercise of reasonable diligence should have knowledge, and for which a patron is transported to a hospital as defined in ch. 395, F.S., must be reported by the owner or manager to DACS. Such reporting must be conducted by telephone within four hours after the accident and followed up with a written report to DACS within 24 hours after the accident.

Any mechanical, structural, or electrical defects affecting patron safety for which an amusement ride is closed to patron use for more than four hours must be reported by the owner or manager to DACS by telephone or facsimile within eight hours after the closing of the ride. A written report of the closing must be filed by the owner or manager with DACS within 24 hours after the ride closes.

Impounding Amusement Rides

DACS is authorized to impound amusement rides that have:

- Been involved in an accident for which a patron is transported to a hospital as defined in ch. 395, F.S.;
- A mechanical, structural, or electrical defect affecting patron safety.

In cases of impoundment, DACS is authorized to impound any other amusement ride of a similar make and model and perform all necessary tests to determine the cause of the accident, defect, or safety of the ride and any other ride of a similar make and model. The ride owners are responsible for the cost of impoundment and relating testing.[46]

Owner/Manager Inspections

Prior to opening each day of operation, and before any inspection by DACS, the owner or manager of an amusement ride is required to inspect and test the ride to ensure compliance with all requirements of the law governing amusement rides. Each inspection must be recorded on a form prescribed by department rule and signed by the person who conducted the inspection.[47]

[43] S. 616.242(13), F.S.
[44] *Id.*
[45] S. 616.242(14), F.S.
[46] S. 616.242(15), F.S.
[47] S. 616.242(16), F.S.

In lieu of using the department form, an owner or manager may request approval of an alternative form, which must include at least the information required on the department form. Inspection records of the last 14 daily inspections must be:

- Kept on site by the owner or manager; and
- Made immediately available to DACS upon request.[48]

Employee Training

Owners or managers of amusement rides are required to:

- Maintain a record of employee training for each employee who is authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride; and
- Certify that each employee is trained on the amusement ride for which the employee is responsible.[49]

The training record must be kept on site by the owner or manager and made immediately available to DACS upon request. In lieu of using the department form, the owner or manager may request approval of an alternative form.[50]

Training is prohibited when an amusement ride is open to the public, unless the training is conducted under the supervision of an employee who is trained in the operation of that ride.[51]

Enforcement and Penalties

DACS has the authority to deny, suspend for up to one year, or revoke any permit or inspection certificate. In addition, DACS may impose an administrative fine pursuant to s. 570.971, F.S., not to exceed $10,000 per violation, for each day the violation exists, against the owner of the amusement ride if DACS finds that an amusement ride has operated or is operating:

- With a mechanical, structural, or electrical defect that affects patron safety, of which the owner or manger has knowledge, or, through the exercise of reasonable diligence, should have knowledge;
- In a manner or circumstance that presents a risk of serious injury to patrons;
- At a speed in excess of its maximum safe operating speed;
- In violation of department rules or state law; or
- In violation of an order of DACS or any court.
- A manager in the course of his or her duties is under the influence of drugs or alcohol.[52]

DACS is required, in its order suspending a permit or inspection certificate, to specify the period during which the suspension is effective, which may not exceed one year. The permit or inspection certificate must remain suspended during the period, subject to any rescission or modification of the order by the department or modification or reversal by the court, prior to expiration of the suspension period.[53]

The owner of an amusement ride whose permit or inspection certificate has been revoked by DACS may not apply for another permit or inspection certificate for the amusement ride within 2 years after the date of the revocation. If judicial review is sought and a stay of the revocation is obtained, the owner may not apply for another permit or inspection certificate within 2 years after the final order of the court sustaining the revocation.[54]

[48] *Id.*
[49] S. 616.242(17), F.S.
[50] *Id.*
[51] *Id.*
[52] S. 616.242(21), F.S.
[53] *Id.*
[54] *Id.*

During the period of suspension or revocation, the owner may not engage in or attempt to engage in any operation of the amusement ride for which a permit or inspection certificate is required.[55]

When a DACS -imposed suspension period has expired, the owner may reapply for a new permit or inspection certificate by submitting a complete application to DACS.[56]

In addition, and notwithstanding the existence of any adequate remedy at law, DACS is authorized to bring an action to enjoin the violation of any provision, or rules adopted, under this section, in the circuit court of the county in which the violation occurs or is about to occur. Upon competent and substantial evidence presented by DACS, the court is required to immediately issue the temporary or permanent injunction sought by DACS without bond.[57]

In addition to the penalties, DACS is authorized to issue a letter of warning to the owner of the ride specifying the violation and requiring immediate corrective action.[58]

Any person who knowingly violates any of the provisions of the regulations governing amusement rides commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.[59]

Consumer Product Safety Commission

The Consumer Product Safety Commission (Commission) is charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of types of consumer products under the Commission's jurisdiction. The Consumer Product Safety Act (Act)[60] authorizes the Commission to investigate serious accidents involving portable carnival rides, inflatables, and go-karts. Amusement rides operated at permanent parks ("permanently fixed to a site") are exempt from compliance with the Act.[61]

Ride manufacturers or owner/operators are required to notify the Commission if they obtain information which reasonably supports the conclusion that a portable amusement ride, inflatable device, go-kart or other non-exempt amusement device:

- Fails to comply with a consumer product safety standard or banning regulation established by the omission or a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the Act;[62]
- Contains a defect which could create a substantial product hazard described in section 15(a)(2) of the Act;[63] or
- Creates an unreasonable risk of serious injury or death.[64]

The Commission does not provide for an inspection program.

Other States

[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] 15 U.S.C. ch. 47 § 2051 et seq.
[61] "Consumer Product Safety Commission." *RidesDatabase*, https://ridesdatabase.org/regulations/united-states/ (last visited March 23, 2023); see also, 15 U.S.C.A. § 2065 (2008).
[62] *See*, 15 U.S.C. § 2058 (2008).
[63] *See,* 15 U.S.C. § 2064.
[64] 15 U.S.C. § 2064(b)(4).

According to a consumer safety organization, Safeparks.org, the research of amusement ride laws in 50 states found the following:[65]

Degree of Oversight	Number of States
Comprehensive Government Oversight	20 States (Including Florida)
Partial Government Oversight	12 States
Private Sector Oversight	9 States
No State Agency with Jurisdiction	8 States
Electrical Inspections Only	1 State

Effect of Bill

The bill, titled the Tyre Sampson Act, amends ch. 616, F.S. relating to the regulation of amusement rides. The bill amends the definition of "major modification" and provides definitions for "nationally recognized testing laboratory" and "ride commissioning and certification report."

The bill provides new requirements for permanent and temporary amusement rides and requires, for each permanent or temporary amusement rides operated, for the first time after July 1, 2023, to have a ride commissioning and certification report on file with DACS before the ride's first inspection and a permit is issued.

The bill requires:

- A ride owner or manager to provide a longitudinal record regarding accidents involving rides they previously owned or operated as part of each permanent or temporary amusement ride annual permit application. It also, provides exemptions for temporary amusement rides from required permit to include previously permitted rides at private events and kiddie rides at public events not to exceed three amusement rides.
- Nonvisual nondestructive testing to be used when it cannot be adequately evaluated by other means and the type of nondestructive testing or recommended by affiant to include the manufacturer's requirements and recommendations. If there are no additional nondestructive testing it is required to be affirmed that the manufacturer's requirements are sufficient for safe operation.

The bill creates new reporting requirements for an affidavit of nondestructive testing. The affidavit of nondestructive testing must include the following statement:

- The ride is in conformance with the requirements of statute and applicable department rules;
- Whether the amusement ride went under a major modification, the name of the person who authorized modification and the date modification took place;
- The ride is in conformance with all of the manufacturer's required or recommended bulletins.

The bill permits DACS to conduct unannounced inspections to verify that on-duty employees have received proper training, and to observe the amusement ride in operation in order to detect unsafe ride conditions that may have occurred following the last inspection. DACS is also permitted to immediately remove amusement ride from service if unsafe conditions are found.

The bill prohibits sensors related to patron safety from being adjusted beyond the prescribed tolerances and requires that the proper positioning and measurements for patron safety restraint systems must be provided to DACS prior to inspection. It also provides that if rider restrictions are not provided from

[65] Safeparks, *U.S. Federal and State Amusement Ride Regulation*, https://ridesdatabase.org/saferparks/u-s-regulatory-agencies/ (last visited March 22, 2023)

manufacturer, the owner or manager must provide DACS with documentation from manufacturer stating that such restrictions are not necessary for safe operation.

The bill permits DACS to prepare a written report of each investigation it conducts. The bill also changes the accident reporting requirements for owners and managers following an accident and changes the parameters in which DACS is permitted to impound an amusement ride involved in an accident. DACS must establish by rule minimum training and retraining standards and the frequency of employee training for all amusement rides. The bill also creates the requirement that the owner or manager of an amusement ride shall immediately document all training following each training session.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Names the title of the Act.

Section 2: Amends s. 616.242 relating to certification reports, permit applications, temporary ride exemptions, nondestructive testing, inspections and reports; reporting for accidents involving medical treatment; impoundment of ride, DACS rules, and employee training.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DACS estimates that the bill would cost DACS $1.4 million in recurring expenditures, in addition to $791,204 in non-recurring, for Fiscal Year 2023-2024. DACS also estimates that the bill would cost DACS $1.4 million in recurring expenditures for Fiscal Years 2024-2025 and 2025-2026.[66]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Additional costs may be incurred by new ride operators to produce a ride commissioning report. This cost could vary greatly depending on the complexity of the ride. Also, the additional nondestructive testing requirements may result in increased costs associated with the inspection by a professional engineer executing the affidavit.[67]

D. FISCAL COMMENTS:

DACS provided the following chart to show the estimated fiscal impact on the agency:[68]

[66] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2023 House Bill 1241, p. 3 (March 8, 2023).
[67] *Id*.
[68] *Id*.

	(FY 23-24) Amount/ FTE	(FY 24-25) Amount/ FTE	(FY 25-26) Amount/ FTE
A. Revenues			
Recurring			
Non-Recurring			
TOTAL REVENUES			
B. Expenditures			
Recurring	1,409,949	1,409,949	1,409,949
Non-Recurring	791,204	0	0
TOTAL EXPENDITURES	2,201,153	1,409,949	1,409,949
C. NET TOTAL	(2,201,153)	(1,409,949)	(1,409,949)
COMMENTS: This includes Salaries and Benefits, standards Expense packages, vehicles and fuel/maintenance packages for 18 FTE.			

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill instructs DACS to create rules for operator training/retraining standards.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill includes a provision regarding unannounced inspections which is already authorized in current law.

The sponsor indicates that an amendment will be filed to correct drafting issues and reduce the DACS fiscal impact.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to safety standards for amusement rides; providing a short title; amending s. 616.242, F.S.; defining and redefining terms; requiring permanent amusement rides operated for the first time in this state after a specified date to have a ride commissioning and certification report on file with the Department of Agriculture and Consumer Services within a specified timeframe; revising the application requirements for permanent and temporary amusement ride permits; exempting from permit requirements temporary amusement rides that meet certain conditions; revising the annual nondestructive testing requirements for amusement rides; requiring nonvisual nondestructive testing to be used in certain circumstances; revising the affidavit requirements for nondestructive testing; authorizing the department to conduct unannounced inspections for specified purposes; requiring the department to remove an amusement ride from service and take appropriate administrative actions under certain circumstances; removing an exemption for temporary amusement ride inspections; authorizing the department to conduct certain inspections upon request; revising amusement ride inspection standards; revising the reasons for

which the department is authorized to enter and inspect amusement rides; requiring the department to prepare a written report of each investigation it conducts; revising the circumstances under which the owner or manager of an amusement ride is required to report an accident and under which the department may impound an amusement ride involved in an accident; requiring daily owner or manager amusement ride inspections to be recorded at the time of inspection; requiring the department to establish by rule minimum amusement ride training and retraining standards; revising training requirements; revising circumstances under which an amusement ride may be considered an immediate serious danger to the public; providing an effective date.

WHEREAS, on March 24, 2022, Tyre Sampson, a 14-year-old boy visiting this state from Missouri, fell to his death from the Eagle Drop Tower in Orlando, and

WHEREAS, after the accident, Department of Agriculture and Consumer Services inspectors performed multiple onsite inspections of the tower and its components and contracted with a third party to conduct a failure analysis assessment of the tower, and

WHEREAS, the investigators concluded that changes made to

the ride by the ride operators after initial installation contributed to Tyre Sampson's death, and

WHEREAS, the proposed changes made by this act are necessary to address the safety problems discovered during the department's investigation, NOW, THEREFORE,

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

Section 1. This act may be cited as the "Tyre Sampson Act."

Section 2. Present paragraphs (j) through (q) and (r) through (u) of subsection (3) of section 616.242, Florida Statutes, are redesignated as paragraphs (k) through (r) and (t) through (w), respectively, new paragraphs (j) and (s) are added to that subsection and a new paragraph (g) is added to subsection (6) of that section, and paragraph (h) of subsection (3), paragraph (a) of subsection (4), paragraph (b) of subsection (5), paragraphs (b) and (f) of subsection (6), subsection (7), paragraph (a) of subsection (8), paragraph (b) of subsection (11), subsections (12) and (14), paragraphs (a) and (c) of subsection (15), and subsections (16), (17), and (19) of that section are amended, to read:

616.242 Safety standards for amusement rides.—

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

(h) "Major modification" means any change in the

structural characteristics, ~~or~~ operational characteristics, or safety systems of an amusement ride which will alter its performance or settings from those ~~that~~ specified in the manufacturer's design criteria or operator's manual or as certified in the ride commissioning and certification report.

(j) "Nationally recognized testing laboratory" means an independent laboratory recognized by the United States Occupational Safety and Health Administration which tests products to applicable product safety standards in order to provide independent testing and certification of devices that may pose a risk to the user.

(s) "Ride commissioning and certification report" means a commissioning and certification report by the ride manufacturer or a nationally recognized testing laboratory which certifies that the ride has been designed, manufactured, installed, and tested in conformance with the manufacturer's design criteria, standards referenced in this section, and rules adopted by the department.

(4) ADOPTION OF STANDARDS; RULES.—

(a) The department shall adopt by rule standards for amusement rides. The rules must:

1. Be ~~which are~~ the same as or similar to the following ~~national~~ standards:

a.~~1.~~ ASTM International Committee F24 Standards on Amusement Rides and Devices.

b.~~2.~~ The National Electric Code Handbook.

c.~~3.~~ National Fire Protection Association standards.

2. Require that each permanent amusement ride operated for the first time in this state after July 1, 2023, have a ride commissioning and certification report on file with the department before the department conducts the permanent amusement ride's first inspection and issues a permit for the permanent amusement ride.

(5) PERMANENT AMUSEMENT RIDE ANNUAL PERMIT.—

(b) To apply for an annual permit, an owner or manager must submit to the department a written application on a form prescribed by department rule, which must include all of the following:

1. The legal name, address, e-mail address, and primary place of business of the owner or manager~~, as applicable~~.

2. A description, manufacturer's name, serial number, model number, and, if previously assigned, the United States Amusement Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. ~~If required under subsection (7),~~ An annual affidavit of compliance and nondestructive testing certifying that the amusement ride was inspected in person by the affiant and that the amusement ride is in ~~general~~ conformance with the requirements of this section and all applicable department

rules. The affidavit must have been executed by a professional engineer or a qualified inspector within the last calendar year.

5. ~~The owner or manager shall,~~ At no cost to the department, ~~provide the department~~ an electronic copy of the manufacturer's current recommended operating instructions, the owner's operating fact sheet, a longitudinal record regarding accidents involving rides he or she previously owned or operated, and any written bulletins concerning the safety, operation, or maintenance of the amusement ride.

6. Beginning July 1, 2023, a ride commissioning and certification report for each permanent amusement ride operated for the first time in this state after July 1, 2023.

(6) TEMPORARY AMUSEMENT RIDE PERMIT.—

(b) To apply for a permit, an owner or manager must submit to the department a written application on a form prescribed by department rule. The written application~~, which~~ must include all of the following:

1. The legal name, address, e-mail address, and primary place of business of the owner or manager~~, as applicable~~.

2. A description, manufacturer's name, serial number, model number, and, if previously assigned, the United States Amusement Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. ~~If required under subsection (7),~~ An affidavit of

compliance and nondestructive testing certifying that the amusement ride was inspected in person by the affiant and that the amusement ride is in ~~general~~ conformance with the requirements of this section and all applicable department rules. The affidavit must be executed by a professional engineer or a qualified inspector.

5. ~~The owner or manager shall,~~ At no cost to the department, ~~provide the department~~ an electronic copy of the manufacturer's current recommended operating instructions, the operating fact sheet, a longitudinal record regarding accidents involving rides he or she previously owned or operated, and any written bulletins concerning the safety, operation, or maintenance of the amusement ride.

(f) A temporary amusement ride is exempt from the required permit if it is:

1. Used at a private event and was issued a permit within the preceding 6 months; or

2. A kiddie ride used at a public event, provided that not more than three amusement rides are at the event, the kiddie rides at the event do not exceed a capacity of 12 persons, and the kiddie ride passed a department inspection and was issued a permit within the preceding 6 months. Unless the capacity of the ride has been determined and specified by the manufacturer, the department shall determine the capacity of the kiddie ride by rule. An owner or a manager of a kiddie ride operating under

this exemption is responsible for ensuring that not more than three amusement rides are operated at the event.

(g) The permit must be displayed in an accessible location on the amusement ride.

(7) NONDESTRUCTIVE TESTING; ANNUAL AFFIDAVIT; EXEMPTIONS.—

(a) ~~Except as provided in paragraph (d),~~ An owner or manager may not operate an amusement ride unless the owner or manager at all times has a current affidavit of nondestructive testing from a professional engineer or qualified inspector that the amusement ride has undergone nondestructive testing to verify the integrity of all components ~~for metal fatigue~~ at least annually. The nondestructive testing ~~for metal fatigue~~ must be conducted more often than annually if required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing. The nondestructive testing ~~for metal fatigue~~ must consist at least of visual nondestructive testing, as well as nonvisual nondestructive testing ~~for metal fatigue~~, which must be conducted on the components of the amusement ride as required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing.

(b) Nonvisual nondestructive testing must be used to verify the integrity of components that, due to their design,

location, installation, or a combination thereof, cannot be adequately evaluated by other means.

(c) Nondestructive testing ~~testings~~ must be performed by a technician who meets the requirements prescribed by department rule.

(d) ~~(c)~~ An affidavit of nondestructive testing, on a form prescribed by department rule, must state, at a minimum, all of the following:

1. That the amusement ride was inspected in person by the affiant.

2. That all of the manufacturer's nondestructive testing requirements and recommendations are current.

3. That the nondestructive testing was performed by a qualified nondestructive testing technician.

4. The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing.

5. The type of nondestructive testing required or recommended by the manufacturer.

6. The frequency of the nondestructive testing required or recommended by the manufacturer.

7. The components of the amusement ride for which the affiant, in addition to the manufacturer's requirements and recommendations, has recommended or required nondestructive testing.

8. The type of nondestructive testing required or

recommended by the affiant in addition to the manufacturer's requirements and recommendations. If the affiant does not require or recommend additional nondestructive testing, the affiant must affirm that the manufacturer's requirements are sufficient for the safe operation of the amusement ride.

9. The frequency of the nondestructive testing as required or recommended by the affiant.

10. That visual nondestructive testing is adequate for the amusement ride to be in ~~general~~ conformance with the requirements of this section and all applicable rules, ~~only~~ if only visual nondestructive testing is required ~~or recommended~~ by the manufacturer or the affiant.

11. That the amusement ride is in conformance with the requirements of this section and all applicable department rules.

12. Whether the amusement ride has undergone a major modification and, if so, the name of the manager, owner, or operator who authorized the modification and the date the modification took place.

13. That the amusement ride and its components are in conformance with the service life specified by the manufacturer.

14. That the amusement ride is in conformance with all of the manufacturer's required or recommended bulletins.

(e) ~~(d)~~ Nonvisual nondestructive testing is not required for fun houses, houses of mirrors, haunted houses, mazes, wave

pools, wave-making devices, kiddie pools, slides that are fully supported by an earthen mound, nonmotorized playground equipment that requires a manager, or lazy-river-type nonmotorized floating carriers propelled by water.

(8) DEPARTMENT INSPECTIONS.—

(a) In order to obtain an annual or a temporary amusement ride permit, an amusement ride must be inspected by the department.

1. The department may conduct unannounced inspections to observe operations and ensure the amusement ride is being conducted pursuant to proper procedures, to verify that on-duty employees have received proper training, and to observe the amusement ride in operation in order to detect unsafe ride conditions that may have occurred following the last inspection. If unsafe conditions are found, the inspector must immediately remove the amusement ride from service to ensure patron safety and follow up with the appropriate administrative actions ~~A temporary amusement ride is exempt from the required inspection if it is:~~

~~a. Used at a private event;~~

~~b. A simulator, the capacity of which does not exceed 16 persons; or~~

~~c. A kiddie ride used at a public event, provided that not more than three amusement rides are at the event, the kiddie rides at the event do not exceed a capacity of 12 persons, and~~

~~the kiddie ride passed a department inspection and was issued a permit within the preceding 6 months. The capacity of a kiddie ride shall be determined by department rule, unless the capacity of the ride has been determined and specified by the manufacturer. Any owner or manager of a kiddie ride operating under this exemption is responsible for ensuring that not more than three amusement rides are operated at the event~~.

2. The department shall inspect permanent amusement rides 6 months after the issuance of the annual permit. The required inspection may be waived for a permanent amusement ride if it was inspected and certified by an accredited trade organization as defined by department rule.

(11) EXEMPTIONS.—

(b) All of the following are exempt from subsections (5), (6), (8), and (9), but may be inspected by the department upon request, following a complaint or pursuant to an accident that is required to be reported under subsection (15), and such exemption may be removed if the exempted amusement ride is found to have been operating in a manner or circumstance that presents a risk or resulted in a serious injury to patrons:

1. Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts.

2. Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on

display or exhibition and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show.

3. Nonmotorized playground equipment that is not required to have a manager.

4. Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less.

5. Facilities described in s. 549.09(1)(a) when such facilities are operating cars, trucks, or motorcycles only.

6. Battery-powered cars or other vehicles that are designed to be operated by children 7 years of age or under and that cannot exceed a speed of 4 miles per hour.

7. Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of 4 miles per hour.

8. A water-related amusement ride operated by a business licensed under chapter 509 if the water-related amusement ride is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates.

9. An amusement ride at a private, membership-only facility if the amusement ride is an incidental amenity and the

facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates.

10. A nonprofit permanent facility registered under chapter 496 which is not open to the general public.

(12) INSPECTION STANDARDS.—An amusement ride must conform to all of the following standards:

(a) All mechanical, structural, and electrical components that affect patron safety must be in good working order.

(b) All control devices, speed-limiting devices, brakes, and safety equipment must be in good working order.

(c) Parts must be properly aligned and may not be bent, distorted, cut, or otherwise injured to force a fit. Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed when required for safe operation.

(d) Sensors and other limiting devices related to patron safety restraint systems may not be adjusted beyond the prescribed tolerances determined by the manufacturer or by a licensed professional engineer if the manufacturer is no longer in business.

(e) The proper positioning and measurements related to patron safety restraint systems must be provided to the department before the time of inspection. The specifications may include redundant restraints, such as seat belts, and must be

approved by the ride manufacturer or by a licensed professional engineer if the manufacturer is no longer in business.

(f) An amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means ~~so as~~ to be stable under all operating conditions.

(g) ~~(e)~~ Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.

(h) ~~(f)~~ Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.

(i) ~~(g)~~ An amusement ride powered ~~so as~~ to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.

(j) ~~(h)~~ The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be smooth and rounded and free from sharp, rough, or splintered edges and corners, and from projecting studs, bolts, and screws or other projections that might cause injury.

(k) ~~(i)~~ Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use restrictions, or lack thereof, ~~required or recommended for the amusement ride by the manufacturer~~ must be prominently displayed at the patron entrance of each amusement ride. If such rider

restrictions are not provided by the manufacturer, the owner or manager must provide the department with documentation from the manufacturer or a licensed professional engineer stating that such rider restrictions are not necessary for the safe operation of the amusement ride.

(l) ~~(j)~~ All amusement rides presented for inspection as ready for operation or in operation must comply with this section and department rule.

(m) ~~(k)~~ A sign containing the toll-free number of the department and informing patrons that they may contact the department with complaints or concerns regarding the safe operation of amusement rides must be posted in a manner conspicuous to the public at each entrance of an ~~a temporary~~ amusement ride ~~facility~~. The department shall prescribe by rule specifications for such signs.

(14) ENTRY FOR INSPECTION OR INVESTIGATION.—

(a) Upon presentation of identification, an authorized employee of the department may enter unannounced and inspect amusement rides at any time and in a reasonable manner and has the right to question any owner, operator, or manager; to inspect, investigate, photograph, and sample all pertinent places, areas, and devices and review required documentation; and to conduct or have conducted all appropriate tests, including nondestructive testing. The department may impose fees for unannounced inspections and recover the cost of tests

authorized by this subsection.

(b) The department shall prepare a written report of each investigation it conducts.

(15) REPORTING AND INVESTIGATION OF ACCIDENTS AND DEFECTS; IMPOUNDMENTS.—

(a) Any accident of which the owner or manager has knowledge or, through the exercise of reasonable diligence should have knowledge, and for which a patron seeks treatment at ~~is transported to~~ a hospital or an urgent care center, as those terms are defined in chapter 395, must be reported by the owner or manager to the department by telephone within 4 hours after the occurrence of the accident or after notification by the patron and must be followed up by a written report to the department within 24 hours after the occurrence of the accident or after notification by the patron.

(c) The department may impound an amusement ride involved in an accident for which a patron seeks treatment at ~~is transported to~~ a hospital or an urgent care center as those terms are defined in chapter 395 or which has a mechanical, structural, or electrical defect affecting patron safety; may impound any other amusement ride of a similar make and model or with similar operating characteristics; and may perform all necessary tests to determine the cause of the accident or the mechanical, structural, or electrical defect or to determine the safety of the amusement ride and any other amusement ride of a

similar make and model or with similar operating characteristics. The cost of impounding the amusement ride and performing the necessary tests must be borne by the owner of the amusement ride.

(16) INSPECTION BY OWNER OR MANAGER.—Before opening on each day of operation and before any inspection by the department, the owner or manager of an amusement ride must inspect and test each amusement ride to ensure compliance with this section. Each inspection must be recorded at the time of inspection on a form prescribed by department rule and signed by the person who conducted the inspection. In lieu of the form prescribed by department rule, the owner or manager may request approval of an alternative form that includes, at a minimum, the information required on the form prescribed by department rule. Inspection records of the last 14 daily inspections must be kept on site by the owner or manager and made immediately available to the department upon request.

(17) TRAINING OF EMPLOYEES.—

(a) The department shall establish by rule minimum training and retraining standards and the frequency of employee training for all amusement rides.

(b) The owner or manager of an amusement ride shall maintain a record of employee training for each employee authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride on a form prescribed by

department rule. In lieu of the form prescribed by department rule, the owner or manager may request approval of an alternative form that includes, at a minimum, the information required on the form prescribed by department rule. The training record must be kept on site by the owner or manager and made immediately available to the department upon request. Training may not be conducted when an amusement ride is open to the public unless the training is conducted under the supervision of an employee who is trained in the operation of that ride. The owner or manager shall immediately document all training following each training session and certify that each employee is trained, as required by this section and any rules adopted thereunder, on the amusement ride for which the employee is responsible.

(19) IMMEDIATE FINAL ORDERS.—

(a) An amusement ride that fails to meet the requirements of this section or pass the inspections required by this section; that is involved in an accident for which a patron seeks treatment at ~~is transported to~~ a hospital or an urgent care center as those terms are defined in chapter 395; or that has a mechanical, structural, or electrical defect that affects patron safety may be considered an immediate serious danger to the public health, safety, and welfare and, upon issuance of an immediate final order prohibiting patron use of the ride, may not be operated for patron use until it has passed a subsequent

inspection by or at the direction of the department.

(b) An amusement ride of a similar make and model or with similar operating characteristics to an amusement ride described in paragraph (a) may be considered an immediate serious danger to the public health, safety, and welfare and, upon issuance of an immediate final order prohibiting patron use of the ride, may not be operated for patron use until it has passed a subsequent inspection by or at the direction of the department.

Section 3. This act shall take effect July 1, 2023.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1241 Safety Standards for Amusement Rides
by Rep. Bracy Davis
AMENDMENT SUMMARY
March 28, 2023

Amendment 1 by Rep. Bracy Davis (line 61):

- Removes and modifies provisions to lessen the fiscal impact on the Department of Agriculture and Consumer Services.
- Removes duplicative provisions.

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: Regulatory Reform & Economic Development Subcommittee
Representative Bracy Davis offered the following:

Amendment (with title amendment)

Remove lines 61-390 and insert:

Section 2. Present paragraphs (j) through (q) and (r) through (u) of subsection (3) of section 616.242, Florida Statutes, are redesignated as paragraphs (k) through (r) and (t) through (w), respectively, new paragraph (j) is added to that subsection and a new paragraph (g) is added to subsection (6) of that section, and paragraph (h) of subsection (3), paragraph (a) of subsection (4), paragraph (b) of subsection (5), paragraphs (b) and (f) of subsection (6), subsection (7), paragraph (a) of subsection (8), paragraph (b) of subsection (11), subsections (12) and (14),

paragraphs (a) and (c) of subsection (15), and subsections (16), (17), and (19) of that section are amended, to read:

616.242 Safety standards for amusement rides.—

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

(h) "Major modification" means any change in the structural characteristics, ~~or~~ operational characteristics, or safety systems of an amusement ride which will alter its performance or settings from those ~~that~~ specified in the manufacturer's design criteria or operator's manual.

(j) "Ride commissioning and certification report" means a commissioning and certification report by the ride manufacturer which certifies that the ride has been designed, and manufactured in conformance with the manufacturer's design criteria, standards referenced in this section, and rules adopted by the department.

(4) ADOPTION OF STANDARDS; RULES.—

(a) The department shall adopt by rule standards for amusement rides. The rules must:

1. Be ~~which are~~ the same as or similar to the following ~~national~~ standards:

a.~~1.~~ ASTM International Committee F24 Standards on Amusement Rides and Devices.

b.~~2.~~ The National Electric Code Handbook.

c.~~3.~~ National Fire Protection Association standards.

(5) PERMANENT AMUSEMENT RIDE ANNUAL PERMIT.—

(b) To apply for an annual permit, an owner or manager must submit to the department a written application on a form prescribed by department rule, which must include all of the following:

1. The legal name, address, e-mail address, and primary place of business of the owner or manager~~, as applicable~~.

2. A description, manufacturer's name, serial number, model number, and, if previously assigned, the United States Amusement Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. ~~If required under subsection (7),~~ An annual affidavit of compliance and nondestructive testing certifying that the amusement ride was inspected in person by the affiant and that the amusement ride is in ~~general~~ conformance with the requirements of this section and all applicable department rules. The affidavit must have been executed by a professional engineer or a qualified inspector within the last calendar year.

5. ~~The owner or manager shall,~~ At no cost to the department, ~~provide the department~~ an electronic copy of the manufacturer's current recommended operating instructions, the owner's operating fact sheet, and any written bulletins concerning the safety, operation, or maintenance of the amusement ride.

6. Beginning July 1, 2023, a ride commissioning and certification report for each permanent amusement ride operated for the first time in this state after July 1, 2023.

(6) TEMPORARY AMUSEMENT RIDE PERMIT.—

(b) To apply for a permit, an owner or manager must submit to the department a written application on a form prescribed by department rule. The written application~~, which~~ must include all of the following:

1. The legal name, address, e-mail address, and primary place of business of the owner or manager~~, as applicable~~.

2. A description, manufacturer's name, serial number, model number, and, if previously assigned, the United States Amusement Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. ~~If required under subsection (7),~~ An affidavit of compliance and nondestructive testing certifying that the amusement ride was inspected in person by the affiant and that the amusement ride is in ~~general~~ conformance with the requirements of this section and all applicable department rules. The affidavit must be executed by a professional engineer or a qualified inspector.

5. ~~The owner or manager shall,~~ At no cost to the department, ~~provide the department~~ an electronic copy of the manufacturer's current recommended operating instructions, the

operating fact sheet, and any written bulletins concerning the safety, operation, or maintenance of the amusement ride.

(f) A temporary amusement ride is exempt from the required permit if it is:

1. Used at a private event and was issued a permit within the preceding 6 months; or

2. A kiddie ride used at a public event, provided that not more than three amusement rides are at the event, the kiddie rides at the event do not exceed a capacity of 12 persons, and the kiddie ride passed a department inspection and was issued a permit within the preceding 6 months. Unless the capacity of the ride has been determined and specified by the manufacturer, the department shall determine the capacity of the kiddie ride by rule. An owner or a manager of a kiddie ride operating under this exemption is responsible for ensuring that not more than three amusement rides are operated at the event.

(g) The permit must be displayed in an accessible location on the amusement ride.

(7) NONDESTRUCTIVE TESTING; ANNUAL AFFIDAVIT; EXEMPTIONS.—

(a) ~~Except as provided in paragraph (d),~~ An owner or manager may not operate an amusement ride unless the owner or manager at all times has a current affidavit of nondestructive testing from a professional engineer or qualified inspector that the amusement ride has undergone nondestructive testing to verify the integrity of all components ~~for metal fatigue~~ at

least annually. The nondestructive testing ~~for metal fatigue~~ must be conducted more often than annually if required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing. The nondestructive testing ~~for metal fatigue~~ must consist at least of visual nondestructive testing, as well as nonvisual nondestructive testing ~~for metal fatigue~~, which must be conducted on the components of the amusement ride as required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing.

(b) Nonvisual nondestructive testing must be used to verify the integrity of components that, due to their design, location, installation, or a combination thereof, cannot be adequately evaluated by other means.

(c) Nondestructive testing ~~testings~~ must be performed by a technician who meets the requirements prescribed by department rule.

(d) ~~(c)~~ An affidavit of nondestructive testing, on a form prescribed by department rule, must state, at a minimum, all of the following:

1. That the amusement ride was inspected in person by the affiant.

2. That all of the manufacturer's nondestructive testing requirements and recommendations are current.

3. That the nondestructive testing was performed by a qualified nondestructive testing technician.

4. The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing.

5. The type of nondestructive testing required or recommended by the manufacturer.

6. The frequency of the nondestructive testing required or recommended by the manufacturer.

7. The components of the amusement ride for which the affiant, in addition to the manufacturer's requirements and recommendations, has recommended or required nondestructive testing.

8. The type of nondestructive testing required or recommended by the affiant in addition to the manufacturer's requirements and recommendations. If the affiant does not require or recommend additional nondestructive testing, the affiant must affirm that the manufacturer's requirements are sufficient for the safe operation of the amusement ride.

9. The frequency of the nondestructive testing as required or recommended by the affiant.

10. That visual nondestructive testing is adequate for the amusement ride to be in ~~general~~ conformance with the requirements of this section and all applicable rules, ~~only~~ if

only visual nondestructive testing is required ~~or recommended~~ by the manufacturer or the affiant.

11. That the amusement ride is in conformance with the requirements of this section and all applicable department rules.

12. Whether the amusement ride has undergone a major modification and, if so, the name of the manager, owner, or operator who authorized the modification and the date the modification took place.

13. That the amusement ride and its components are in conformance with the service life specified by the manufacturer.

(e) ~~(d)~~ Nonvisual nondestructive testing is not required for fun houses, houses of mirrors, haunted houses, mazes, wave pools, wave-making devices, kiddie pools, slides that are fully supported by an earthen mound, nonmotorized playground equipment that requires a manager, or lazy-river-type nonmotorized floating carriers propelled by water.

(8) DEPARTMENT INSPECTIONS.—

(a) In order to obtain an annual or a temporary amusement ride permit, an amusement ride must be inspected by the department.

~~1. A temporary amusement ride is exempt from the required inspection if it is:~~

~~a. Used at a private event;~~

~~b. A simulator, the capacity of which does not exceed 16 persons; or~~

~~c. A kiddie ride used at a public event, provided that not more than three amusement rides are at the event, the kiddie rides at the event do not exceed a capacity of 12 persons, and the kiddie ride passed a department inspection and was issued a permit within the preceding 6 months. The capacity of a kiddie ride shall be determined by department rule, unless the capacity of the ride has been determined and specified by the manufacturer. Any owner or manager of a kiddie ride operating under this exemption is responsible for ensuring that not more than three amusement rides are operated at the event~~. The department shall inspect permanent amusement rides 6 months after the issuance of the annual permit. The required inspection may be waived for a permanent amusement ride if it was inspected and certified by an accredited trade organization as defined by department rule.

(11) EXEMPTIONS.—

(b) All of the following are exempt from subsections (5), (6), (8)<u>,</u> and (9), but may be inspected by the department <u>upon request,</u> following a complaint or pursuant to an accident that is required to be reported under subsection (15), and such exemption may be removed if the exempted amusement ride is found to have been operating in a manner or circumstance that presents a risk or resulted in a serious injury to patrons:

1. Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts.

2. Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on display or exhibition and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show.

3. Nonmotorized playground equipment that is not required to have a manager.

4. Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less.

5. Facilities described in s. 549.09(1)(a) when such facilities are operating cars, trucks, or motorcycles only.

6. Battery-powered cars or other vehicles that are designed to be operated by children 7 years of age or under and that cannot exceed a speed of 4 miles per hour.

7. Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of 4 miles per hour.

8. A water-related amusement ride operated by a business licensed under chapter 509 if the water-related amusement ride

is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates.

9. An amusement ride at a private, membership-only facility if the amusement ride is an incidental amenity and the facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates.

10. A nonprofit permanent facility registered under chapter 496 which is not open to the general public.

(12) INSPECTION STANDARDS.—An amusement ride must conform to all of the following standards:

(a) All mechanical, structural, and electrical components that affect patron safety must be in good working order.

(b) All control devices, speed-limiting devices, brakes, and safety equipment must be in good working order.

(c) Parts must be properly aligned and may not be bent, distorted, cut, or otherwise injured to force a fit. Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed when required for safe operation.

(d) The proper positioning, measurements, and demonstration of proper patron loading procedures related to patron safety restraint systems must be provided to the department upon request.

(e) An amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means ~~so as~~ to be stable under all operating conditions.

(f)~~(e)~~ Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.

(g)~~(f)~~ Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.

(h)~~(g)~~ An amusement ride powered ~~so as~~ to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.

(i)~~(h)~~ The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be smooth and rounded and free from sharp, rough, or splintered edges and corners, and from projecting studs, bolts, and screws or other projections that might cause injury.

(j)~~(i)~~ Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use restrictions, or lack thereof, ~~required or recommended for the amusement ride by the manufacturer~~ must be prominently displayed at the patron entrance of each amusement ride. If such rider restrictions are not provided by the manufacturer, the owner or manager must provide the department with documentation from the

manufacturer or a licensed professional engineer stating that such rider restrictions are not necessary for the safe operation of the amusement ride.

(k) ~~(j)~~ All amusement rides presented for inspection as ready for operation or in operation must comply with this section and department rule.

(l) ~~(k)~~ A sign containing the toll-free number of the department and informing patrons that they may contact the department with complaints or concerns regarding the safe operation of amusement rides must be posted in a manner conspicuous to the public at each entrance of an ~~a temporary~~ amusement ride ~~facility~~. The department shall prescribe by rule specifications for such signs.

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

Remove lines 17-19 and insert:
nondestructive testing; requiring the department to remove an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1243 Pub. Recs./Safety Standards for Amusement Rides
SPONSOR(S): Bracy Davis and others
TIED BILLS: HB 1241 **IDEN./SIM. BILLS:** SB 904

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
2) Ethics, Elections & Open Government Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Department of Agriculture and Consumer Services' (DACS) investigates accidents involving amusement rides to evaluate the cause of the accident and impound a ride if it poses an immediate serious danger to public health, safety and welfare. Currently, public records created during an active fair accident investigation are available to the public. The disclosure of records during an active investigation may hinder the duration and thoroughness of the investigation.

The bill provides:

- That all investigatory records made or received by DACS pursuant to an investigation are confidential and exempt from public records until the investigation is no longer active or it is completed.
- That such exemption will be repealed on a specified date unless reviewed and saved from repeal.

The bill provides the following legislative intent: "The premature release of [investigative] records could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer the investigation."

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

The bill is effective on the same date that HB 1241 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

Access to Public Records

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, ch. 119, F.S., provides requirements for public records held by executive agencies.

Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[3]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[4] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[5]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[6] A violation of the Public Records Act may result in civil or criminal liability.[7]

The Legislature may exempt[8] public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[9] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[10]

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[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] S.119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "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."
[4] S. 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[5] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[6] S.119.07(1)(a), F.S.
[7] S.119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[8] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla.
[9] FLA. CONST. art. I, s. 24(c).
[10] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.,* 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a

General exemptions from the public records requirements are contained in the Public Records Act.[11] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[12]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[13] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[14]

Open Government Sunset Review Act

The Open Government Sunset Review Act[15] (the act) prescribes a legislative review process for newly created or substantially amended[16] public records or open meetings exemptions, with specified exceptions.[17] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[18]

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[19]

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[20]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[21] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[22]

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:[23]

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?

statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

[11] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

[12] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

[13] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

[14] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

[15] Section 119.15, F.S.

[16] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

[17] S. 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

[18] S. 119.15(3), F.S.

[19] S. 119.15(6)(b), F.S.

[20] S. 119.15(6)(b)1., F.S.

[21] S. 119.15(6)(b)2., F.S.

[22] S. 119.15(6)(b)3., F.S.

[23] S. 119.15(6)(a), F.S.

- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[24] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[25]

Active Fair Accident Investigations

Currently, active fair accident investigations are available to the public. These public records are not exempt or confidential under the Public Reports Act. DACS investigates accidents involving amusement rides to determine the cause of the accident, determine if a ride can continue to operate, and impound a ride if it poses an immediate serious danger to public health, safety and welfare.[26]

DACS has stated that released information can hinder the ability of the Department to conduct a timely and through inquiry.[27]

Effect of Bill

The bill:

- Creates a public record exemption for investigatory records made or received by the Department of Agriculture and Consumer Services. The public records exemption would stand repealed on October 2, 2028, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.
- Provides a statement of public necessity which is to allow the department to effectively and efficiently administer safety standards for amusement rides.
- Provides that releasing such records could jeopardize ongoing investigations. The Legislature finds that the harm that may result from the release of these records outweigh public benefit from the disclosure of the information.

Overall, the bill would permit DACS to withhold public records until the completion of the accident investigation, so the investigation is not jeopardized.

B. SECTION DIRECTORY:

Section 1: Amends s. 616.242, F.S., by providing exemption from public records requirements for all investigatory records made or received by the department pursuant to an active amusement ride investigation; providing for future legislative review and repeal of exemption; providing a statement of public necessity.

Section 2: Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[24] *See generally* s. 119.15, F.S.
[25] S. 119.15(7), F.S.
[26] Florida Department of Agriculture and Consumer Services, Fair Rides Inspection, https://fdacs.gov/Business-Services/Fairs/Fair-Rides-Inspection (last visited March 24, 2023).
[27] Department of Agriculture and Consumer Services, Analysis of 2023 House Bill 1243, p. 1.

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:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Vote Requirement
   Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly-created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

   Public Necessity Statement
   Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that revealing the personal information of DACS inspectors and investigators and their family members may place them in danger of physical and emotional harm from disgruntled individuals whose businesses or professional practices have come under the scrutiny of DACS.

   Breadth of Exemption
   Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for sensitive investigative materials and personal information, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; amending s. 616.242, F.S.; providing an exemption from public records requirements for all investigatory records made or received by the Department of Agriculture and Consumer Services pursuant to an active amusement ride investigation for a specified timeframe; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (b) of subsection (14) of section 616.242, Florida Statutes, as amended by HB 1241, 2023 Regular Session, is amended to read:

616.242 Safety standards for amusement rides.—

(14) ENTRY FOR INSPECTION OR INVESTIGATION.—

(b) The department shall prepare a written report of each investigation it conducts. All investigatory records made or received by the department pursuant to an investigation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the investigation is completed or ceases to be active. For purposes of this paragraph, an investigation is considered active so long as the

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

department is proceeding with reasonable dispatch and has a reasonable good faith belief that additional information is necessary and likely to be discovered which will allow the department, following an accident, to make a final determination of the cause and circumstances of the accident. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all investigatory records made or received by the Department of Agriculture and Consumer Services pursuant to an amusement ride investigation by the department pursuant to s. 616.242, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until the investigation is completed or ceases to be active. The premature release of such records could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 616.242, Florida Statutes. In addition, the release of such records before completion of an active investigation could jeopardize the ongoing investigation, thereby affecting the ability of the department to effectively and efficiently administer the investigation. Therefore, the Legislature finds that the harm that may result from the release of investigatory

records made or received by the department pursuant to an investigation by the department of a violation of s. 616.242, Florida Statutes, outweighs the public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect on the same date that HB 1241 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

HB 1341

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1341 Provision of Homeowners' Association Rules and Covenants
SPONSOR(S): Arrington
TIED BILLS: **IDEN./SIM. BILLS:** SB 788

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel. The HOA's declaration of covenants establishes the community's basic covenants and restrictions. The rules and regulations typically address matters of everyday policy.

An HOA must maintain certain records which constitute the official records of the HOA, which includes a copy of the HOA's declaration of covenants, amendments, and current HOA rules.

The official records must be maintained within the state for at least 7 years and must be made available to a parcel owner for inspection or photocopying. An HOA may comply by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, by making the records available to a parcel owner electronically or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

The bill requires an HOA to provide the following:

- Before October 1, 2023, a physical or digital copy of the HOA's rules and covenants to every member of the HOA.
- A physical or digital copy of the HOA's rules and covenants to every new member of the HOA.
- An updated copy of the amended rules or covenants when an HOA's rules or covenants are amended to every member of the association. An HOA may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

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

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.[1]

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.[2]

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.[3]

HOA Governing Documents

An HOA's governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA's articles of incorporation and bylaws and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.[4]

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.[5] The articles of incorporation establish the HOA's existence, basic structure, and governance.[6] The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.[7]

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.[8] Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.[9]

Official Records

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[1] S. 720.301(9), F.S.
[2] *See generally* ch. 720, F.S.
[3] S. 720.311, F.S.
[4] S. 720.301(8), F.S.
[5] Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/ (last visited Mar. 25, 2023).
[6] *Id.*
[7] *Id.*
[8] S. 720.306(1), F.S.
[9] *Id.*

An HOA must maintain each of the following items, when applicable, which constitute the official records of the HOA:[10]

- A copy of the HOA's:
  - declaration of covenants and each amendment,
  - bylaws and each amendment,
  - articles of incorporation and each amendment, and
  - current rules.
- Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the HOA is obligated to maintain, repair, or replace.
- The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.
- A current roster of all members and their mailing addresses and parcel identifications. The HOA must maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission must be removed from HOA records when consent to receive notice by electronic transmission is revoked. However, the HOA is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.
- All of the HOA's insurance policies, which must be retained for at least 7 years.
- A current copy of all contracts to which the HOA is a party, including, without limitation, any management agreement, lease, or other contract under which the HOA has any obligation or responsibility. Bids received by the HOA for work to be performed must also be considered official records and must be kept for a period of 1 year.
- The financial and accounting records of the HOA, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:
  - Accurate, itemized, and detailed records of all receipts and expenditures.
  - A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
  - All tax returns, financial statements, and financial reports of the HOA.
  - Any other records that identify, measure, record, or communicate financial information.
- A copy of the disclosure summary.
- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.
- All other written records of the HOA which are related to the operation of the HOA.

Access to Official Records

The official records must be maintained within the state for at least 7 years and be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the HOA is located within 10 business days after receipt by the board or its designee of a written request.

An HOA may comply by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

[10] S. 720.303(4), F.S.

If the HOA has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association must allow a member or authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of providing the member or authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.[11]

The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this requirement.[12]

A member who is denied access to official records is entitled to the actual damages or minimum damages for the HOA's willful failure to comply with this requirement. The minimum damages are to be $50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.[13]

The HOA may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month.[14]

The following records are not accessible to members or parcel owners:[15]

- Any record protected by the lawyer-client privilege as described in s. 90.502, F.S., and any record protected by the work-product privilege.
- Information obtained in connection with the approval of the lease, sale, or other transfer of a parcel.
- Information obtained in a gated community in connection with guests' visits to parcel owners or community residents.
- Personnel records of HOA or management company employees.
- Medical records of parcel owners or community residents.
- Personal identifying information of a parcel owner other than as provided for HOA notice requirements, excluding the person's name, parcel designation, mailing address, and property address.
- Any electronic security measure that is used to safeguard data, including passwords.
- The software and operating system which allows the manipulation of data; however, the data is part of the official records.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.

Effect of the Bill

The bill requires an HOA to provide the following:

- Before October 1, 2023, a physical or digital copy of the HOA's rules and covenants to every member of the HOA.
- A physical or digital copy of the HOA's rules and covenants to every new member of the HOA.
- An updated copy of the amended rules or covenants when an HOA's rules or covenants are amended to every member of the association. An HOA may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

The bill provides an effective date of July 1, 2023.

[11] S. 720.303(5), F.S.
[12] S. 720.303(5)(a), F.S.
[13] S. 720.303(5)(b), F.S.
[14] S. 720.303(5)(c), F.S.
[15] S. 720.303(5)(c)1.-9., F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 720.303, F.S., relating to rules and covenants of a homeowners' association.
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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to provision of homeowners' association rules and covenants; amending s. 720.303, F.S.; requiring an association to provide copies of the association's rules and covenants to every member before a specified date, and every new member thereafter; requiring an association to provide members with a copy of updated rules and covenants; authorizing an association to adopt rules relating to the standards and manner in which such copies are distributed; providing an effective date.

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

Section 1. Subsection (13) is added to section 720.303, Florida Statutes, to read:

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

(13) REQUIREMENT TO PROVIDE COPIES OF RULES AND COVENANTS.—

(a) Before October 1, 2023, an association shall provide a physical or digital copy of the association's rules and covenants to every member of the association.

(b) An association shall provide a physical or digital

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

copy of the association's rules and covenants to every new member of the association.

(c) If an association's rules or covenants are amended, the association must provide every member of the association with an updated copy of the amended rules or covenants. An association may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

Section 2. This act shall take effect July 1, 2023.

HB 1521

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1521 Facility Requirements Based on Sex
SPONSOR(S): Plakon and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1674

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) Justice Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Currently, Florida law does not address whether all businesses, schools, hospitals or prisons are required to provide separate restrooms or changing rooms for people based on their sex. However, the Florida Building Code does require that certain businesses that are open to the public, like public lodging establishments and restaurants, have at least one restroom that is available to the public. In addition, Florida law does not currently make it a crime for a person of one sex to enter a restroom or changing room intended for use by the opposite sex.

The bill creates the "Safety in Private Spaces Act."

The bill:

- Requires public and private sector covered entities that maintain a restroom or changing facility to have restrooms separately designated for males and females or a unisex restroom or changing facility.
- Limits instances when a person may enter a restroom or changing facility designated for the opposite sex to the following circumstances:
  - For assisting or chaperoning a minor child, elderly person, or disabled person.
  - For law enforcement or governmental regulatory purposes.
  - For emergency situations.
  - For custodial, maintenance, or inspection purposes, if not in use.
  - If the appropriate designated restroom or changing facility is out of order or under repair and the opposite designated restroom or changing facility contains no person of the opposite sex.
- Makes it a second degree misdemeanor for a person 18 years of age or older to willfully enter a restroom or changing facility designated for the opposite sex and refuse to immediately depart.
- Requires educational institutions to establish disciplinary procedures for violators under 18 years old.
- Requires all covered entities who must be licensed to operate in the state to submit documentation regarding compliance with restroom and changing facilities requirements, as applicable, upon initial or renewal application for licensure, after July 1, 2023.
- Requires domestic violence centers and correctional institutions to provide separate accommodations for females and males, based on their sex.
- Makes covered entities who fail to comply with such requirements subject to penalties and licensure or regulatory disciplinary action.
- Authorizes the Attorney General to bring a civil action to enforce these provisions against any covered entity, to seek injunctive relief, and to impose a fine of up to $10,000 for any covered entity found to have willfully violated such provisions.
- Directs fines collected to be deposited in the General Revenue Fund.

The bill may have an indeterminate fiscal impact on state and local government and the private sector.

The effective date of the bill is July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Restrooms and Building Codes

Until roughly 1850, there were no indoor toilet facilities in America. Everyone used outdoor restrooms to meet basic human needs, which were mostly single-user and not sex-designated. The first regulation requiring separate restroom facilities for men and women was passed in 1887 by Massachusetts, which required the establishment of separate restrooms in businesses. "Wherever male and female persons are employed in the same factory or workshop, a significant number of separate and distinct water-closets, earth-closets, or privies shall be provided for the use of each sex and should be plainly designated." Mixed use of such facilities was also specifically prohibited in some states. Over the course of the next thirty years, almost every state passed its own provision for separate restrooms for men and women.[1] Historians indicate that these laws were based on the social norms of the times and the intention to protect women.[2]

These requirements were carried over in building codes throughout the U.S.[3] Building codes in the U.S. provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of uniform building standards. Typically, restroom requirements are based on a public building's capacity to determine how many restrooms should be built. Most codes mandate a minimum number of toilets and urinals per sex. Previously, these requirements resulted in more facilities being made available for men than for women, resulting in famously long lines for ladies' rooms, which lead to "Potty Parity" laws.[4] Florida's law required three women's toilets for every two for men in certain facilities.[5] After various changes over the years, Florida has settled on incorporating the International Plumbing Code into the state building code which sets the number of toilets for the expected public use and size of a facility -- usually two female toilets for every one male depending on occupancy.[6]

The Florida Building Code provides that where plumbing fixtures are required, usually based on being open to the public, separate facilities must be provided for each sex[7] with correct signage[8], with certain exceptions.[9] For example, family or assisted-use toilet facilities are permitted to serve as the required separate facilities and are not required to be identified for exclusive use by either sex.[10] Single-user toilet facilities and bathing rooms, and family or assisted-use toilet and bathing rooms, must be identified for use by either sex.[11]

Requirements for restrooms may differ depending on the type of building or business. For example: The Florida Building Code requires swimming pools with a bathing load of 20 persons or less to utilize a unisex restroom. Pools with bathing loads of 40 persons or less may utilize two unisex restrooms or

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[1] TIME, Maya Rhodan, Why Do We Have Men's and Women's Bathrooms Anyway?, May 16, 2016, https://time.com/4337761/history-sex-segregated-bathrooms/ (last visited Mar. 22, 2023).

[2] *Id.* During this same period, separate facilities were required in almost every area of society for women's safety. For example: women's reading rooms, and women's train cars.

[3] Suellen Hoy, *Chasing Dirt, The American Pursuit of Cleanliness*, Oxford University Press, Oct. 10, 1996.

[4] New York Times, John Brach, New Ballpark Statistic: Stadium's Toilet Ratio, April 12, 2009, https://www.nytimes.com/2009/04/13/sports/baseball/13potty.html?auth=login-google1tap&login=google1tap (last visited on Mar. 22, 2023).

[5] S. 553.141 (1997).

[6] American Restroom Association, *Potty Parity, Overview*, https://americanrestroom.org/potty-parity/ (last visited Mar. 22, 2023). *See also*, s. 553.86, F.S.

[7] S. 553.86, F.S.

[8] S. 403.4, F.B.C.

[9] S. 403.2, F.B.C.

[10] S. 403.2.1, F.B.C.

[11] S. 403.1.2, F.B.C.

meet the requirements based on square footage. Each such restroom must include a water closet, a diaper change table, a urinal, and a lavatory. Pools with a bathing load larger than 40 persons must provide separate sanitary facilities labeled for each sex.[12]

Some states have specifically adopted laws related to restrooms and who is permitted to use them. For example: In 2016, North Carolina enacted the Public Facilities Privacy & Security Act (Act). The Act preempted any anti-discrimination ordinances passed by local communities and compelled schools and state and local government facilities containing single-gender restrooms to only allow people of the corresponding sex as listed on their birth certificate to use them.[13] In 2017, the portion of the Act regarding restroom use was repealed and, in 2020, the portion that prohibited local governments from passing anti-discrimination ordinances was sunset.[14]

Florida Public Lodging Establishments and Public Food Service Establishments

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments[15] for the purpose of protecting the public health, safety, and welfare.[16] Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.[17]

According to Florida laws and regulations governing hotels and restaurants, each public lodging establishment and each public food service establishment in the state is required to maintain public restroom facilities in accordance with the Florida Building Code as approved by the local building authority,[18] and must meet the following requirements:

- Each transient establishment that does not provide private or connecting restrooms shall maintain one public restroom on each floor for every 15 guests, or major fraction of that number, rooming on that floor.[19]
- Each public lodging establishment and public food service establishment must be supplied with potable water and provide adequate sanitary facilities for the accommodation of its employees and guests. Such facilities may include, but are not limited to, showers, handwash basins, toilets, and bidets, and must be connected to approved plumbing in accordance with the Florida Building Code as approved by the local building authority.[20]
- Each public lodging establishment and public food service establishment is required to provide at least one conveniently located restroom facility for its employees and guests as approved by the local building authority having jurisdiction.[21]
- Public access to restroom facilities may not be permitted through food preparation, storage, or ware washing areas.[22]
- Restroom fixtures must be of readily cleanable sanitary design. Restroom facilities must be kept clean, in good repair and free from objectionable odors. Restrooms must provide at least 20 foot candles of light. The walls, ceilings and floors of all restroom facilities shall be kept in good condition.[23]

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[12] S. 403.6, F.B.C.
[13] North Carolina General Assembly, *House Bill 2/SL 2016-3*, https://www.ncleg.gov/BillLookup/2015E2/H2 (last visited Mar. 20, 2023).
[14] North Carolina General Assembly, *House Bill 142/SL 2017-4*, https://www.ncleg.gov/BillLookup/2017/h142 (last visited Mar. 20, 2023).
[15] S. 509.013(5)(a), F.S.
[16] S. 509.241, F.S.
[17] S. 509.242(1), F.S.
[18] S. 509.221(2)(a), F.S.
[19] S. 509.221(2)(c), F.S.
[20] S. 509.221(1), F.S.
[21] R. 61C-1.004, F.A.C.
[22] *Id*.
[23] *Id*.

- Restrooms must be completely enclosed and have tight-fitting, self-closing doors, except restrooms located in public lodging establishments or located outside a public food service establishment, may have entrances and exits constructed in such a manner as to ensure privacy of occupants. Restroom doors shall not be left open except during cleaning or maintenance. Handwashing signs must be posted in each restroom used by employees.[24]
- In a restroom where more than one toilet is provided, each toilet must be separated by a partition from adjoining fixtures and a door shall be provided which will partially conceal the occupant from outside view.[25]
- Nontransient establishments, vacation rentals, and timeshare projects are exempt from the provisions of this subsection.[26]

Federal Regulations Related to Restrooms

Enacted in 1970, the Occupational Safety and Health Act (OSHA) guarantees that employers will provide all employees with safe work conditions. It includes accessibility to restrooms and sanitary conditions.[27] It provides that restroom facilities for employees must be made available based on the knowledge that restroom restrictions can result in employees avoiding using restrooms entirely while at work, which can lead to potentially serious physical injury or illness.

OSHA covers the number of water closets required depending on the number of employees. At work sites with up to 15 employees, one water closet is expected to be provided; Otherwise, the standard is one for every 40 employees. If employee restrooms are made available to the public, they must comply with local building code requirements, and OSHA and ADA requirements.

Florida law requires all restrooms to be compliant with the Americans With Disabilities Act (ADA), which, among other things, directs the provision of as-needed restroom breaks as a reasonable accommodation for an employee who needs to use the facilities due to an injury, disability, or illness.

Requirements include that different facilities have to be provided for each sex unless the restrooms themselves can be occupied by no more than one person and can be locked from the inside. Each restroom is required to be a separate compartment, with a door, that is separated from the next by partitions. Public restrooms must be completely closed and have tight-fitting doors that close properly to ensure privacy. In addition, entrances and exits must be designed to promote an occupants' privacy.[28]

Family Restrooms

According to the American Restroom Association, ADA accessible single-stall restrooms are important for people living with “special needs.” These restrooms allow people with special needs to visit museums, parks, theaters, libraries and other public places.[29] Family style, unisex, or single-user restrooms (often called handicapped restrooms) offer flexibility. Males or females, and one or more individuals (i.e. family members), of the same or opposite sex, can use them. They can also provide such amenities as two toilets, one for adults and one for children, and a changing table.[30]

People with visible physical disabilities are not the only users of single-stall handicapped restrooms. The single-stall washroom (whether it is called family style or handicapped washroom) provides a

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[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] 29 CFR 1910.141(c)(1)(i).
[28] Americans with Disabilities Act, *ADA Title III Technical Assistance Manual, Covering Public Accommodations and Commercial Facilities*, https://archive.ada.gov/taman3.html; The ADA-Compliant Restroom, https://www.buildings.com/ada-compliance/article/10191973/the-ada-compliant-restroom; ADACP, ADA guidelines for restroom accessibility https://adacompliancepros.com/ada-guidelines-for-restroom -accessibility/
[29] American Restroom Association, Family and Unisex Restrooms, https://americanrestroom.org/family-unisex-restrooms/ (last visited Mar. 20, 2023).
[30] *Id.*

higher level of privacy than the multi-stall public restrooms. In addition, people using an ostomy pouch often prefer the additional access space and increased privacy of a unisex restroom.[31]

Pay Toilets

Currently, there is a shortage of public restrooms in U.S. cities. However, this wasn't always the case. Publicly-available for-pay restrooms used to be common in the U.S. In the early 1900s, they were available at railroad stations, airports, bus stations, and highway rest stops. They were also common in busy urban commercial districts. For the most part, people had to pay for the stalls, which opened with coins, while urinals were free. By 1970, America had over 50,000 for-pay toilets.[32]

In the 1970s, several separate interests began dismantling this business model. One was the feminist movement, which pointed out differences in charges - some companies charged for using commodes or toilets, which were more expensive to operate than urinals, but did not charge for urinals. Another was the Committee to End Pay Toilets in America (CEPTIA), a group of teenagers who got tired of paying to use restrooms. As a result, states began passing legislation to ban for-pay restrooms.[33]

Instead of free public toilets available for all, public toilets pretty much disappeared from American cities, since cities found it expensive and difficult to keep them safe and clean. By 1980, almost none existed in the United States. In Europe, where there was no such movement, pay public toilets continue to operate today. Today, in the United States, many complain that restrooms are unsafe, unclean, and in disrepair, and have a reputation for attracting illegal activity.[34] The resulting restroom shortage has resulted in real inconvenience in cities, and sometimes public health problems.[35]

Federal Guidance, Recent Cases Related to the Use of Restrooms, Title IX, Title VII and Discrimination Laws

Public debate, legal questions, and concerns exist regarding whether discrimination against a transgender[36] student or transgender employee constitutes discrimination "**on the basis of sex**." Such issues have multiple contexts, including debate over transgender restroom policies. Interpretations of the protections are varied.

In June 2020, the U.S. Supreme Court issued its opinion in *Bostock v. Clayton County*, holding that under Title VII, prohibited "sex" discrimination includes prohibiting employers from discriminating against employees because of an individual's sexual orientation or gender identity. The Court reached its conclusion by interpreting the Title VII's statutory language, particularly the phrase "**based on sex**." The Court noted that it was only addressing the question of whether employees could be fired under Title VII for their LGBTQ status and was not addressing issues such as "restrooms, locker rooms… or anything else of the kind."[37]

Title VII of the Civil Rights Act of 1964 is a federal law that protects employees against discrimination in the workplace based on certain specified characteristics, including race, color, national origin, sex, and religion. Title VII provides:

> "It shall be an unlawful employment practice for an employer… to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect

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[31] *Id*.
[32] Catalyst, U.S. Cities Should Bring Back For-pay Toilets, https://catalyst.independent.org/2020/02/13/u-s-cities-should-bring-back-for-pay-toilets/ (last visited Mar. 20, 2023).
[33] *Id*.
[34] Marketplace, Chelsea Wald, *Shelf Life, What happened to America's public toilets?, April 13, 2021, https://www.marketplace.org/2021/04/13/what-happened-to-americas-public-toilets/ (last visited Mar. 22, 2023).*
[35] *Id*.
[36] The term "transgender" is an "umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth." Definition from the GLAAD Media Reference Guide, http://www.glaad.org/reference/transgender (last visited Mar. 19, 2023).
[37] *Bostock v. Clayton County, Georgia*, 590 U.S. __, 140 S. Ct. 1731, 1737 (2020).

> to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.[38]

Title VII applies to employers in both the private and public sectors that have 15 or more employees. It also applies to the federal government, employment agencies, and labor organizations.

Title VII is enforced by the Equal Employment Opportunity Commission (EEOC). The Attorney General, through the Employment Litigation Section (ELS) of the U.S. Department of Justice (DOJ) brings lawsuits under Title VII against state and local government employers after the EEOC refers a complaint to the DOJ and investigates employers when there is reason to believe that an employer's policy or practice discriminates against a group of job applicants or employees based on their race, color, religion, sex (including sexual orientation and gender identity), or national origin.[39]

The U.S. Department of Education (USDOE) Office for Civil Rights (OCR) enforces, among other statutes, Title IX of the Education Amendments of 1972,[40] which protects people from discrimination based on sex in education programs or activities that receive federal financial assistance. Title IX states:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.[41]

Title IX applies to schools, local and state educational agencies, and other institutions that receive federal financial assistance from the USDOE. These recipients include approximately 17,600 local school districts, over 5,000 postsecondary institutions, and charter schools, for-profit schools, libraries, and museums. Also included are vocational rehabilitation agencies and education agencies of 50 states, the District of Columbia, and territories of the United States.[42] Title IX is enforced through private causes of action against the federal funding recipient, and by federal agencies that provide funding to the educational programs or activities.[43]

Guidance by Federal Agencies

Since 2016, the USDOE and DOJ have issued multiple guidance documents addressing whether Title IX and Title VII apply to claims of discrimination in programs or activities based on **gender identity** or sexual orientation.

In 2016, the DOJ and USDOE issued a letter[44] containing "significant guidance" on how the departments applied sex discrimination protections under Title IX to transgender students, including **access to restrooms**, locker rooms, and similar facilities. Litigation challenging the enforceability of its protections providing access to restrooms and other facilities that match a student's **gender identity**

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[38] 42 U.S.C. §§ 2000e - 2000e17 (as amended).
[39] U.S. Department of Justice Employment Litigation Section, *Laws We Enforce, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964*, https://www.justice.gov/crt/laws-we-enforce#:~:text=The%20Attorney%20General%2C%20through%20ELS,to%20the%20Department%20of%20Justice. (last visited Mar. 20, 2023).
[40] 20 U.S.C. 1681 through 1688; Pub. L. 100-259, 102 Stat. 28 (Mar. 22, 1988).
[41] 20 U.S.C. § 1681(a).
[42] U.S. Department of Education Office of Civil Rights, *Title IX and Sex Discrimination*, https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html (last visited Mar. 20, 2023).
[43] Title IX is not the exclusive remedy for victims of sex discrimination in schools. In matters pertaining to public colleges, universities, or school districts, 42 U.S.C. § 1983 provides an avenue for relief against state actors who deprive individuals of a constitutional right. The Supreme Court has held that Title IX does not displace the availability of § 1983 claims based on the Equal Protection Clause for plaintiffs alleging gender discrimination in schools. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 248 (2009).
[44] U.S. Department of Education, Dear Educator (June 23, 2021), https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/educator-202106-tix.pdf (last visited Mar. 20, 2023).

ensued.[45] In 2017, the DOE and the DOJ rescinded the letter.[46] The rescission letter indicated that the original letter caused extensive litigation regarding school restrooms and locker rooms and pointed to regard for the primary role of the States and local school districts in establishing educational policy.[47]

In 2021, President Biden signed an executive order addressing implementation of non-discrimination[48] protections[49] on the basis of "sex" related to Title IX and Title VII.[50], The executive order cited the 2020 U.S. Supreme Court Bostock decision[51] as the basis. However, the Supreme Court did not state that "gender identity" is a protected characteristic. Instead, it held that **discrimination on the basis of "transgender status"** is a form of sex discrimination. The court did not provide a definition for transgender status.[52] The USDOE[53] issued guidance and the EEOC[54] issued Technical Assistance Document indicated that USDOE and EEOC would enforce Title VII and Title IX to require transgender persons to be allowed to use facilities (restrooms, locker rooms, etc.) **consistent with their gender identity**.[55]

In 2021, 20 states filed suit against the USDOE, the EEOC and the DOJ, alleging that the guidance documents and Technical Assistance Document were unlawful.[56] On July 15, 2022, the U.S. District Court for the Eastern District of Tennessee entered a preliminary injunction barring the EEOC and the USDOE from enforcing guidance documents issued to interpret Title VII and Title IX to prohibit discrimination based on sexual orientation and gender identity.[57] In March of 2022, the State of Texas filed suit, arguing that the EEOC guidance does not coincide with law because it diverges from the stated protections of Title VII as interpreted through Bostock.[58] In October, 2022, the U.S. District Court for the Northern District of Texas **held that the EEOC guidance addressing sexual orientation and gender identity discrimination in the workplace is unlawful**. The Court granted the state's request for declaratory judgment, declared the guidance unlawful, and vacated the guidance on a nationwide basis.[59]

In June 2022, the USDOE released proposed changes to Title IX regulations for public comment extending Title IX's prohibition on discrimination based on sex to sexual orientation and gender identity, giving such protections to transgender students.[60]

Cases Related to State and Local Policies

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[45] U.S. Department of Education, *Dear Colleague Letter on Title IX Coordinators*, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf (last visited Mar. 20, 2023).
[46] Jackson Lewis, *Trump Administration Rescinds Guidance on Transgender Rights under Title IX*, https://www.jacksonlewis.com/publication/trump-administration-rescinds-guidance-transgender-rights-under-title-ix (last visited Mar. 20, 2023).
[47] U.S. Department of Justice and U.S. Department of Education, *Dear Colleague Letter* (Feb. 22, 2017), http://i2.cdn.turner.com/cnn/2017/images/02/23/1atransletterpdf022317.pdf (Last visited Mar. 2023).
[48] U.S. Department of Justice, Civil Rights Division, *MEMORANDUM TO: Federal Agency Civil Rights Directors and General Counsels*, https://www.justice.gov/crt/page/file/1383026/download (last visited Mar. 19, 2023).
[49] 34 C.F.R. ch. I.
[50] Executive Order 13988.
[51] *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020).
[52] *Id*.
[53] U.S. Department of Education and U.S. Department of Justice, Confronting Anti-LGBTQI+ Harassment in Schools, https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf (last visited Mar. 20, 2023).
[54] U.S. Equal Employment Opportunity Commission, Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity, https://www.eeoc.gov/laws/guidance/protections-against-employment-discrimination-based-sexual-orientation-or-gender (last visited Mar. 20, 2023); *See also*, JD Supra, District Court Enjoins EEOC and Department of Education Guidance Protecting LGBTQ Rights, https://www.jdsupra.com/legalnews/district-court-enjoins-eeoc-and-7385661/ (last visited Mar. 20, 2023).
[55] *Id*.
[56] *Tennessee. et al. v. U.S. Dep't of Educ. et al*., Case No. 3:21-cv-308 (E.D. Tenn.).
[57] *Id*.
[58] *State of Texas v. EEOC*, Case No. 2:21-cv-00194-Z.
[59] *Id*.
[60] U.S. Department of Education, *The U.S. Department of Education Releases Proposed Changes to Title IX Regulations, Invites Public Comment*, https://www.ed.gov/news/press-releases/us-department-education-releases-proposed-changes-title-ix-regulations-invites-public-comment (last visited Mar. 20, 2023).

In 2020, the U.S. Fourth Circuit Court of Appeals determined that a Maryland local school board's policy refusing to allow a transgender student to use the school restroom that **corresponds with their gender identity** violated both the Fourteenth Amendment Equal Protection Clause[61] and Title IX. The court further held that the school's refusal to amend the student's school records[62] to accurately reflect gender, in accordance with driver's license and birth certificate information, also violated the Equal Protection Clause and Title IX.[63] In 2021, the U.S. Supreme Court declined to hear the case, leaving the appellate court decision in place, which says the school district discriminated against a transgender student by not permitting the student to use a certain restroom at school.[64]

In 2022, the U.S. Eleventh Circuit Court of Appeals determined that a Florida local school board's policy requiring students to use the restroom **corresponding to their biological sex** was proper based on both the U.S. Constitution and Title IX.[65] The majority opinion provided that Title IX allows schools to provide separate restrooms on the basis of biological sex.[66] However, the dissenting opinions indicated that the restroom policy was discriminatory because "[u]nderlying this sex-assigned-at-matriculation restroom policy, … is the presumption that biological sex is accurately determinable at birth and that it is a static or permanent biological determination."[67]

In October, 2022, the Florida State Board of Education adopted a rule requiring that if a school board or charter school governing board has a policy or procedure that allows for separation of restrooms or locker rooms according to some criteria **other than biological sex at birth**, the policy or procedure must be posted on the district's website or charter school's website, and must be sent by mail to student residences to fully inform parents.[68] The rule went into effect on November 22, 2022.[69]

Proposed Changes

The bill creates the "Safety in Private Spaces Act."

The bill provides the intent that "females and males should be provided restrooms and changing facilities for their exclusive use in order to maintain public safety, decency, and decorum."

The bill defines the following terms:

- "Changing facility" means a room in which two or more persons may be in a state of undress in the presence of others, including, but not limited to, a dressing room, fitting room, locker room, changing room, or shower room.
- "Correctional institution" means any state correctional institution as defined in s. 944.02, F.S., juvenile detention center or residential program as described in s. 985.03, F.S., county or municipal detention facility as defined in s. 951.23, F.S., private correctional facility as defined in s. 944.710, F.S., or any other facility used for the detention of adults or juveniles charged with or convicted of a crime.
- "Covered entity" means any:
    - Educational institution, as defined in s. 768.38, F.S.
    - Public accommodations, as defined in s. 760.02(11), F.S.

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[61] The Fourteenth Amendment Equal Protection Clause provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[62] U.S. Department of State, Bureau of Consular Affairs, *Gender Reassignment Applicants*, http://travel.state.gov/content/passports/english/passports/information/gender.html (last visited Mar. 19, 2023).

[63] *Grimm v. Gloucester County School Board*, 972 F.3d 586 (Aug. 20, 2020).

[64] U.S. Supreme Court, Order List: 594 U.S. (June 28, 2021), 20-1163 GLOUCESTER COUNTY SCHOOL BOARD V. GRIMM, GAVIN The petition for a writ of certiorari is denied, https://www.supremecourt.gov/orders/courtorders/062821zor_6j37.pdf (last visited Mar. 20, 2023).

[65] *Drew Adams v. School Board of St. John's County, Florida*, No. 18-13592 (December 30, 2022).

[66] Florida Department of Highway Safety and Motor Vehicles, *Gender Reassignment*, http://fdhsmv.rapidinsites.com/answer/gender-reassignment (last visited Mar. 19, 2023).

[67] *Id.*

[68] R. 64V-1.002, F.A.C.

[69] R. 6A-10.086, F.A.C.

    - Public shelter space under s. 252.385, F.S.
    - Service provider, as defined in s. 397.311(44), F.S.
    - Health care facility, which means:
        - Provider as defined in s. 408.803, F.S.;
        - Provider with an active health care clinic exemption under s. 400.9935, F.S.;
        - Continuing care facility with a certificate of authority under chapter 651, F.S.;
        - Optical establishment permitted under s. 484.007, F.S.;
        - Massage establishment licensed under s. 480.043, F.S.;
        - Pharmacy as defined in s. 465.003, F.S.;
        - Office described in s. 459.0138, F.S., which is required to register with the Department of Health;
        - Pain-management clinic registered under s. 458.3265, F.S.;
        - Electrolysis facility licensed under 478.51, F.S.;
        - Health care setting owned or operated by a health care practitioner as defined in s. 456.001, F.S.; or
        - Provider licensed under ch. 394, ch. 397, or part IV of ch. 468, F.S.
- "Female" means a person belonging, **at birth**, to the **biological sex** which has the specific reproductive role of producing eggs.
- "Male" means a person belonging, **at birth,** to the **biological sex** which has the specific reproductive role of producing sperm.
- "Restroom" means a room that includes one or more water closets. This term does not include a unisex restroom.
- "Sex" means the classification of a person as **either female or male** based on the organization of the body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia **present at birth.**
- "Unisex changing facility" means a room intended for a single-occupant or a family in which one or more persons may be in a state of undress, including, but not limited to, a dressing room, fitting room, locker room, changing room, or shower room that is enclosed in floor-to-ceiling walls and accessed by a full door with a secure lock that prevents another individual from entering while the changing facility is in use.
- "Unisex restroom" means a room that includes one or more water closets that is intended for a single-occupant, or a family, and the room is enclosed in floor-to-ceiling walls and accessed by a full door with a secure lock that prevents another individual from entering while the room is in use.
- "Water closet" means a toilet or urinal.

The bill requires a covered entity that maintains a water closet to, at a minimum, have:
- A restroom designated for exclusive use by females and a restroom designated for exclusive use by males; or
- A unisex restroom.

The bill requires a covered entity that maintains a changing facility to, at a minimum, have:
- A changing facility designated for exclusive use by females and a changing facility designated for exclusive use by males; or
- A unisex changing facility.

The bill authorizes a person to enter a restroom or changing facility designated for the opposite sex under the following circumstances:
- To accompany another person of the opposite sex for the purpose of assisting or chaperoning a minor child, elderly person, or disabled person.
- For law enforcement or governmental regulatory purposes.
- To render emergency medical assistance or to intervene in any other emergency situation where the health or safety of another person is at risk.
- For custodial, maintenance, or inspection purposes, provided that the restroom or changing facility is not in use.

- If the appropriate designated restroom or changing facility is out of order or under repair and the opposite designated restroom or changing facility contains no person of the opposite sex.

The bill makes it a second degree misdemeanor for a person 18 years of age or older to:

- Willfully enter, for a purpose other than those allowed, a restroom or changing facility designated for the opposite sex; **and**
- Refuse to immediately depart when asked to do so by another person present in the restroom or changing facility.

A second degree is a second degree misdemeanor is punishable by a term of up to 60 days imprisonment and a $500 fine.[70]

The bill requires each educational institution to establish in its code of student conduct disciplinary procedures for any person under 18 years of age who:

- Willfully enters, for a purpose other than those purposes allowed, an educational institution restroom or changing facility designated for the opposite sex; **and**
- Refuses to immediately depart when asked to do so by another person present in the restroom or changing facility.

The bill requires a domestic violence center under chapter 39, F.S., to provide separate overnight accommodations for females and males based on their sex. This requirement does not apply to mixed-sex family units.

The bill requires a correctional institution to house females and males in its custody separately, based on their sex. This requirement applies to all housing assignments in a correctional institution, including temporary assignments.

The bill requires covered entities that are required to obtain a license to operate in the state to submit documentation regarding compliance with the requirements for water closets and changing facilities, as applicable, upon initial application for such license or on first renewal after July 1, 2023. Failure to comply can result in licensure or regulatory disciplinary action, as applicable.

The bill authorizes the Attorney General to:

- Bring a civil action to enforce these provisions against any covered entity.
- Seek injunctive relief.
- Seek to impose a fine of up to $10,000 for any covered entity found to have willfully violated these provisions.

The bill directs fines collected to be deposited in the General Revenue Fund.

The bill provides severability.

B. SECTION DIRECTORY:

Section 1: Creates s. 553.865, F.S.; providing a short title; providing legislative findings; providing definitions; providing requirements for exclusive use of restrooms by gender; providing requirements for exclusive use of changing facilities by gender; providing exceptions; prohibiting willfully entering a restroom or changing facility designated for the opposite sex and refusing to immediately depart when asked to do so by another person present there; providing criminal penalties; providing requirements for exclusive use of domestic violence centers by gender; providing requirements for correctional institutions; requiring entities that receive state licenses to submit compliance documentation; authorizing the Attorney General to bring enforcement actions; authorizing civil penalties; providing for certain funds to be deposited in the General Revenue Fund.

[70] Ss. 775.082, and 775.083, F.S.

Section 2: Provides severability.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The Attorney General is authorized to impose a fine of up to $10,000 for violations. Fines collected must be deposited in the General Revenue Fund.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

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:

This bill may implicate the Equal Protection Clause of the United States Constitution[71] and/or the similar clause in the Florida Constitution.[72] In general, sex-based discrimination by a state government is subject to intermediate scrutiny. This standard requires the government to show that its gender classification is substantially related to a sufficiently important government interest. [73]

Title VII of the Civil Rights Act of 1964, and Title IX of the Education Amendments Act of 1972, which prohibit discrimination on the basis of sex, may be implicated. The U.S. Supreme Court has found that under Title VII, prohibited "sex" discrimination includes prohibiting employers from discriminating

[71] The 14th Amendment reads in pertinent part: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws."
[72] Article I, s. 2, Fla. Const., reads in pertinent part: "All natural persons, female and male alike, are equal before the law…"
[73] *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

against employees because of an individual's sexual orientation or gender identity. In this case, the Court noted that it was only addressing the question of whether employees could be fired under Title VII for their LGBTQ status and not issues such as "restrooms, locker rooms… or anything else of the kind."[74]

A recent en banc decision by the U.S. Eleventh Circuit Court of Appeals determined that a Florida school board's policy requiring students to use the restroom corresponding to their biological sex comports with both the U.S. Constitution and Title IX.[75] The ruling creates a potential "circuit split" among the nation's federal appeals courts because both the Seventh Circuit and the Fourth Circuit have ruled in favor of students wishing to use the restroom facilities consistent with their "gender identity" rather than their sex at birth. Such circuit splits make it more likely that the U.S. Supreme Court may take up the issue to ensure uniformity among the circuits on the issue.

B. RULE-MAKING AUTHORITY:

Covered state agencies may need to promulgate new or revise existing rules to implement the requirements of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The sponsor has indicated that an amendment will be filed that will clarify applicability.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[74] *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020).
[75] *Drew Adams v. School Board of St. John's County, Florida*, No. 18-13592 (December 30, 2022).

A bill to be entitled

An act relating to facility requirements based on sex; creating s. 553.865, F.S.; providing a short title; providing legislative findings; providing definitions; providing requirements for exclusive use of restrooms by gender; providing requirements for exclusive use of changing facilities by gender; providing exceptions; prohibiting willfully entering a restroom or changing facility designated for the opposite sex and refusing to immediately depart when asked to do so by another person present there; providing criminal penalties; providing requirements for exclusive use of domestic violence centers by gender; providing requirements for correctional institutions; requiring entities that receive state licenses to submit compliance documentation; authorizing the Attorney General to bring enforcement actions; authorizing civil penalties; providing for certain funds to be deposited in the General Revenue Fund; providing severability; providing an effective date.

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

Section 1. Section 553.865, Florida Statutes, is created to read:

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

553.865 Private spaces.—

(1) This section may be cited as the "Safety in Private Spaces Act."

(2) The Legislature finds that females and males should be provided restrooms and changing facilities for their exclusive use in order to maintain public safety, decency, and decorum.

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

(a) "Changing facility" means a room in which two or more persons may be in a state of undress in the presence of others, including, but not limited to, a dressing room, fitting room, locker room, changing room, or shower room.

(b) "Correctional institution" means any state correctional institution as defined in s. 944.02, juvenile detention center or residential program as described in s. 985.03, county or municipal detention facility as defined in s. 951.23, private correctional facility as defined in s. 944.710, or any other facility used for the detention of adults or juveniles charged with or convicted of a crime.

(c) "Covered entity" means any:

1. Educational institution, as defined in s. 768.38.

2. Public accommodations, as defined in s. 760.02(11).

3. Public shelter space under s. 252.385.

4. Service provider, as defined in s. 397.311(44).

5. Health care facility, which means any provider as defined in s. 408.803; a provider with an active health care

clinic exemption under s. 400.9935; a continuing care facility with a certificate of authority under chapter 651; an optical establishment permitted under s. 484.007; a massage establishment licensed under s. 480.043, a pharmacy as defined in s. 465.003, an office described in s. 459.0138 which is required to register with the Department of Health; a pain-management clinic registered under s. 458.3265; an electrolysis facility licensed under 478.51; or any health care setting owned or operated by a health care practitioner as defined in s. 456.001 or a provider licensed under chapter 394, chapter 397, or part IV of chapter 468.

(d) "Female" means a person belonging, at birth, to the biological sex which has the specific reproductive role of producing eggs.

(e) "Male" means a person belonging, at birth, to the biological sex which has the specific reproductive role of producing sperm.

(f) "Restroom" means a room that includes one or more water closets. This term does not include a unisex restroom.

(g) "Sex" means the classification of a person as either female or male based on the organization of the body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.

(h) "Unisex changing facility" means a room intended for a single-occupant or a family in which one or more persons may be in a state of undress, including, but not limited to, a dressing room, fitting room, locker room, changing room, or shower room that is enclosed in floor-to-ceiling walls and accessed by a full door with a secure lock that prevents another individual from entering while the changing facility is in use.

(i) "Unisex restroom" means a room that includes one or more water closets that is intended for a single-occupant, or a family, and the room is enclosed in floor-to-ceiling walls and accessed by a full door with a secure lock that prevents another individual from entering while the room is in use.

(j) "Water closet" means a toilet or urinal.

(4) A covered entity that maintains a water closet must, at a minimum, have:

(a) A restroom designated for exclusive use by females and a restroom designated for exclusive use by males; or

(b) A unisex restroom.

(5) A covered entity that maintains a changing facility must, at a minimum, have:

(a) A changing facility designated for exclusive use by females and a changing facility designated for exclusive use by males; or

(b) A unisex changing facility.

(6) For purposes of this section, a person may enter a restroom or changing facility designated for the opposite sex under the following circumstances:

(a) To accompany another person of the opposite sex for the purpose of assisting or chaperoning a minor child, elderly person, or disabled person.

(b) For law enforcement or governmental regulatory purposes;

(c) For the purpose of rendering emergency medical assistance or to intervene in any other emergency situation where the health or safety of another person is at risk;

(d) For custodial, maintenance, or inspection purposes, provided that the restroom or changing facility is not in use; or

(e) If the appropriate designated restroom or changing facility is out of order or under repair and the opposite designated restroom or changing facility contains no person of the opposite sex.

(7) A person 18 years of age or older who willfully enters, for a purpose other than those listed in subsection (6), a restroom or changing facility designated for the opposite sex and refuses to immediately depart when asked to do so by another person present in the restroom or changing facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Each educational institution shall establish in its code of student conduct disciplinary procedures for any person under 18 years of age who willfully enters, for a purpose other than those listed in subsection (6), an educational institution restroom or changing facility designated for the opposite sex and refuses to immediately depart when asked to do so by another person present in the restroom or changing facility.

(9) A domestic violence center under chapter 39 must provide separate overnight accommodations for females and males based on their sex. This requirement does not apply to mixed-sex family units.

(10) A correctional institution must house females and males in its custody separately, based on their sex. This requirement applies to all housing assignments in a correctional institution, including temporary assignments.

(11)(a) A covered entity that is required to obtain a license to operate in the state shall submit documentation regarding compliance with subsections (4) and (5), as applicable, upon initial application for such license or on first renewal after July 1, 2023.

(b) A covered entity that fails to comply with subsection (4) or subsection (5) shall be subject to penalties under paragraph (c) and is subject to licensure or regulatory disciplinary action, as applicable.

(c) The Attorney General may bring a civil action to enforce this section against any covered entity. The Attorney General may seek injunctive relief, and, for any covered entity found to have willfully violated this section, the Attorney General may seek to impose a fine of up to $10,000.

(d) Fines collected pursuant to paragraph (c) must be deposited in the General Revenue Fund.

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

Section 3. This act shall take effect July 1, 2023.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1521 by Rep. Plakon
Facility Requirements Based on Sex

AMENDMENT SUMMARY
March 28, 2023

Amendment 1 by Rep. Plakon (line 154):

- Provides an exception for individuals born with certain genetically or biochemically verifiable disorders of sex development.

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: Regulatory Reform & Economic Development Subcommittee

Representative Plakon offered the following:

Amendment (with title amendment)

Between lines 154 and 155, insert:

(12) This section does not apply to individuals born with a genetically or biochemically verifiable disorder of sex development, including, but not limited to, 46, XX disorder of sex development; 46, XY disorder of sex development; sex chromosome disorder of sex development; XX or XY sex reversal; and ovotesticular disorder.

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

Remove line 20 and insert:

providing an exception for individuals born with certain genetically or biochemically verifiable disorders of sex development; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1547 Technology Transparency
SPONSOR(S): McFarland
TIED BILLS: HB 1549 **IDEN./SIM. BILLS:** SB 262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Justice Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Due to the growth in businesses that collect personal information for the purpose of selling targeted advertising on the Internet, many countries and states have adopted or updated laws relating to the collection and use of personal information. Specifically, the European Union, and states like California, Virginia, Colorado, and Illinois, have enacted data privacy laws to protect consumers' personal information.

The bill requires certain businesses to publish a privacy policy for personal information, and defines "personal information" as information that is linked or reasonably linkable to an identified or identifiable consumer or household, including biometric information and unique identifiers to the consumer. The term does not include certain public information, certain employee information, or deidentified or aggregate information.

The bill gives consumers rights related to personal information collected by certain businesses with over $1 billion in gross annual revenues, including:

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

The bill provides that a social media platform that is predominantly accessed by children may not:

- Collect, sell, or share the personal information of any child if the controller has actual knowledge that collecting, selling, or sharing such information may result in substantial harm or risk to the child.
- Use any deceptive patterns, techniques, mechanisms, or dark patterns to lead children to provide excess personal information or to deceive children into making unintended or harmful decisions.

The bill allows the Department of Legal Affairs (DLA) to enforce such rights by bringing an action against, and collecting civil penalties from, businesses that violate a consumer's rights as provided in the bill. A consumer whose personal information has been sold or shared after opting-out, or has been retained after a request to delete or correct such information may also bring a cause of action on his or her own behalf.

The bill also adds "biometric information or genetic information" and "geolocation" to the definition of "personal information" under the Florida Information Protection Act. As such, entities in possession of fingerprints, DNA, and other biological or physiological identifying information, or geolocation data, must take reasonable measures to protect biometric and genetic information and report data breaches.

The bill provides that certain government employees may not request that a social media platform remove content or accounts and prohibits a governmental entity from working with a social media platform for the purpose of content moderation, with certain exceptions.

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

The bill has an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Consumer Data Privacy – Current Situation

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.[1] FDUTPA was modeled after the Federal Trade Commission (FTC) Act.[2]

The DLA or the Office of the State Attorney (SAO) may bring actions on behalf of consumers or governmental entities when it is a matter of public interest.[3] The SAO may enforce violations of FDUTPA if the violations take place within its jurisdiction. The DLA has enforcement authority when the violation is multi-jurisdictional, the state attorney defers to the DLA in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[4] In certain circumstances, consumers may also file suit through private actions.[5]

The DLA and the SAO have powers to investigate FDUTPA claims, which include:[6]

- Administering oaths and affirmations;
- Subpoenaing witnesses or matter; and
- Collecting evidence.

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

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to $10,000 per willful violation.[7]

FDUTPA may not be applied to certain entities in certain circumstances, including:[8]

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services; or
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

Consumer Data

[1] Ch. 73-124, L.O.F.; s. 501.202, F.S.
[2] D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).
[3] S. 501.207(1)(c) and (2), F.S.; *see* s. 501.203(2), F.S. (defining "enforcing authority" and referring to the office of the state attorney if a violation occurs in or affects the judicial circuit under the office's jurisdiction; or the Department of Legal Affairs if the violation occurs in more than one circuit; or if the office of the state attorney defers to the department in writing; or fails to act within a specified period); *see also* David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLORIDA BAR JOURNAL 52, Dec. 2002 (analyzing the merits of FDUPTA and the potential for deterrence of anticompetitive conduct in Florida), *available at* http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on Mar. 25, 2023).
[4] S. 501.203(2), F.S.
[5] S. 501.211, F.S.
[6] S. 501.206(1), F.S.
[7] Ss. 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. S. 501.2105, F.S.
[8] S. 501.212(4), F.S.

As technologies that capture and analyze data proliferate so do businesses' abilities to contextualize consumer data. Businesses use such data for a range of purposes, including better understanding day-to-day operations to increase revenue, making informed business decisions, learning about their customer base, and tailoring marketing strategies.[9]

From consumer behavior to predictive analytics, companies regularly capture, store, and analyze large amounts of quantitative and qualitative data on their consumer base. Some companies have built an entire business model around consumer data, which may include the company are selling personal information to a third party or creating targeted ads for specific consumers.[10]

Generally, the types of consumer data that businesses collect are:[11]

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

General Data Protection Regulation (European Union)

In 2016, The European Union passed a broad data privacy law that addressed several areas of consumer rights and data protection called the General Data Protection Regulation (GDPR).[12] The law became effective in 2018 and unified the regulatory approach to data privacy across the European Union. The GDPR has since become a model for other data privacy laws in other countries, including Chile, Japan, Brazil, South Korea, Argentina, and Kenya.[13]

Under the GDPR, personal data includes anything that allows a person to be identified. Individuals, organizations, and companies that are either “controllers” or “processors” of personal data are covered by the law. Controllers exercise overall control of the purposes and means of processing personal data; whereas processors act on behalf of, and only on the instructions of, the relevant controller.[14]

Before processing or collecting any personal data, a business must explicitly request permission from the subject or person to do so. The request must use clear language and is commonly referred to as a data “opt-in.”

The GDPR specifically bans the use of lengthy documents filled with legalese to confuse or frustrate the consumer. Hiding permissions to collect and use data within a contract’s Terms and Conditions or Privacy Policy sections is not permissible under the GDPR. Consent must be given for a specific purpose and must be requested separately from other documents and policy statements. [15]

The GDPR requires companies to provide, at the data subject's request, confirmation as to whether personal data pertaining to them is being processed, where it is being processed, and for what

[9] Max Freedman, *How Businesses Are Collecting Data (And What They’re Doing With It)*, Business News Daily (Jun. 17, 2020) https://www.businessnewsdaily.com/10625-businesses-collecting-data.html (last visited Mar. 25, 2023).
[10] *Id*.
[11] *Id*.
[12] European Data Protection Supervisor, *The History of the General Data Protection Regulation*, https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en (last visited Mar. 25, 2023).
[13] *Id*.
[14] Wired, *What is the GDPR? The Summary Guide to GDPR Compliance in the UK*, https://www.wired.co.uk/article/what-is-gdpr-uk-eu-legislation-compliance-summary-fines-2018 (last visited Mar. 25, 2023).
[15] TechRepublic, *GDPR: A Cheat Sheet*, https://www.techrepublic.com/article/the-eu-general-data-protection-regulation-gdpr-the-smart-persons-guide/ (last visited Mar. 25, 2023).

purpose. A company must also provide, free of charge**,** a copy of the personal data being processed in an electronic format to the consumer.[16]

Under the GDPR, a company must erase all personal data when asked to do so by the subject consumer. At that point, the company must cease further dissemination of the data and halt all processing of that consumer's data. Valid conditions for erasure include situations where the data is no longer relevant, the original purpose has been satisfied, or a subject consumer withdraws consent.[17]

The GDPR requires a company to provide mechanisms for a subject to receive any previously provided personal data in a commonly used and machine-readable format.[18]

The GDPR allows private rights of action for violations of privacy rights; however, the consumer must prove any damages in order to receive compensation.[19]

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

The California Consumer Privacy Act of 2018 (CCPA) was passed to give consumers more control over the personal information that businesses collect. This landmark law granted new privacy rights for California consumers, including:[20]

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

The CCPA applies to for-profit businesses that do business in California that also meet any of the following:[21]

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

Businesses must give consumers certain notices explaining their privacy practices and provide certain mechanisms to allow consumers to exercise their rights.[22]

The law is largely enforced by the Attorney General, and businesses are subject to fines for violating the law. A consumer may only bring a cause of action against a business if certain categories of personal information tied to his or her name have been stolen in a nonencrypted and nonredacted form.[23] As of July 2020, approximately 50 suits had been filed pursuant to this provision.[24]

The California Privacy Rights Act (CPRA) passed in 2020 as a statewide proposition, though it is not effective until January 1, 2023. The CPRA amends and expands the CCPA. Specifically dealing with certain areas of concern with the CCPA, the CPRA created a new agency to handle complaints and enforcement. The CPRA changes the CCPA by:[25]

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[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] Art. 82 of the GDPR.
[20] State of California Department of Justice, Office of the Attorney General, California Consumer Privacy Act (CCPA), https://oag.ca.gov/privacy/ccpa (last visited Mar. 25, 2023).
[21] Cal. Civ. Code s. 1798.140.
[22] Cal. Civ. Code ss. 1798.130, 1798.135.
[23] Cal. Civ. Code ss. 1798.150, 1798.155.
[24] Holland & Knight LLP, *Litigating the CCPA in Court*, Litigating the CCPA in Court | Insights | Holland & Knight (hklaw.com) (last visited Mar. 25, 2023).
[25] Ballotpedia, *California Proposition 24, Consumer Personal Information Law and Agency Initiative (2020)*, https://ballotpedia.org/California_Proposition_24,_Consumer_Personal_Information_Law_and_Agency_Initiative_(2020) (last visited Mar. 25, 2023).

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

California Age-Appropriate Design Code Act

In 2022, California adopted the California Age-Appropriate Design Code Act (CAADCA), an amendment to the CPRA,[26] legislation modelled on the United Kingdom's Age Appropriate Design Code,[27] which requires online platforms to adhere to strict default privacy and safety settings that protect the best interest of children.[28] CAADCA covers children under 18 years of age and will be effective July 1, 2024.[29]

CAADCA requires certain businesses that provide an online service, product, or feature that is likely to be accessed by children to comply with several new requirements and restrictions, including:[30]

- Prohibitions on using any personal information that it knows or should know is materially detrimental to a child's physical or mental health and/or wellbeing; and
- Prohibitions on obscuring user interface features to deliberately defeat consent or manipulate children into providing unnecessary personal information, otherwise called "dark patterns."

Such businesses must complete a Data Protection Impact Assessment for any new feature they wish to offer to the public if it is likely to be accessed by children, which will determine if any dark patterns are employed, if there is an asymmetrical reward, or if targeted advertisements are deployed in a way that could harm or exploit children.[31]

Virginia Consumer Data Protection Act

On March 2, 2021, the Virginia Consumer Data Protection Act (VCDPA) was signed into law.[32] The VCDPA, which becomes effective January 1, 2023, borrows from CCPA and GDPR.[33] Some argue that

[26] Cal. Civil Code § 1798.99.28-.35
[27] 5Rights Foundation, *California follows UK lead as child data protection law is passed*, https://5rightsfoundation.com/in-action/california-follows-uk-lead-as-child-data-protection-law-is-passed.html (last visited Mar. 2, 2023).
[28] Office of Governor Gavin Newsome, *Governor Newsom Signs First-in-Nation Bill Protecting Children's Online Data and Privacy*, https://www.gov.ca.gov/2022/09/15/governor-newsom-signs-first-in-nation-bill-protecting-childrens-online-data-and-privacy/ (last visited Mar. 2, 2023).
[29] Cal. Civil Code § 1798.99.28-.35
[30] Briana Kelly, Nelson Mullins Riley & Scarborough LLP, *State of California Passes Bill to Protect Children Online*, Jan. 26, 2023, https://www.nelsonmullins.com/idea_exchange/alerts/privacy_and_data_security_alert/all/state-of-california-passes-bill-to-protect-children-online (last visited Mar. 2, 2023).
[31] *Id*.
[32] JDSupra, *Virginia's Consumer Data Protection Act Has assed: What's in It?*, https://www.jdsupra.com/legalnews/virginia-s-consumer-data-protection-act-1577777/ (last visited Mar. 25, 2023).
[33] Sidley Austin LLP, East Coast Meet West Coast: Enter the Virginia Consumer Data Privacy Protection Act, https://www.sidley.com/en/insights/newsupdates/2021/03/east-coast-meets-west-coast-enter-the-virginia-consumer-data-protection-act (last visited Mar. 25, 2023).

because Virginia was able to benefit from the experience of businesses that have spent the better part of the last five years implementing GDPR or CCPA, the Virginia law may be a lighter implementation task for companies.[34]

Generally, with regard to personal data, the VCDPA grants consumers the right to access, correct, delete, obtain a copy of, and opt-out of the processing of personal data for the purposes of targeted advertising.

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

- Control or process personal data of at least 100,000 consumers; or
- Derive over 50 percent of gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers.[35]

Colorado Privacy Act

The Colorado Privacy Act (CPA)[36] was signed in to law on July 8, 2021, and is effective July 1, 2023. The law also borrows from the GDPR, CCPA, and VDCPA.[37]

Generally, with regard to personal data, the CPA grants a consumer the right to:[38]

- Access data;
- Correct data;
- Delete data; and
- Move data across different services.

Like the CCPA and VCDPA, CPA contains exceptions for certain types of data and information governed by federal law. It provides that the Attorney General has exclusive authority to enforce violations of the law, and does not provide a private cause of action to a consumer. CPA applies to persons conducting business in the state that either:[39]

- Control or process personal data of 100,000 or more consumers during a calendar year; or
- Derive revenue or receive discounts from the sale of personal data and control or process data of at least 25,000 consumers.

Illinois Biometric Information Privacy Act

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

Under BIPA, a private entity:[40]

- In possession of biometric data (defined as retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry) must have a written policy establishing a retention schedule and guidelines for permanently destroying such data;

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[34] *Id*.
[35] Virginia's Legislative Information System, Bill Summary for SB 1392, https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+SB1392S (last visited Mar. 25, 2023).
[36] C.R.S. 1-6-1301-1313
[37] The National Law Review, *And Now There are Three…The Colorado Privacy Act*, July 16, 2021, https://www.natlawreview.com/article/and-now-there-are-three-colorado-privacy-act#:~:text=Colorado%20has%20now%20joined%20California,effect%20on%20July%201%2C%202023. (last visited Mar. 25, 2023).
[38] *Id*.
[39] *Id*.
[40] 740 Ill. Comp. Stat. 14/10, 14/15 (2008).

- May not collect, capture, purchase, receive through trade, or otherwise obtain biometric data unless it informs the subject that the data is being stored and the manner of storage, and receives a written release from the subject;
- May not profit from a person's biometric data;
- May not disseminate a person's biometric data unless the subject consents, is authorized by the subject, or is required by law or a valid warrant or subpoena; and
- Must store, transmit, and protect biometric data with a reasonable standard of care and in a manner as or more protective as other confidential and sensitive information.

BIPA provides a private cause of action, with relief including:[41]

- Liquidated damages of $1,000 or actual damages, whichever is greater, against a private entity that negligently violates BIPA;
- Liquidated damages of $5,000 or actual damages, whichever is greater, against a private entity that intentionally or recklessly violates BIPA;
- Reasonable attorneys' fees and costs; and
- Other relief, including an injunction, as the court deems appropriate.

Because Illinois granted a private cause of action for violations of BIPA, there have been several lawsuits claiming damages for privacy and use violations, and Illinois courts have upheld the law. On January 25, 2019, the Illinois Supreme Court found that an individual does not need to allege an actual injury or adverse effect, beyond violation of their rights under BIPA, to qualify as an aggrieved party. Therefore, anyone whose biometric data is affected by a violation of BIPA may seek liquidated damages or injunctive relief under the Act.[42] Court documents also tend to support the notion that an individual in Illinois has a valid cause of action if his or her biometric data is taken without consent by a private entity, including out-of-state entities, but it is subject to a finding of fact.[43]

Additional States

Connecticut and Utah recently signed similar bills to Virginia and Colorado into law. There are also 18 other states that are actively considering data privacy bills.[44]

Federal Laws Addressing Data Privacy

While there is no broad federal law addressing data privacy, generally, there are several industry-specific laws that address the need to keep certain data private or protected.

Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act of 1996 (HIPAA)[45] is a federal law that required the creation of national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge. The U.S. Department of Health and Human Services (HHS) issued the HIPAA Privacy Rule[46] to implement the requirements of HIPAA. The HIPAA Security Rule protects a subset of information covered by the Privacy Rule.[47]

HIPAA's Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The

[41] 740 Ill. Comp. Stat. 14/20 (2008).
[42] *Rosenbach v. Six Flags Entertainment Corporation*, 2019 IL 123186.
[43] *Rivera v. Google, Inc.*, 238 F.Supp.3d 1088 (N.D. Ill. 2017).; *In re Facebook Biometric Information Privacy Litigation*, 185 F.Supp.3d 1155 (N.D. Cal. (2016).; *Norberg v. Shutterfly, Inc.*, 152 F.Supp.3d 1103 (N.D. Ill. 2015).
[44] IAPP, *US State Privacy Legislation Tracker*, Mar. 17, 2023, https://iapp.org/resources/article/us-state-privacy-legislation-tracker/ (last visited Mar. 25, 2023).
[45] 42 U.S.C. s. 1320.
[46] 45 C.F.R. ss. 160 and 164.
[47] Centers for Disease Control and Prevention, Health Insurance Portability and Accountability Act of 1996 (HIPAA), https://www.cdc.gov/phlp/publications/topic/hipaa.html (last visited Mar. 25, 2023).

Privacy Rule calls this information "protected health information (PHI)" from being disclosed without the patient's consent or knowledge.[48]

"Individually identifiable health information" is information, including demographic data, that relates to:[49]

- The individual's past, present or future physical or mental health or condition,
- The provision of health care to the individual, or
- The past, present, or future payment for the provision of health care to the individual.

The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act.[50]

The Security Rule applies to the subset of identifiable health information a covered entity creates, receives, maintains, or transmits in electronic form, and is called "electronic protected health information" (e-PHI). The Security Rule does not apply to PHI transmitted orally or in writing. To comply with the Security Rule, all covered entities must do the following:[51]

- Ensure the confidentiality, integrity, and availability of all electronic protected health information;
- Detect and safeguard against anticipated threats to the security of the information;
- Protect against anticipated impermissible uses or disclosures; and
- Certify compliance by their workforce.

"Covered entities" who must abide by the Privacy Rule and the Security Rule are:[52]

- Health plans;
- Healthcare providers;
- Healthcare clearinghouses; and
- Business associates.

Federal Policy for the Protection of Human Subjects

The Federal Policy for the Protection of Human Subjects, or the "Common Rule," is a rule promulgated by the U.S. Food and Drug Administration (FDA).[53] The Common Rule governs the ethical conduct of research involving human subjects. Fifteen federal agencies and departments are party to this rule, which first came into effect in 1981. The Common Rule has not been substantively updated since 1991.[54] Among other requirements, the Common Rule mandates that researchers protect the privacy of subjects and maintain confidentiality of human subject data.[55]

The FDA is a member of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, which brings together the regulatory authorities and pharmaceutical industry to develop guidelines for pharmaceutical trials.[56]

The Fair Credit Reporting Act

The Fair Credit Reporting Act[57] (FCRA) protects information collected by consumer reporting agencies such as credit bureaus, medical information companies and tenant screening services. Information in a consumer report cannot be provided to anyone who does not have a purpose specified in the FCRA. Companies that provide information to consumer reporting agencies also have specific legal

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[48] *Id*.
[49] 45 C.F.R. s. 160.103.
[50] 20 U.S.C. s. 1232(g).
[51] CDC, supra note 47.
[52] 45 C.F.R. ss. 160.102, 160.103.
[53] 21 C.F.R. §§ 50, 60.
[54] U.S. Department of Health and Human Services, Federal Policy for the Protection of Human Subjects ('Common Rule'), Federal Policy for the Protection of Human Subjects ('Common Rule | HHS.gov (last visited Mar. 25, 2023).
[55] The University of Chicago, *University Data Usage Guide, Sensitive Identifiable Human Subject Research Data*, https://dataguide.uchicago.edu/sensitive-identifiable-human-subject-research-data (last visited Mar. 25, 2023).
[56] International Council for Harmonisation, https://www.ich.org/ (last visited Mar. 25, 2023).
[57] 15 U.S.C. s. 1681.

obligations, including the duty to investigate disputed information. In addition, users of the information for credit, insurance, or employment purposes must notify the consumer when an adverse action is taken on the basis of such reports.[58]

The Gramm-Leach-Bliley Act

The Gramm-Leach-Bliley Act[59] requires financial institutions, such as companies that offer consumers financial products or services like loans, financial or investment advice, mortgages, or insurance, to explain their information-sharing practices to their customers and to safeguard sensitive data.[60]

The law requires that financial institutions protect information collected about individuals; it does not apply to information collected in business or commercial activities.

In certain situations, consumers of a financial institution have opt-out rights from having their nonpublic personal information shared with third parties.[61]

Driver's Privacy Protection Act

The Driver's Privacy Protection Act of 1994 (DPPA)[62] protects the privacy of personal information assembled by state departments of motor vehicles (DMVs).

The DPPA prohibits the release or use by any state DMV (or any officer, employee, or contractor thereof) of personal information about an individual obtained by the DMV in connection with a motor vehicle record, subject to certain exceptions, such as for legitimate government needs. It sets penalties for violations and makes violators liable on a civil action to the individual to whom the released information pertains.[63]

DPPA also requires states to obtain permission from individuals before their personal motor vehicle record may be sold or released to third-party marketers.[64]

Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA)[65] protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when they reach the age of 18 or attend a school beyond the high school level.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA.[66]

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[58] The Federal Trade Commission, Fair Credit Reporting Act, https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act (last visited Mar. 25, 2023).
[59] 15 U.S.C. s. 6801.
[60] The Federal Trade Commission, Gramm-Leach-Bliley Act, https://www.ftc.gov/tips-advice/business-center/privacy-and-security/gramm-leach-bliley-act (last visited Mar. 25, 2023).
[61] International Association of Privacy Processionals, *In Brief: The Financial Privacy Requirements of the Gramm-Leach-Bliley Act*, https://iapp.org/media/pdf/knowledge_center/brief_requirements_GLBA.pdf (last Mar. 25, 2023).
[62] 18 U.S.C. s. 2721.
[63] Electronic Privacy Information Center, The Drivers Privacy Protection Act (DPPA) and the Privacy of Your State Motor Vehicle Record, https://epic.org/privacy/drivers/ (last visited Mar. 25, 2023).
[64] *Id.*
[65] 20 U.S.C. s. 1232(g); 34 C.F.R. s. 99.
[66] United States Department of Education, Family Educational Rights and Privacy Act (FERPA), https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html (last visited Mar. 25, 2023).

Children's Online Privacy Protection Act (COPPA)

The Children's Online Privacy Protection Act (COPPA)[67] and its related rules regulate websites' collection and use of children's information. The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children's personal information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security.

A covered entity may not collect a child's (individual under the age of 13) personal information without the prior, verifiable consent of his or her parent.[68]

COPPA requires covered entities to:[69]

- Give parents direct notice of their privacy policies, including a description of their data collection and sharing practices;
- Post a clear link to their privacy policies on their home page and at each area of their website where they collect personal information from children;
- Institute procedures to protect the personal information that they hold;
- Ensure that any third party with which they share collected personal information implements the same protection procedures; and
- Delete children's personal information after the purpose for its retention has been fulfilled.

Violations of COPPA are deemed an unfair or deceptive act or practice and may therefore be prosecuted by the FTC. COPPA also authorizes state attorneys general to enforce violations that affect residents of their states. There is no criminal prosecution or private right of action provided for under COPPA.[70]

Consumer Data Privacy – Effect of the Bill

Overview

The bill creates s. 501.173, F.S., to establish consumer rights related to personal information, including:

- The right to access personal information collected specific to the individual consumer;
- The right to delete or correct personal information; and
- The right to opt out of the sale of sharing of personal information to third parties.

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

A controller that receives a verifiable consumer request to access, delete, correct, or opt-out must comply with such consumer request, with certain exceptions. Exceptions include those for:

- Certain small businesses;
- Businesses which only use personal information to market its own products or services; and
- Businesses which only sell or share personal information as permitted under by certain federal privacy laws.

Controllers may share personal information with a processor, even if a consumer has "opted out," if the processor processes information for a controller pursuant to a written contract which limits how the processor uses such information.

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[67] 16 C.F.R. pt. 312.
[68] 15 U.S.C. ss. 6502(a)-(b).
[69] *See*, Federal Trade Commission, *General Questions About the COPPA Rule: What is the Children's Online Privacy Protection Rule?*, https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0 (last visited Mar. 25, 2023).
[70] Federal Trade Commission, *General Questions About the COPPA Rule: COPPA Enforcement*, https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0 (last visited Mar. 25, 2023).

The DLA may bring a FDUTPA action against a controller, processor, or a third-party who violates the provisions of the bill. As such, a controller, processor, or third party may be subject to certain civil penalties and legal action.

Exceptions

The bill does not apply to the collection of personal information:

- Necessary for the sole purpose of sharing such personal information with a financial service provider solely to facilitate short term, transactional payment processing for the purchase of products or services.
- That is deidentified or aggregate consumer information.
- In compliance with federal, state, or local laws.
- In compliance with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities.
- In cooperation with law enforcement agencies concerning conduct or activity that the controller, processor, or third party reasonably and in good faith believes may violate federal, state, or local law.
- Used for the purpose of exercising or defending legal rights, claims, or privileges.
- Collected through the controller's direct interactions with the consumer, if collected in accordance with the provisions of this section, that is used by such controller, or the processor that the controller directly contracts with for advertising or marketing services, to advertise or market products or services that are produced or offered directly by the controller. Such information may not be sold, shared, or disclosed unless otherwise authorized under the bill.
- Used by a controller or processor to advertise or market products or services that are produced or offered directly by the controller or processor as long as personal information is not sold, shared, or disclosed to another party outside the consumer's direct interaction with the controller or processor.
- Collected by a controller of a natural person acting in the role of a job applicant, employee, owner, director, officer, contractor, volunteer, or intern of the controller, to the extent the personal information is collected and used solely within the context of the person's role or former role with the controller. Personal information includes employee benefit information.
- That is the protected health information for purposes of HIPAA and related regulations, and patient identifying information for purposes of 42 C.F.R. Part 2, established pursuant to 42 U.S.C. s. 290dd-2.
- Collected by an entity or business associate governed by the privacy, security, and breach notification rules issued by the U.S. Department of Health and Human Services in 45 C.F.R. parts 160 and 164, or a program or a qualified service program defined in 42 C.F.R. part 2, to the extent the entity, business associate, or program maintains personal information in the same manner as medical information or protected health information and as long as the entity, business associate, or program does not use personal information for targeted advertising in conjunction with third parties and does not sell or share personal information to a third party unless such sale or sharing is covered by an exception.
- Collected for purposes of research as defined in 45 C.F.R. s. 164.501, conducted in accordance with the Federal Policy for the Protection of Human Subjects for purposes of 45 C.F.R. part 46, the good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, the Federal Policy for the Protection for Human Subjects for purposes of 21 C.F.R. Parts 50 and 56; or personal information used or shared in research conducted in accordance with one or more of these standards.
- Created for purposes of the federal Health Care Quality Improvement Act of 1986 and related regulations, or patient safety work product for purposes of 42 C.F.R. part 3, established pursuant to 42 U.S.C. s. 299b-21 through 299b-26.
- Is deidentified in accordance with 45 C.F.R. part 164 and that is derived from individually identifiable health information, as described in HIPAA, or identifiable personal information, consistent with the Federal Policy for the Protection of Human Subjects or the human subject protection requirements of the FDA.

- Used only for public health activities and purposes as described in 45 C.F.R. s. 164.512.
- Collected, processed, sold, or disclosed pursuant to the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681 and implementing regulations.
- Is nonpublic personal information collected, processed, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq. and implementing regulations.
- Of a financial institution as defined in the Gramm-Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq. to the extent the financial institution maintains personal information in the same manner as nonpublic personal information, and as long as such financial institution does not use personal information for targeted advertising in conjunction with third parties and does not sell or share personal information to a third party unless such sale or sharing is covered by an exception.
- Collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et. seq.
- Consisting of education information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R. part 99.
- That is collected as part of public or peer-reviewed scientific or statistical research in the public interest.
- Necessary to fulfill the terms of a written warranty when such warranty was purchased by the consumer or the product that is warranted was purchased by the consumer. Such information may not be sold or shared unless otherwise authorized under the bill.
- Necessary for a product recall for a product purchased or owned by the consumer conducted in accordance with federal law. Such information may not be sold or shared unless otherwise authorized under the bill.
- Processed solely for the purpose of independently measuring or reporting advertising or content performance, reach, or frequency pursuant to a contract with a controller that collected personal information in accordance with this section. Such information may not be sold or shared unless otherwise authorized under the bill.
- Shared between a manufacturer of a tangible product and authorized third-party distributors or vendors of the product, as long as such personal information is used solely for advertising, marketing, or servicing the product that is acquired directly through such manufacturer and such authorized third-party distributors or vendors. Such personal information may not be sold or shared unless otherwise authorized under the bill.

Definitions

The bill defines the following terms:

- "Aggregate consumer information" means information that relates to a group or category of consumers, from which the identity of an individual consumer has been removed and is not reasonably capable of being directly or indirectly associated or linked with, any consumer, household, or device. The term does not include information about a group or category of consumers used to facilitate targeted advertising or the display of ads online. The term does not include personal information that has been deidentified.
- "Biometric information" means an individual's physiological, biological, or behavioral characteristics, including an individual's deoxyribonucleic acid (DNA), that can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.
- "Collect" means to buy, rent, gather, obtain, receive, or access any personal information pertaining to a consumer by any means. The term includes, but is not limited to, actively or passively receiving information from the consumer or by observing the consumer's behavior or actions.
- "Consumer" means a natural person who resides in or is domiciled in this state, however identified, including by any unique identifier, who is acting in a personal capacity or household context. The term does not include a natural person acting on behalf of a legal entity in a commercial or employment context.

- "Controller" means:
    - A sole proprietorship, partnership, limited liability company, corporation, association, or legal entity that meets the following requirements:
        - Is organized or operated for the profit or financial benefit of its shareholders or owners;
        - Does business in this state;
        - Collects personal information about consumers, or is the entity on behalf of which such information is collected;
        - Determines the purposes and means of processing personal information about consumers alone or jointly with others; and
        - Has global annual gross revenues in excess of $1 billion, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index.
        - Satisfies one of the following:
            - Derives 50 percent or more of its global annual revenues from providing targeted advertising or the sale of ads online; or
            - Operates a consumer smart speaker and voice command component service with an integrated virtual assistant connected to a cloud computing service that uses hands-free verbal activation. A consumer smart speaker and voice command component service does not include a motor vehicle or speaker or device associated with or connected to a vehicle.
    - Any entity that controls or is controlled by controller. As used in this definition, the term "control" means:
        - Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a controller;
        - Control in any manner over the election of a majority of the directors, or of individuals exercising similar functions; or
        - The power to exercise a controlling influence over the management of a company.
- "Deidentified" means information that cannot reasonably be used to infer information about or otherwise be linked to a particular consumer, provided that the controller that possesses the information:
    - Takes reasonable measures to ensure that the information cannot be associated with a specific consumer;
    - Maintains and uses the information in deidentified form and not to attempt to reidentify the information, except that the controller may attempt to reidentify the information solely for the purpose of determining whether its deidentification processes satisfy the requirements of this paragraph; and
    - Contractually obligates any recipients of the information to comply with all the provisions of this paragraph to avoid reidentifying such information.
    - Implements business processes to prevent the inadvertent release of deidentified information.
- "Department" means the Department of Legal Affairs.
- "Device" means a physical object associated with a consumer or household capable of directly or indirectly connecting to the Internet.
- "Homepage" means the introductory page of an Internet website and any Internet webpage where personal information is collected. In the case of a mobile application, the homepage is the application's platform page or download page, a link within the application, such as the "About" or "Information" application configurations, or the settings page, and any other location that allows consumers to review the required notice.
- "Household" means a natural person or a group of people in this state who reside at the same address, share a common device or the same service provided by a controller, and are identified by a controller as sharing the same group account or unique identifier.
- "Personal information" means information that is linked or reasonably linkable to an identified or identifiable consumer or household, including geolocation, biometric information, and unique identifiers to the consumer. The term does not include consumer information that is:
    - Consumer employment contract information;

    - Deidentified or aggregate consumer information; or
    - Publicly and lawfully available information reasonably believed to be made available to the public in a lawful manner without legal restrictions:
        - From federal, state, or local government records.
        - By a widely distributed media source.
        - By the consumer or by someone to whom the consumer disclosed the information unless the consumer has purposely and effectively restricted the information to a certain audience on a private account.
- "Precise geolocation data" means information from technology, such as global positioning system level latitude and longitude coordinates or other mechanisms, which directly identifies the specific location of a natural person with precision and accuracy within a radius of 1,750 feet. The term does not include information generated by the transmission of communications or any information generated by or connected to advance utility metering infrastructure systems or equipment for use by a utility.
- "Processing" means any operation or set of operations that are performed on personal information or on sets of personal information, regardless of whether by automated means.
- "Processor" means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that processes information on behalf of a controller and to which the controller discloses a consumer's personal information pursuant to a written contract, provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the controller, or as authorized.
- "Sell" means to sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, a consumer's personal information or information that relates to a group or category of consumers by a controller to another controller or a third party for monetary or other valuable consideration.
- "Share" means to share, rent, release, disclose, disseminate, make available, transfer, or access a consumer's personal information for advertising. The term includes:
    - Allowing a third party to advertise to a consumer based on a consumer's personal information without disclosure of the personal information to the third party.
    - Monetary transactions, nonmonetary transactions, and transactions for other valuable consideration between a controller and a third party for advertising.
- "Targeted advertising" means marketing to a consumer or displaying an advertisement to a consumer when the advertisement is selected based on personal information used to predict such consumer's preferences or interests.
- "Third party" means a person who is not the controller or the processor.
- "Unique identifier" means a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or a family, over time and across different services, including, but not limited to, a device identifier; an Internet Protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; a customer number, unique pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer, family, or device that is linked to a consumer or family. The term "family" means a custodial parent or guardian and any minor children of whom the parent or guardian has custody, or a household.
- "Verifiable consumer request" means a request made by a consumer, by a parent or guardian on behalf of a consumer who is a minor child, or by a person authorized by the consumer to act on the consumer's behalf, that the controller can reasonably verify to be the consumer, pursuant to rules adopted by the department. A verifiable consumer request is presumed to have been made when requested through an established account using the controller's established security features to access the account through communication features offered to consumers, but a controller may not require the consumer to create or have an account with the controller in order to make a verifiable consumer request.
- "Voice recognition feature" means the function of a device which enables the collection, recording, storage, analysis, transmission, interpretation, or other use of spoken words or other sounds.

Controller Requirements and Consumer Data Collection Requirements and Responsibilities

The bill provides that a controller may not collect, without the consumer's authorization, a consumer's precise geolocation data or personal information through the operation of a voice recognition feature.

The bill requires a controller that operates a search engine to provide a consumer with information of how the controller's search engine algorithm prioritizes or deprioritizes political partisanship or political ideology in its search results.

The bill requires a controller who collects personal information about a consumer to maintain an online privacy policy and make such policy available on its homepage. The online privacy policy must include the following information:

- Any Florida-specific consumer privacy rights;
- A list of the categories of personal information the controller collects or has collected about consumers;
- The right to request deletion or correction of certain personal information; and
- The right to opt-out of the sale or sharing to third parties.

The bill requires a controller that collects personal information from the consumer to, at or before the point of collection, inform the consumer of the categories of personal information to be collected and the purposes for which the categories of personal information will be used.

The bill provides that a controller may not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice consistent with the requirements of the bill.

The bill provides that a controller that collects a consumer's personal information must implement and maintain reasonable security procedures and practices appropriate to the nature of the personal information to protect the personal information from unauthorized or illegal access, destruction, use, modification, or disclosure. A controller shall require any processors to implement and maintain the same or similar security procedures and practices for personal information.

The bill requires a controller to adopt and implement a retention schedule that prohibits the use or retention of personal information by the controller or processor:

- After the satisfaction of the initial purpose for which such information was collected or obtained;
- After the expiration or termination of the contract pursuant to which the information was collected or obtained; or
- 3 years after the consumer's last interaction with the controller.

The required retention schedule does not apply to personal information reasonably used or retained to do any of the following:

- Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.
- Provide a good or service requested by the consumer, or reasonably anticipate the request of such good or service within the context of a controller's ongoing business relationship with the consumer.
- Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute of those responsible for such activity or access.
- Debug to identify and repair errors that impair existing intended functionality.
- Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws when the controller's deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.
- Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.

- Comply with a legal obligation, including any federal retention laws.
- Protect the controller's interests against existing disputes, legal action, or governmental investigations.
- Assure the physical security of persons or property.

Consumer's Right to Request a Copy of Personal Information Collected, Sold, or Shared

The bill provides that a consumer has the right to request that a controller that collects personal information about the consumer disclose the personal information that has been collected, sold, or shared by or on behalf of the controller. The bill provides that a consumer has the right to request that a controller that collects, sells, or shares personal information about the consumer to disclose the following to the consumer:

- The specific pieces of personal information which have been collected about the consumer.
- The categories of sources from which the consumer's personal information was collected.
- The specific pieces of personal information about the consumer which were sold or shared.
- The third parties to which the personal information about the consumer was sold or shared.
- The categories of personal information about the consumer which were disclosed to a processor.

The bill requires a controller that collects, sells, or shares personal information about consumers to disclose the requested information to the consumer upon receipt of a request.

The bill does not require a controller to retain, reidentify, or otherwise link any data that, in the ordinary course of business is not maintained in a manner that would be considered personal information.

The bill requires a controller to deliver the information required or act on a verifiable consumer request to a consumer free of charge within 45 calendar days after receiving a verifiable consumer request. The response period may be extended once by 45 additional calendar days when reasonably necessary, provided the controller informs the consumer of any such extension within the initial 45-day response period and the reason for the extension. The information must be delivered in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another entity without hindrance. A controller may provide the data to the consumer in a manner that does not disclose the controller's trade secrets.

A controller is not obligated to provide information to the consumer if the consumer or a person authorized to act on the consumer's behalf does not provide verification of identity or verification of authorization to act with the permission of the consumer.

A controller may provide personal information to a consumer at any time, but may not be required to provide personal information to a consumer more than twice in a 12-month period.

Such requirements to disclose information do not apply to personal information relating solely to households.

Consumer Right to Correct or Delete Personal Information

The bill provides that a consumer has the right to request that a controller delete any personal information about the consumer or about the consumer's child younger than 18 years of age which the controller has collected from the consumer.

The bill requires a controller that receives a verifiable consumer request to delete the consumer's personal information to delete the consumer's personal information from its records and direct any processors to delete such information within 90 calendar days after receipt of the verifiable consumer request.

A controller or a processor acting pursuant to its contract with the controller may not be required to comply with a consumer's request to delete the consumer's personal information if it is reasonably

necessary for the controller or processor to maintain the consumer's personal information to do any of the following:

- Complete the transaction for which the personal information was collected.
- Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.
- Provide a good or service requested by the consumer, or reasonably anticipate the request of such good or service within the context of a controller's ongoing business relationship with the consumer, or otherwise perform a contract between the controller and the consumer.
- Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activity or access.
- Debug to identify and repair errors that impair existing intended functionality.
- Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws when the controller's deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.
- Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.
- Comply with a legal obligation, including any state or federal retention laws.
- Protect the controller's interests against existing disputes, legal action, or governmental investigations.
- Assure the physical security of persons or property.

The bill allows a consumer to make a request that a controller correct inaccurate personal information maintained by the controller about the consumer or about the consumer's child younger than 18 years of age. A controller that receives a verifiable consumer request to correct inaccurate personal information must use commercially reasonable efforts to correct such inaccurate information as directed by the consumer and direct any processors to correct such information within 90 calendar days after receipt of the verifiable consumer request. If a controller maintains a self-service mechanism to allow a consumer to correct certain personal information, the controller may require the consumer to correct his or her own personal information through such mechanism. A controller or a processor acting pursuant to its contract with the controller is not required to comply with a consumer's request to correct the consumer's personal information if it is reasonably necessary for the controller or processor to maintain such information to do any of the following:

- Complete the transaction for which the personal information was collected.
- Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.
- Detect security threats or incidents, protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activity or access.
- Debug to identify and repair errors that impair existing intended functionality.
- Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.
- Comply with a legal obligation, including any state or federal retention laws.
- Protect the controller's interests against existing disputes, legal action, or governmental investigations.
- Assure the physical security of persons or property.

Consumer Right to Opt Out of the Sale or Sharing of Personal Information

The bill provides the consumer with the right to opt out at any time and to direct a controller that sells or shares personal information about the consumer to third parties to not sell or share the consumer's personal information. This right may be referred to as the right to opt out.

The bill requires that a controller that sells or shares personal information to third parties to provide notice to consumers that this information may be sold or shared and that consumers have the right to opt out of the sale or sharing of their personal information.

The bill provides that a controller may not sell or share the personal information of a minor consumer if the controller has actual knowledge that the consumer is not 18 years of age or older. However, if a consumer is between 13 and 18, or if the parent or guardian of a consumer who is 12 years of age or younger, affirmatively authorizes the sale or sharing of such consumer's personal information, then a controller may sell or share such information. A controller that willfully disregards the consumer's age is deemed to have actual knowledge of the consumer's age. A controller that complies with the verifiable parental consent requirements of COPPA is deemed compliant with any obligation to obtain parental consent.

The bill provides that a controller that has received direction from a consumer opting out of the sale or sharing of the consumer's personal information is prohibited from selling or sharing the consumer's personal information beginning 4 calendar days after receipt of such direction, unless the consumer subsequently provides express authorization for the sale or sharing of the consumer's personal information.

Form to Opt Out of the Sale or Sharing of Personal Information

The bill requires a controller, in a reasonably accessible format, to provide a clear and conspicuous link on the controller's Internet homepage, entitled "Do Not Sell or Share My Personal Information," to an Internet webpage that enables a consumer, a parent or guardian of a minor who is a consumer, or a person authorized by the consumer, to opt out of the sale or sharing of the consumer's personal information. A controller may not require a consumer to create an account in order to direct the controller not to sell or share the consumer's personal information.

A controller may accept a request to opt out received through a user-enabled global privacy control, such as a browser plug-in or privacy setting, device setting, or other mechanism, which communicates or signals the consumer's choice to opt out.

A controller must respect the consumer's decision to opt out for at least 12 months before requesting that the consumer authorize the sale or sharing of the consumer's personal information.

A controller may not use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

The bill allows a consumer to authorize another person to opt out of the sale or sharing of the consumer's personal information on the consumer's behalf, and a controller must comply with an opt-out request received from a person authorized by the consumer to act on the consumer's behalf, pursuant to rules adopted by the DLA.

Actions Related to Consumers Who Exercise Their Rights

The bill provides that a controller may not deny goods or services to a consumer because the consumer exercised any of the consumer's rights under the bill.

The bill allows a controller to charge a consumer who exercised any of the consumer's rights a different price or rate, or provide a different level or quality of goods or services to the consumer, but only if that difference is:

- Reasonably related to the value provided to the controller by the consumer's data, or
- Related to a consumer's voluntary participation in a financial incentive program, including a bona fide loyalty, rewards, premium features, discounts, or club card program offered by the controller.

A controller may offer financial incentives, including payments to a consumer as compensation, for the collection, sharing, sale, or deletion of personal information if the consumer gives the controller prior consent that clearly describes the material terms of the financial incentive program. The consent may be revoked by the consumer at any time. The bill prohibits a controller from using financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.

Contracts and Roles

The bill requires that any contract between a controller and a processor must:

- Prohibit the processor from selling, sharing, retaining, using, or disclosing the personal information for any purpose that violates this section;
- Prohibit the processor from retaining, using, or disclosing the personal information other than for the purposes specified in the contract or agreement;
- Prohibit the processor from combining the personal information that the processor receives from or on behalf of the controller with personal information that the processor receives from or on behalf of another person or that the processor collects from its own interaction with the consumer, provided that the processor may combine personal information to perform any purpose specified in the contract or agreement and such combination is reported to the controller.
- Govern the processor's personal information processing procedures with respect to processing performed on behalf of the controller, including processing instructions, the nature and purpose of processing, the type of information subject to processing, the duration of processing, and the rights and obligations of both the controller and processor;
- Require the processor to return or delete all personal information under the contract to the controller as requested by the controller at the end of the provision of services, unless retention of the information is required by law; and
- Upon request of the controller, require the processor to make available to the controller all personal information in its possession under the contract or agreement.

The bill provides that determining whether a person is acting as a controller or processor with respect to a specific processing of data is fact-based and depends upon the context in which personal information is to be processed. The contract between a controller and processor must reflect their respective roles and relationships related to handling personal information. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal information remains a processor.

The bill provides that a third party that has collected personal information from a controller in accordance with this section:

- May not sell or share personal information about a consumer unless the consumer is provided an opportunity by such third party to opt out under this section. Once a third party sells or shares personal information after providing the opportunity to opt out, the third party becomes a controller under this section if the entity meets the definition of controller.
- May use such personal information from a controller to advertise or market products or services that are produced or offered directly by such third party.

The bill requires a processor or third party to require any subcontractor to meet the same obligations of such processor or third party with respect to personal information.

The bill provides that a processor or third party or any subcontractor thereof who violates any of the restrictions imposed upon it under the bill is liable or responsible for any failure to comply. A controller that discloses personal information to a third party or processor in compliance with the bill is not liable or responsible if the person receiving the personal information uses it without complying with the restrictions if, provided that at the time of disclosing the personal information, the controller does not have actual knowledge or reason to believe that the person does not intend to comply.

The bill provides that any provision of a contract or agreement of any kind that waives or limits in any way a consumer's rights under the bill, including, but not limited to, any right to a remedy or means of

enforcement, is deemed contrary to public policy and is void and unenforceable. This section does not prevent a consumer from declining to exercise the consumer's rights under the bill.

Social Media Platform Protection For Children

The bill provides that a social media platform[71] that is predominantly accessed by children may not:

- Collect, sell, or share the personal information of any child if the controller has actual knowledge that collecting, selling, or sharing such information may result in substantial harm or risk to the child.
- Use any deceptive patterns, techniques, mechanisms, or dark patterns to lead or encourage children to provide personal information in excess of what is reasonably needed by the social media platform to allow the child to use or participate in the platform.
- Use any deceptive patterns, techniques, mechanisms, or dark patterns to mislead or deceive children into making unintended or harmful decisions on the platform.
- A social media platform that violates this subsection is subject to the remedies and penalties under the bill.

Enforcement and Implementation

The bill provides that if DLA has reason to believe that any controller, processor, or third party is in violation of the requirements of the bill, DLA may bring an action against such controller, processor, or third party for an unfair or deceptive act or practice under FDUTPA. A consumer may not bring an action under FDUTPA under the bill. DLA is permitted to bring an action against:

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services; and
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

In addition to other remedies under FDUTPA, the department may collect a civil penalty of up to $50,000 per violation of the bill.

Civil penalties may be tripled if the violation involves:

- A consumer who the controller, processor or third party has actual knowledge is 18 or younger.
- Failure to delete or correct the consumer's personal information after receiving a verifiable consumer request or directions from a controller to delete or correct such personal information unless the controller, processor, or third party qualifies for an exception to the requirements to delete or correct such personal information.
- Continuing to sell or share the consumer's personal information after the consumer chooses to opt out.

After DLA has notified a controller, processor, or third party in writing of an alleged violation, DLA may grant the controller, processor, or third party a 45-day period to cure the alleged violation. DLA may consider the number of violations, the substantial likelihood of injury to the public, or the safety of persons or property when determining whether to grant 45 days to cure. If the controller, processor, or third party cures the alleged violation to the satisfaction of DLA and provides proof, DLA may not bring an action for the alleged violation but in its discretion may issue a letter of guidance that indicates that the controller, processor, or person will not be offered a 45-day cure period for any future violations. If the controller, processor, or third party fails to cure the violation to the satisfaction of DLA within 45 calendar days, DLA may bring an action against the controller, processor, or third party for the alleged violation. The bill clarifies that any action brought by DLA may only be brought on behalf of a Florida consumer.

[71] "Social media platform" means a form of electronic communication through which users create online communities to share information, ideas, personal messages, and other content. The definition is the same as under newly-created s. 112.23, F.S.

DLA may adopt rules to implement the bill, including standards for verifiable consumer requests, enforcement, data security, and authorized persons who may act on a consumer's behalf.

The bill requires DLA to submit a report by February 1 each year to the President of the Senate and the Speaker of the House of Representatives describing any actions taken by DLA to enforce the bill. The report must be viewable on the DLA website and include statistics and relevant information detailing:

- The number of complaints received and the categories or types of violations alleged by the complainant;
- The number and type of enforcement actions taken and the outcomes of such actions, including the amount of penalties issued and collected;
- The number of complaints resolved without the need for litigation; and
- The status of the development and implementation of rules to implement the bill.

DLA may collaborate and cooperate with other enforcement authorities of the federal government or other state governments concerning consumer data privacy issues and consumer data privacy investigations if such enforcement authorities have restrictions governing confidentiality at least as stringent as the restrictions provided in this section.
The bill provides that liability for a tort, contract claim, or consumer protection claim that is unrelated to an action brought under the bill does not arise solely from the failure of a controller, processor, or third party to comply with this section.

The bill provides that the bill does not establish a private cause of action.

The bill allows DLA to employ or use the legal services of outside counsel and the investigative services of outside personnel to fulfill the obligations of the bill.

Jurisdiction

For purposes of bringing an action under the bill, any controller which collects, shares, or sells the personal information of a Florida consumer is considered to be both engaged in substantial activities within Florida, and is operating, conducting, engaging in, or carrying on a business, and doing business in Florida; and is therefore subject to the jurisdiction of Florida courts.

Preemption

The bill provides that consumer data privacy is a matter of statewide concern and the bill supersedes all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the collection, processing, sharing, or sale of consumer personal information by a controller or processor. The regulation of the collection, processing, sharing, or sale of consumer personal information by a controller or processor is preempted to the state.

Legal Affairs Revolving Trust Fund

The bill provides that all moneys recovered by the Attorney General for attorney fees, costs, and penalties in an action for a violation of the bill must be deposited in the fund in the State Treasury the Legal Affairs Revolving Trust Fund, from which the Legislature may appropriate funds for the purpose of funding investigation, prosecution, and enforcement by the Attorney General.

Comparison Chart of Consumer Data Privacy Laws[72]

Comparison of Consumer Data Privacy Laws					
Provision	**Colorado**	**Virginia**	**California**	**European Union**	**2023 HB 1547**
Opt-In or Opt-Out of Sale of Personal Information	Opt-Out	Opt-Out	Opt-Out	Opt-In	Opt-Out
Opt-In or Opt-Out of Sensitive Information Processing	Opt-In	Opt-In	Opt-Out	Opt-In	X
Cure Period Before Government Enforcement	✓ **60 Days (Repeals 2025)**	✓ **30 Days**	✓ **30 Days**	X	✓ **45 Days (AG Discretion)**
Right to Appeal Denials or Requests	✓	✓	X	X	X
Express Obligations for Deidentified Data	✓	✓	X	X	✓
Requirement to Perform Data Assessments	✓	✓	✓	✓	X
Private Right of Action	X	X	✓ **Greater of $100-$750 or actual damages**	✓ **Actual damages**	X
Government Enforcement Agency	Attorney General	Attorney General	Attorney General, CPPA	Information Commissioner's Office	Attorney General
Government Enforcement Penalties	Up to $20,000 per violation	Up to $7,500 per violation	Up to $2,500 per unintentional violation, and up to $7,500 per intentional violation	Up to €20 million, or 4% of worldwide annual revenue per violation	Up to $50,000 per violation, which can be tripled in certain circumstances
Operative Date	07/01/23	01/01/23	01/01/23	05/25/18	07/01/23
Applicability Thresholds For Business/Controller	Either: •Controls/Processes data of at least 100,000 consumers per year; or •Derives revenue from sale of data from at least 25,000 consumers per year	Either: •Controls/Processes data of at least 100,000 consumers per year; or •Derives over 50% of revenue from sale of data from at least 25,000 consumers per year	Meets any of the following: •Gross annual revenue of over $25 mill; •Processes data of 100,000 or more consumers; or •Derives at least 50% or more of revenue from data sales	Either: •Any E.U. business which processes consumer data; or •Any worldwide business that offers goods/services to or monitors behavior of E.U. individuals	•Global gross annual revenue over $1 bil; and either •Operates a certain smart speaker; or •Derives 50% or more global annual revenue from data sales

Florida Information Protection Act – Current Situation

In 2014, Florida passed the Florida Information Protection Act (FIPA).[73] FIPA requires commercial covered entities[74] and government entities which hold personal information to take reasonable measures to protect such information and report data breaches to affected consumers.[75]

FIPA defines "personal information" as:

[72] *See* JDSupra, *Virginia Is For Lovers…Of Data Privacy*, https://www.jdsupra.com/legalnews/virginia-is-for-lovers-of-data-privacy-3879845/ (last visited Mar. 25, 2023).
[73] S. 501.171, F.S.; Fla. SB 1524 (2014) (FIPA expanded and updated Florida's data breach disclosure laws contained in s. 817.5681, F.S. (2013), which was adopted in 2005 and repealed in 2014.)
[74] "Covered entity" means a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. S. 501.171(1)(b), F.S.
[75] Florida Office of the Attorney General, *How to Protect Yourself: Data Security*, http://myfloridalegal.com/pages.nsf/Main/53D4216591361BCD85257F77004BE16C (last visited Mar. 25, 2023).

- Online account information, such as security questions and answers, email addresses and passwords;
- An individual's first name or first initial and last name in combination with any one or more of the following:
    - A social security number;
    - A driver license or similar identity verification number issued on a government document;
    - A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;
    - Any medical history information; or
    - An individual's health insurance identification numbers.[76]

Personal information does not include information:

- About an individual that has been made publicly available by a federal, state, or local governmental entity; or
- That is encrypted, secured, or modified to remove elements that personally identify an individual or that otherwise renders the information unusable.[77]

If a breach of personal information occurs, notice must be given to each individual in Florida whose personal information was accessed as a result of the breach. If the breach affected 500 or more individuals in this state, the covered entity must also provide notice to the Department of Legal Affairs (DLA). If the breach affected more than 1,000 individuals at a single time, credit reporting agencies must be notified of such breach, with certain exceptions.[78]

FIPA expressly does not provide a private cause of action, but does authorize enforcement actions by DLA under Florida's Unfair and Deceptive Trade Practices Act (FDUTPA) against covered entities for any statutory violations.[79]

In addition to the remedies provided for under FDUTPA an entity that fails to provide the required notification of a data breach is liable for certain civil penalties assessed on a daily basis. The civil penalties for failure to notify apply per breach and not per individual affected by the breach.

Florida Information Protection Act – Effect of the Bill

The bill amends s. 501.171, F.S., to define "biometric information" as an individual's physiological, biological, or behavioral characteristics that can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.

The bill defines **"**genetic information**"** as an individual's deoxyribonucleic acid (DNA).

The bill includes biometric information, genetic information, and geolocation in FIPA's definition of "personal information" so that covered entities are required to notify the affected individual, DLA, and credit reporting agencies of a breach of such information paired with an individual's first name or first initial and last name.

The bill allows DLA to bring a FDUTPA action against a covered entity which fails to notify DLA of or an individual affected by a breach of biometric information, genetic information, or geolocation.

[76] *Id*.; s. 501.171(1)(g)1., F.S.
[77] S. 501.171(1)(g)2., F.S.
[78] S. 501.171(3)-(6), F.S.
[79] S. 501.171(9), (10), F.S.; OAG *supra* note 75.

Government Moderation of Social Media Platforms – Current Situation

Many cities and government entities in Florida have official accounts on various social media platforms. Social media can be an effective platform for reaching citizens in to keep them informed about news and events in their communities.[80]

Government entities may not censor a constituent's post or comment based on views in public conversation or restrict access to their profile based solely on viewpoints based on certain Constitutional protections. However, certain speech is not protected under the First Amendment, and generally may be blocked, like threats.[81]

Government Moderation of Social Media Platforms – Effect of the Bill

The bill defines the following terms:

- "Social media platform" means a form of electronic communication through which users create online communities to share information, ideas, personal messages, and other content.
- "Governmental entity" means 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, but not limited to, the Commission on Ethics, the Public Service Commission, 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.

The bill provides that an officer or a salaried employee of a governmental entity may not use his or her position or any state resources to communicate with a social media platform to request that it remove content or accounts from the social media platform.

The bill prohibits a governmental entity, or an officer or a salaried employee acting on behalf of a governmental entity, from initiating or maintaining any agreements or working relationships with a social media platform for the purpose of content moderation.

However, these restrictions do not apply if the governmental entity or an officer or a salaried employee acting on behalf of a governmental entity is acting as part of any of the following:

- Routine account management of the governmental entity's account.
- An attempt to remove content or an account that pertains to the commission of a crime or violation of public records law.
- An investigation or inquiry related to public safety.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 112.23, F.S., relating to governmental social media content moderation.
Section 2: Creates s. 501.173, F.S., relating to consumer data privacy rights and requirements.
Section 3: Amends s. 501.171, F.S.; relating to FIPA and triggering requirements.
Section 4: Amends s. 16.53, F.S.; relating to the Legal Affairs Revolving Trust Fund.
Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[80] Jessica Marabella, CivicPlus, *7 Ways to Use Social Media with Your Municipal Website in 2019*, https://www.civicplus.com/blog/ce/using-social-media-with-municipal-website (last visited Mar. 25, 2023).
[81] ACLU Florida, *Government Social Media Censorship*, https://www.aclufl.org/en/know-your-rights/government-social-media-censorship (last visited Mar 25, 2023).

There may be an increase in civil penalties collected by DLA.

2. Expenditures:

There may be an increase of regulatory costs to DLA from implementing and enforcing the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require certain businesses in possession of personal information to implement mechanisms to effectuate the requirements of the bill, and such implementation will have a fiscal impact on such businesses. However, many of the businesses subject to the bill's requirements may have already implemented similar privacy practices based on protections required in other states and countries.

The bill may increase protections provided for personal information that may save consumers the expense of dealing with stolen personal information used to commit financial crimes. About 15 million consumers are victims of identity theft or fraud each year. Identity theft and fraud costs consumers more than $15 billion a year.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Certain provisions may implicate Constitutional analysis based on the U.S. and Florida Constitutions' Equal Protection Clause,[82] and the U.S. and Florida Constitutions' protections of the right to free speech.[83]

B. RULE-MAKING AUTHORITY:

DLA is given rulemaking authority in the bill to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[82] U.S. Const. amend. XIV, and Art. I, § 2, Fla. Const.
[83] U.S. Const. amend. I, and Art. I, §§ 4-5, Fla. Const.

A bill to be entitled

An act relating to technology transparency; creating s. 112.23, F.S.; defining terms; prohibiting officers or salaried employees of governmental entities from using their positions or state resources to make certain requests of social media platforms; prohibiting governmental entities from initiating or maintaining agreements or working relationships with social media platforms under a specified circumstance; providing exceptions; creating s. 501.173, F.S.; providing applicability; defining terms; prohibiting a controller from collecting certain consumer information without the consumer's authorization; requiring controllers that collect a consumer's personal information to disclose certain information regarding data collection and selling practices to the consumer at or before the point of collection; specifying that such information may be provided through a general privacy policy or through a notice informing the consumer that additional specific information will be provided upon a certain request; prohibiting controllers from collecting additional categories of personal information or using personal information for additional purposes without notifying the consumer; requiring controllers that collect

personal information to implement reasonable security procedures and practices to protect such information; authorizing consumers to request controllers to disclose the specific personal information the controller has collected about the consumer; requiring controllers to make available two or more methods for consumers to request their personal information; requiring controllers to provide such information free of charge within a certain timeframe and in a certain format upon receiving a verifiable consumer request; specifying requirements for third parties with respect to consumer information acquired or used; providing construction; authorizing consumers to request controllers to delete or correct personal information collected by the controllers; providing exceptions; specifying requirements for controllers to comply with deletion or correction requests; authorizing consumers to opt out of third-party disclosure of personal information collected by a controller; prohibiting controllers from selling or disclosing the personal information of consumers younger than a certain age, except under certain circumstances; prohibiting controllers from selling or sharing a consumer's information if the consumer has opted out of such disclosure; prohibiting controllers from taking

certain actions to retaliate against consumers who exercise certain rights; providing applicability; providing that a contract or agreement that waives or limits certain consumer rights is void and unenforceable; prohibiting social media platforms predominantly accessed by children from collecting, selling, or sharing personal information of such children under a specified condition; prohibiting such platforms from using specified patterns, techniques, and mechanisms to manipulate the disclosure of personal information or the making of certain decisions; authorizing the Department of Legal Affairs to bring an action under the Florida Deceptive and Unfair Trade Practices Act and to adopt rules; requiring the department to submit an annual report to the Legislature; providing report requirements; providing that controllers must have a specified timeframe to cure any violations; providing jurisdiction; declaring that the act is matter of statewide concern; preempting the collection, processing, sharing, and sale of consumer personal information to the state; amending s. 501.171, F.S.; revising the definition of "personal information"; amending s. 16.53, F.S.; requiring that certain attorney fees, costs, and penalties recovered by the

Attorney General be deposited in the Legal Affairs Revolving Trust Fund; providing an effective date.

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

Section 1. Section 112.23, Florida Statutes, is created to read:

112.23 Government-directed content moderation of social media platforms prohibited.—

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

(a) "Social media platform" means a form of electronic communication through which users create online communities to share information, ideas, personal messages, and other content.

(b) "Governmental entity" means 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, but not limited to, the Commission on Ethics, the Public Service Commission, 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.

(2) An officer or a salaried employee of a governmental entity may not use his or her position or any state resources to communicate with a social media platform to request that it remove content or accounts from the social media platform.

(3) A governmental entity, or an officer or a salaried employee acting on behalf of a governmental entity, may not initiate or maintain any agreements or working relationships with a social media platform for the purpose of content moderation.

(4) Subsections (2) and (3) do not apply if the governmental entity or an officer or a salaried employee acting on behalf of a governmental entity is acting as part of any of the following:

(a) Routine account management of the governmental entity's account.

(b) An attempt to remove content or an account that pertains to the commission of a crime or violation of this state's public records law.

(c) An investigation or inquiry related to public safety.

Section 2. Section 501.173, Florida Statutes, is created to read:

501.173 Consumer data privacy.—

(1) APPLICABILITY.—This section does not apply to:

(a) Personal information collected and transmitted which is necessary for the sole purpose of sharing such personal information with a financial service provider solely to facilitate short term, transactional payment processing for the purchase of products or services.

(b) Personal information collected, used, retained, sold,

shared, or disclosed as deidentified personal information or aggregate consumer information.

(c) Compliance with federal, state, or local laws.

(d) Compliance with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities.

(e) Cooperation with law enforcement agencies concerning conduct or activity that the controller, processor, or third party reasonably and in good faith believes may violate federal, state, or local law.

(f) Exercising or defending legal rights, claims, or privileges.

(g) Personal information collected through the controller's direct interactions with the consumer, if collected in accordance with this section, which is used by the controller or the processor that the controller directly contracts with for advertising or marketing services to advertise or market products or services that are produced or offered directly by the controller. Such information may not be sold, shared, or disclosed unless otherwise authorized under this section.

(h) Personal information of a person acting in the role of a job applicant, employee, owner, director, officer, contractor, volunteer, or intern of a controller which is collected by a controller, to the extent the personal information is collected and used solely within the context of the person's role or

former role with the controller. For purposes of this paragraph, personal information includes employee benefit information.

(i) Protected health information for purposes of the federal Health Insurance Portability and Accountability Act of 1996 and related regulations, and patient identifying information for purposes of 42 C.F.R. part 2, established pursuant to 42 U.S.C. s. 290dd-2.

(j) An entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services in 45 C.F.R. parts 160 and 164, or a program or a qualified service program as defined in 42 C.F.R. part 2, to the extent the entity, business associate, or program maintains personal information in the same manner as medical information or protected health information as described in paragraph (i), and as long as the entity, business associate, or program does not use personal information for targeted advertising with third parties and does not sell or share personal information to a third party unless such sale or sharing is covered by an exception under this section.

(k) Identifiable private information collected for purposes of research as defined in 45 C.F.R. s. 164.501 conducted in accordance with the Federal Policy for the Protection of Human Subjects for purposes of 45 C.F.R. part 46, the good clinical practice guidelines issued by the

International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, or the Federal Policy for the Protection for Human Subjects for purposes of 21 C.F.R. parts 50 and 56, or personal information used or shared in research conducted in accordance with one or more of these standards.

(l) Information and documents created for purposes of the federal Health Care Quality Improvement Act of 1986 and related regulations, or patient safety work product for purposes of 42 C.F.R. part 3, established pursuant to 42 U.S.C. s. 299b-21 through 299b-26.

(m) Information that is deidentified in accordance with 45 C.F.R. part 164 and derived from individually identifiable health information as described in the Health Insurance Portability and Accountability Act of 1996, or identifiable personal information, consistent with the Federal Policy for the Protection of Human Subjects or the human subject protection requirements of the United States Food and Drug Administration.

(n) Information used only for public health activities and purposes as described in 45 C.F.R. s. 164.512.

(o) Personal information collected, processed, sold, or disclosed pursuant to the federal Fair Credit Reporting Act, 15 U.S.C. s. 1681 and implementing regulations.

(p) Nonpublic personal information collected, processed, sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15

U.S.C. s. 6801 et seq., and implementing regulations.

(q) A financial institution as defined in the Gramm-Leach-Bliley Act, 15 U.S.C. s. 6801 et seq., to the extent the financial institution maintains personal information in the same manner as nonpublic personal information as described in paragraph (p), and as long as such financial institution does not use personal information for targeted advertising with third parties and does not sell or share personal information to a third party unless such sale or sharing is covered by an exception under this section.

(r) Personal information collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. s. 2721 et seq.

(s) Education information covered by the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R. part 99.

(t) Information collected as part of public or peer-reviewed scientific or statistical research in the public interest and which adheres to all other applicable ethics and privacy laws, if the consumer has provided informed consent. Research with personal information must be subjected by the controller conducting the research to additional security controls that limit access to the research data to only those individuals necessary to carry out the research purpose, and such personal information must be subsequently deidentified.

(u) Personal information disclosed for the purpose of responding to an alert of a present risk of harm to a person or property or prosecuting those responsible for that activity.

(v) Personal information disclosed when a consumer uses or directs a controller to intentionally disclose information to a third party or uses the controller to intentionally interact with a third party. An intentional interaction occurs when the consumer intends to interact with the third party, by one or more deliberate interactions. Hovering over, muting, pausing, or closing a given piece of content does not constitute a consumer's intent to interact with a third party.

(w) An identifier used for a consumer who has opted out of the sale or sharing of the consumer's personal information for the sole purpose of alerting processors and third parties that the consumer has opted out of the sale or sharing of the consumer's personal information.

(x) Personal information transferred by a controller to a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the controller, provided that the information is used or shared consistently with this section. If a third party materially alters how it uses or shares the personal information of a consumer in a manner that is materially inconsistent with the commitments or promises made at the time of collection, it must provide prior notice of the

new or changed practice to the consumer. The notice must be sufficiently prominent and robust to ensure that consumers can easily exercise choices consistent with this section.

(y) Personal information necessary to fulfill the terms of a written warranty when such warranty was purchased by the consumer or the product that is warranted was purchased by the consumer. Such information may not be sold or shared unless otherwise authorized under this section.

(z) Personal information necessary for a product recall for a product purchased or owned by the consumer conducted in accordance with federal law. Such information may not be sold or shared unless otherwise authorized under this section.

(aa) Personal information processed solely for the purpose of independently measuring or reporting advertising or content performance, reach, or frequency pursuant to a contract with a controller that collected personal information in accordance with this section. Such information may not be sold or shared unless otherwise authorized under this section.

(bb) Personal information shared between a manufacturer of a tangible product and authorized third-party distributors or vendors of the product, as long as such personal information is used solely for advertising, marketing, or servicing the product that is acquired directly through such manufacturer and such authorized third-party distributors or vendors. Such personal information may not be sold or shared unless otherwise

authorized under this section.

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

(a) "Aggregate consumer information" means information that relates to a group or category of consumers, from which the identity of an individual consumer has been removed and is not reasonably capable of being directly or indirectly associated or linked with any consumer, household, or device. The term does not include information about a group or category of consumers used to facilitate targeted advertising or the display of ads online. The term does not include personal information that has been deidentified.

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

(c) "Collect" means to buy, rent, gather, obtain, receive, or access any personal information pertaining to a consumer by any means. The term includes, but is not limited to, actively or

passively receiving information from the consumer or by observing the consumer's behavior or actions.

(d) "Consumer" means a natural person who resides in or is domiciled in this state, however identified, including by any unique identifier, who is acting in a personal capacity or household context. The term does not include a natural person acting on behalf of a legal entity in a commercial or employment context.

(e) "Controller" means:

1. A sole proprietorship, partnership, limited liability company, corporation, association, or legal entity that meets the following requirements:

a. Is organized or operated for the profit or financial benefit of its shareholders or owners;

b. Does business in this state;

c. Collects personal information about consumers, or is the entity on behalf of which such information is collected;

d. Determines the purposes and means of processing personal information about consumers alone or jointly with others;

e. Makes in excess of $1 billion in gross revenues, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index; and

f. Satisfies one of the following:

(I) Derives 50 percent or more of its global annual

revenues from providing targeted advertising or the sale of ads online; or

(II) Operates a consumer smart speaker and voice command component service with an integrated virtual assistant connected to a cloud computing service that uses hands-free verbal activation. For purposes of this sub-sub-subparagraph, a consumer smart speaker and voice command component service does not include a motor vehicle or speaker or device associated with or connected to a vehicle.

2. Any entity that controls or is controlled by a controller. As used in this subparagraph, the term "control" means:

a. Ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a controller;

b. Control in any manner over the election of a majority of the directors, or of individuals exercising similar functions; or

c. The power to exercise a controlling influence over the management of a company.

(f) "Deidentified" means information that cannot reasonably be used to infer information about or otherwise be linked to a particular consumer, provided that the controller that possesses the information:

1. Takes reasonable measures to ensure that the

information cannot be associated with a specific consumer;

2. Maintains and uses the information in deidentified form and does not attempt to reidentify the information, except that the controller may attempt to reidentify the information solely for the purpose of determining whether its deidentification processes satisfy the requirements of this paragraph;

3. Contractually obligates any recipients of the information to comply with all this paragraph to avoid reidentifying such information; and

4. Implements business processes to prevent the inadvertent release of deidentified information.

(g) "Department" means the Department of Legal Affairs.

(h) "Device" means a physical object associated with a consumer or household capable of directly or indirectly connecting to the Internet.

(i) "Genetic information" means information about an individual's deoxyribonucleic acid (DNA).

(j) "Homepage" means the introductory page of an Internet website and any Internet webpage where personal information is collected. In the case of a mobile application, the homepage is the application's platform page or download page, a link within the application, such as the "About" or "Information" application configurations, or the settings page, and any other location that allows consumers to review the notice required by subsection (7), including, but not limited to, before

downloading the application.

(k) "Household" means a natural person or a group of people in this state who reside at the same address, share a common device or the same service provided by a controller, and are identified by a controller as sharing the same group account or unique identifier.

(l) "Personal information" means information that is linked or reasonably linkable to an identified or identifiable consumer or household, including biometric information, genetic information, and unique identifiers to the consumer.

1. The term includes, but is not limited to, the following:

a. Identifiers such as a real name, alias, postal address, unique identifier, online identifier, internet protocol address, email address, account name, social security number, driver license number, passport number, or other similar identifiers.

b. Information that identifies, relates to, or describes, or could be associated with, a particular individual, including, but not limited to, a name, signature, social security number, physical characteristics or description, address, location, telephone number, passport number, driver license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information.

c. Characteristics of protected classifications under state or federal law.

d. Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.

e. Biometric information.

f. Internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with an Internet website, application, or advertisement.

g. Geolocation data.

h. Audio, electronic, visual, thermal, olfactory, or similar information.

i. Inferences drawn from any of the information identified in this paragraph to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

2. The term does not include consumer information that is:

a. Consumer employment contact information, including a position name or title, employment qualifications, emergency contact information, business telephone number, business electronic mail address, employee benefit information, and

similar information used solely in an employment context.

b. Deidentified or aggregate consumer information.

c. Publicly and lawfully available information reasonably believed to be made available to the general public in a lawful manner and without legal restrictions:

(I) From federal, state, or local government records.

(II) By a widely distributed media source.

(III) By the consumer or by someone to whom the consumer disclosed the information unless the consumer has purposely and effectively restricted the information to a certain audience on a private account.

(m) "Precise geolocation data" means information from technology, such as global positioning system level latitude and longitude coordinates or other mechanisms, which directly identifies the specific location of a natural person with precision and accuracy within a radius of 1,750 feet. The term does not include information generated by the transmission of communications or any information generated by or connected to advance utility metering infrastructure systems or equipment for use by a utility.

(n) "Processing" means any operation or set of operations performed on personal information or on sets of personal information, regardless of whether by automated means.

(o) "Processor" means a sole proprietorship, partnership, limited liability company, corporation, association, or other

legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that processes information on behalf of a controller and to which the controller discloses a consumer's personal information pursuant to a written contract, provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the controller, as authorized by this section.

(p) "Sell" means to sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, a consumer's personal information or information that relates to a group or category of consumers by a controller to another controller or a third party for monetary or other valuable consideration.

(q) "Share" means to share, rent, release, disclose, disseminate, make available, transfer, or access a consumer's personal information for advertising or marketing. The term includes:

1. Allowing a third party to advertise or market to a consumer based on a consumer's personal information without disclosure of the personal information to the third party.

2. Monetary transactions, nonmonetary transactions, and transactions for other valuable consideration between a

controller and a third party for advertising or marketing.

(r) "Targeted advertising" means marketing to a consumer or displaying an advertisement to a consumer when the advertisement is selected based on personal information used to predict such consumer's preferences or interests.

(s) "Third party" means a person who is not a controller or a processor.

(t) "Unique identifier" means a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or a family, over time and across different services, including, but not limited to, a device identifier; an Internet Protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; a customer number, unique pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer, family, or device that is linked to a consumer or family. As used in this paragraph, the term "family" means a custodial parent or guardian and any minor children of whom the parent or guardian has custody, or a household as defined in paragraph (k).

(u) "Verifiable consumer request" means a request made by a consumer, by a parent or guardian on behalf of a consumer who is a minor child, or by a person authorized by the consumer to act on the consumer's behalf, that the controller can reasonably

verify to be the consumer, pursuant to rules adopted by the department. A verifiable consumer request is presumed to have been made when requested through an established account using the controller's established security features to access the account through communication features offered to consumers, but a controller may not require the consumer to create or have an account with the controller in order to make a verifiable consumer request.

(v) "Voice recognition feature" means the function of a device which enables the collection, recording, storage, analysis, transmission, interpretation, or other use of spoken words or other sounds.

(3) CONTROLLER REQUIREMENTS; CONSUMER DATA COLLECTION REQUIREMENTS AND RESPONSIBILITIES.—

(a) A controller may not collect, without the consumer's authorization, a consumer's precise geolocation data or personal information through the operation of a voice recognition feature.

(b) A controller that operates a search engine shall provide a consumer with information of how the controller's search engine algorithm prioritizes or deprioritizes political partisanship or political ideology in its search results.

(c) A controller that collects personal information about consumers shall maintain an up-to-date online privacy policy and make such policy available on its homepage. The online privacy

policy must include the following information:

1. Any Florida-specific consumer privacy rights.

2. A list of the types and categories of personal information that the controller collects, sells, or shares, or has collected, sold, or shared, about consumers.

3. The consumer's right to request deletion or correction of certain personal information.

4. The consumer's right to opt out of the sale or sharing to third parties.

(d) A controller that collects personal information from the consumer shall, at or before the point of collection, inform, or direct the processor to inform, consumers of the categories of personal information to be collected and the purposes for which such categories of personal information will be used.

(e) A controller may not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice consistent with this section.

(f) A controller that collects a consumer's personal information shall implement and maintain reasonable security procedures and practices appropriate to the nature of the personal information to protect such personal information from unauthorized or illegal access, destruction, use, modification, or disclosure. A controller shall require any processors to

implement and maintain the same or similar security procedures and practices for personal information.

(g) A controller shall adopt and implement a retention schedule that prohibits the use or retention of personal information not subject to an exemption by the controller or processor after the satisfaction of the initial purpose for which such information was collected or obtained, after the expiration or termination of the contract pursuant to which the information was collected or obtained, or 2 years after the consumer's last interaction with the controller. This paragraph does not apply to personal information reasonably used or retained to do any of the following:

1. Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.

2. Provide a good or service requested by the consumer, or reasonably anticipate the request of such good or service within the context of a controller's ongoing business relationship with the consumer.

3. Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activity or access.

4. Debug to identify and repair errors that impair existing intended functionality.

5. Engage in public or peer-reviewed scientific,

historical, or statistical research in the public interest which adheres to all other applicable ethics and privacy laws when the controller's deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.

6. Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.

7. Comply with a legal obligation, including any state or federal retention laws.

8. Protect the controller's interests against existing disputes, legal action, or governmental investigations.

9. Assure the physical security of persons or property.

(4) CONSUMER RIGHT TO REQUEST COPY OF PERSONAL INFORMATION COLLECTED, SOLD, OR SHARED.—

(a) A consumer has the right to request that a controller that collects, sells, or shares personal information about the consumer disclose the following to the consumer:

1. The specific pieces of personal information which have been collected about the consumer.

2. The categories of sources from which the consumer's personal information was collected.

3. The specific pieces of personal information about the consumer which were sold or shared.

4. The third parties to which the personal information about the consumer was sold or shared.

5. The categories of personal information about the consumer which were disclosed to a processor.

(b) A controller that collects, sells, or shares personal information about a consumer shall disclose the information specified in paragraph (a) to the consumer upon receipt of a verifiable consumer request.

(c) This subsection does not require a controller to retain, reidentify, or otherwise link any data that, in the ordinary course of business is not maintained in a manner that would be considered personal information.

(d) The controller shall deliver to a consumer the information required under this subsection or act on a request made under this subsection by a consumer free of charge within 45 calendar days after receiving a verifiable consumer request. The response period may be extended once by 45 additional calendar days when reasonably necessary, provided the controller informs the consumer of any such extension within the initial 45-day response period and the reason for the extension. The information must be delivered in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another entity without hindrance. A controller may provide the data to the consumer in a manner that does not disclose the controller's trade secrets.

A controller is not obligated to provide information to the consumer if the consumer or a person authorized to act on the consumer's behalf does not provide verification of identity or verification of authorization to act with the permission of the consumer.

(e) A controller may provide personal information to a consumer at any time, but is not required to provide personal information to a consumer more than twice in a 12-month period.

(f) This subsection does not apply to personal information relating solely to households.

(5) RIGHT TO HAVE PERSONAL INFORMATION DELETED OR CORRECTED.—

(a) A consumer has the right to request that a controller delete any personal information about the consumer or about the consumer's child younger than 18 years of age which the controller has collected.

1. A controller that receives a verifiable consumer request to delete the consumer's personal information shall delete the consumer's personal information from its records and direct any processors to delete such information within 90 calendar days after receipt of the verifiable consumer request.

2. A controller or a processor acting pursuant to its contract with the controller may not be required to comply with a consumer's request to delete the consumer's personal information if it is reasonably necessary for the controller or

processor to maintain the consumer's personal information to do any of the following:

a. Complete the transaction for which the personal information was collected.

b. Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.

c. Provide a good or service requested by the consumer, or reasonably anticipate the request of such good or service within the context of a controller's ongoing business relationship with the consumer, or otherwise perform a contract between the controller and the consumer.

d. Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activity or access.

e. Debug to identify and repair errors that impair existing intended functionality.

f. Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest which adheres to all other applicable ethics and privacy laws when the controller's deletion of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.

g. Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's

relationship with the controller or that are compatible with the context in which the consumer provided the information.

h. Comply with a legal obligation, including any state or federal retention laws.

i. Protect the controller's interests against existing disputes, legal action, or governmental investigations.

j. Assure the physical security of persons or property.

(b) A consumer has the right to request that a controller correct inaccurate personal information maintained by the controller about the consumer or about the consumer's child younger than 18 years of age. A controller that receives a verifiable consumer request to correct inaccurate personal information shall use commercially reasonable efforts to correct the inaccurate personal information as directed by the consumer and shall direct any processors to correct such information within 90 calendar days after receipt of the verifiable consumer request. If a controller maintains a self-service mechanism to allow a consumer to correct certain personal information, the controller may require the consumer to correct their own personal information through such mechanism. A controller or a processor acting pursuant to its contract with the controller may not be required to comply with a consumer's request to correct the consumer's personal information if it is reasonably necessary for the controller or processor to maintain the consumer's personal information to do any of the following:

1. Complete the transaction for which the personal information was collected.

2. Fulfill the terms of a written warranty or product recall conducted in accordance with federal law.

3. Detect security threats or incidents; protect against malicious, deceptive, fraudulent, unauthorized, or illegal activity or access; or prosecute those responsible for such activity or access.

4. Debug to identify and repair errors that impair existing intended functionality.

5. Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the controller or that are compatible with the context in which the consumer provided the information.

6. Comply with a legal obligation, including any state or federal retention laws.

7. Protect the controller's interests against existing disputes, legal action, or governmental investigations.

8. Assure the physical security of persons or property.

(6) RIGHT TO OPT OUT OF THE SALE OR SHARING OF PERSONAL INFORMATION.—

(a) A consumer has the right at any time to direct a controller not to sell or share the consumer's personal information to a third party. This right may be referred to as the right to opt out.

(b) Notwithstanding paragraph (a), a controller may not sell or share the personal information of a minor consumer if the controller has actual knowledge that the consumer is not 18 years of age or older. However, if a consumer who is between 13 and 18 years of age, or if the parent or guardian of a consumer who is 12 years of age or younger, has affirmatively authorized the sale or sharing of such consumer's personal information, then a controller may sell or share such information in accordance with this section. A controller that willfully disregards the consumer's age is deemed to have actual knowledge of the consumer's age. A controller that complies with the verifiable parental consent requirements of the Children's Online Privacy Protection Act, 15 U.S.C. s. 6501 et seq., shall be deemed compliant with any obligation to obtain parental consent.

(c) A controller that has received direction from a consumer opting out of the sale or sharing of the consumer's personal information is prohibited from selling or sharing the consumer's personal information beginning 4 calendar days after receipt of such direction, unless the consumer subsequently provides express authorization for the sale or sharing of the consumer's personal information.

(7) FORM TO OPT OUT OF SALE OR SHARING OF PERSONAL INFORMATION.—

(a) A controller shall:

1. In a form that is reasonably accessible to consumers, provide a clear and conspicuous link on the controller's Internet homepage, entitled "Do Not Sell or Share My Personal Information," to an Internet webpage that enables a consumer, a parent or guardian of a minor who is a consumer, or a person authorized by the consumer, to opt out of the sale or sharing of the consumer's personal information. A controller may not require a consumer to create an account in order to direct the controller not to sell or share the consumer's personal information. A controller may accept a request to opt out received through a user-enabled global privacy control, such as a browser plug-in or privacy setting, device setting, or other mechanism, which communicates or signals the consumer's choice to opt out.

2. For consumers who opted out of the sale or sharing of their personal information, respect the consumer's decision to opt out for at least 12 months before requesting that the consumer authorize the sale or sharing of the consumer's personal information.

3. Use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

(b) A consumer may authorize another person to opt out of the sale or sharing of the consumer's personal information on

the consumer's behalf pursuant to rules adopted by the department.

(8) ACTIONS RELATED TO CONSUMERS WHO EXERCISE PRIVACY RIGHTS.—

(a) A controller may not deny goods or services to a consumer because the consumer exercised any of the consumer's rights under this section.

(b) A controller may charge a consumer who exercised any of the consumer's rights under this section a different price or rate, or provide a different level or quality of goods or services to the consumer, only if that difference is reasonably related to the value provided to the controller by the consumer's data or is related to a consumer's voluntary participation in a financial incentive program, including a bona fide loyalty, rewards, premium features, discounts, or club card program offered by the controller.

(c) A controller may offer financial incentives, including payments to consumers as compensation, for the collection, sharing, sale, or deletion of personal information if the consumer gives the controller prior consent that clearly describes the material terms of the financial incentive program. The consent may be revoked by the consumer at any time.

(d) A controller may not use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.

(9) CONTRACTS AND ROLES.—

(a) Any contract or agreement between a controller and a processor must:

1. Prohibit the processor from selling, sharing, retaining, using, or disclosing the personal information for any purpose that violates this section;

2. Prohibit the processor from retaining, using, or disclosing the personal information other than for the purposes specified in the contract or agreement;

3. Prohibit the processor from combining the personal information that the processor receives from or on behalf of the controller with personal information that the processor receives from or on behalf of another person or that the processor collects from its own interaction with the consumer, provided that the processor may combine personal information to perform any purpose specified in the contract or agreement and such combination is reported to the controller;

4. Govern the processor's personal information processing procedures with respect to processing performed on behalf of the controller, including processing instructions, the nature and purpose of processing, the type of information subject to processing, the duration of processing, and the rights and obligations of both the controller and processor;

5. Require the processor to return or delete all personal information under the contract to the controller as requested by the controller at the end of the provision of services, unless

retention of the information is required by law; and

6. Upon request of the controller, require the processor to make available to the controller all personal information in its possession under the contract or agreement.

(b) Determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends upon the context in which personal information is to be processed. The contract between a controller and processor must reflect their respective roles and relationships related to handling personal information. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal information remains a processor.

(c) A third party that has collected personal information from a controller in accordance with this section:

1. May not sell or share personal information about a consumer unless the consumer is provided an opportunity by such third party to opt out under this section. Once a third party sells or shares personal information after providing the opportunity to opt out, the third party becomes a controller under this section if the entity meets the definition of controller in subsection (2).

2. May use such personal information from a controller to advertise or market products or services that are produced or offered directly by such third party.

(d) A processor or third party must require any subcontractor to meet the same obligations of such processor or third party with respect to personal information.

(e) A processor or third party or any subcontractor thereof who violates any of the restrictions imposed upon it under this section is liable or responsible for any failure to comply with this section. A controller that discloses personal information to a third party or processor in compliance with this section is not liable or responsible if the person receiving the personal information uses it without complying with the restrictions under this section if, provided that at the time of disclosing the personal information, the controller does not have actual knowledge or reason to believe that the person does not intend to comply with this section.

(f) Any provision of a contract or agreement of any kind that waives or limits in any way a consumer's rights under this section, including, but not limited to, any right to a remedy or means of enforcement, is deemed contrary to public policy and is void and unenforceable. This section does not prevent a consumer from declining to exercise the consumer's rights under this section.

(10) SOCIAL MEDIA PLATFORM PROTECTION FOR CHILDREN.—

(a) A social media platform as defined in s. 112.23 that is predominantly accessed by children may not:

1. Collect, sell, or share the personal information of any

child if the controller has actual knowledge that collecting, selling, or sharing such information may result in substantial harm or risk to the child.

2. Use any deceptive patterns, techniques, mechanisms, or dark patterns to lead or encourage children to provide personal information in excess of what is reasonably needed by the social media platform to allow the child to use or participate in the platform.

3. Use any deceptive patterns, techniques, mechanisms, or dark patterns to mislead or deceive children into making unintended or harmful decisions on the platform.

(b) A social media platform that violates this subsection is subject to the remedies and penalties under subsection (11).

(11) ENFORCEMENT AND IMPLEMENTATION BY THE DEPARTMENT.—

(a) Any violation of this section is an unfair and deceptive trade practice actionable under part II of chapter 501 solely by the department against a controller, processor, or third party. If the department has reason to believe that any controller, processor, or third party is in violation of this section, the department, as the enforcing authority, may bring an action against such controller, processor, or third party for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply. In addition to other remedies under part II of chapter 501, the department may collect a civil penalty of

up to $50,000 per violation of this section. Civil penalties may be tripled for the following violations:

1. Any violation involving a Florida consumer who the controller, processor, or third party has actual knowledge is 18 years of age or younger.

2. Failure to delete or correct the consumer's personal information pursuant to this section after receiving a verifiable consumer request or directions from a controller to delete or correct such personal information unless the controller, processor, or third party qualifies for an exception to the requirements to delete or correct such personal information under this section.

3. Continuing to sell or share the consumer's personal information after the consumer chooses to opt out under this section.

(b) After the department has notified a controller, processor, or third party in writing of an alleged violation, the department may in its discretion grant a 45-day period to cure the alleged violation. The 45-day cure period does not apply to a violation of subparagraph (a)1. The department may consider the number and frequency of violations, the substantial likelihood of injury to the public, and the safety of persons or property when determining whether to grant 45 calendar days to cure and the issuance of a letter of guidance. If the violation is cured to the satisfaction of the department and proof of such

cure is provided to the department, the department may not bring an action for the alleged violation but in its discretion may issue a letter of guidance that indicates that the controller, processor, or person will not be offered a 45-day cure period for any future violations. If the controller, processor, or third party fails to cure the violation within 45 calendar days, the department may bring an action against the controller, processor, or third party for the alleged violation.

(c) Any action brought by the department may be brought only on behalf of a Florida consumer.

(d) By February 1 of each year, the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives describing any actions taken by the department to enforce this section. Such report must be made publicly available on the department's website. The report must include statistics and relevant information detailing:

1. The number of complaints received and the categories or types of violations alleged by the complainant;

2. The number and type of enforcement actions taken and the outcomes of such actions, including the amount of penalties issued and collected;

3. The number of complaints resolved without the need for litigation; and

4. The status of the development and implementation of rules to implement this section.

(e) The department may adopt rules to implement this section, including standards for verifiable consumer requests, enforcement, data security, and authorized persons who may act on a consumer's behalf.

(f) The department may collaborate and cooperate with other enforcement authorities of the federal government or other state governments concerning consumer data privacy issues and consumer data privacy investigations if such enforcement authorities have restrictions governing confidentiality at least as stringent as the restrictions provided in this section.

(g) Liability for a tort, contract claim, or consumer protection claim that is unrelated to an action brought under this subsection does not arise solely from the failure of a controller, processor, or third party to comply with this section.

(h) This section does not establish a private cause of action.

(i) The department may employ or use the legal services of outside counsel and the investigative services of outside personnel to fulfill the obligations of this section.

(12) JURISDICTION.—For purposes of bringing an action pursuant to subsection (11), any person who meets the definition of controller as defined in this section which collects, shares, or sells the personal information of Florida consumers is considered to be both engaged in substantial and not isolated

activities within this state and operating, conducting, engaging in, or carrying on a business, and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

(13) PREEMPTION.—This section is a matter of statewide concern and supersedes all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the collection, processing, sharing, or sale of consumer personal information by a controller or processor. The regulation of the collection, processing, sharing, or sale of consumer personal information by a controller or processor is preempted to the state.

Section 3. Paragraph (g) of subsection (1) of section 501.171, Florida Statutes, is amended to read:

501.171 Security of confidential personal information.—

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

(g)1. "Personal information" means either of the following:

a. An individual's first name or first initial and last name in combination with any one or more of the following data elements for that individual:

(I) A social security number;

(II) A driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify

identity;

(III) A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;

(IV) Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; ~~or~~

(V) An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual;

(VI) An individual's biometric information or genetic information as defined in s. 501.173(2); or

(VII) Any information regarding an individual's geolocation.

b. A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.

2. The term does not include information about an individual that has been made publicly available by a federal, state, or local governmental entity. The term also does not include information that is encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable.

Section 4. Subsection (1) of section 16.53, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

16.53 Legal Affairs Revolving Trust Fund.—

(1) There is created in the State Treasury the Legal Affairs Revolving Trust Fund, from which the Legislature may appropriate funds for the purpose of funding investigation, prosecution, and enforcement by the Attorney General of the provisions of the Racketeer Influenced and Corrupt Organization Act, the Florida Deceptive and Unfair Trade Practices Act, the Florida False Claims Act, ~~or~~ state or federal antitrust laws, or s. 501.173.

(8) All moneys recovered by the Attorney General for attorney fees, costs, and penalties in an action for a violation of s. 501.173 must be deposited in the fund.

Section 5. This act shall take effect July 1, 2023.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1547 by Rep. McFarland
Technology Transparency

AMENDMENT SUMMARY
March 28, 2023

Amendment 1 by Rep. McFarland (line 872):

- Makes technical changes to conform the bill.

Amendment 2 by Rep. McFarland (line 971):

- Makes technical changes to conform the bill.

Amendment 3 by Rep. McFarland (line 1025):

- Provides that online platforms that are predominantly accessed by children may not, except under certain circumstances:
  - Process personal information of or profile a child.
  - Collect, sell, share, or retain personal information or geolocation of a child.
  - Use a child's personal information for any unstated reason.
  - Use dark patterns to obtain more information of a child than necessary.
  - Use collected information to estimate age for any other reason.
- If an online platform violates such operating requirements, such platform is liable for enforcement measures by the Department of Legal Affairs.

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: Regulatory Reform & Economic Development Subcommittee
Representative McFarland offered the following:

Amendment (with title amendment)

Remove lines 872-889 and insert:

(10) ENFORCEMENT AND IMPLEMENTATION BY THE DEPARTMENT.—

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

Remove lines 55-62 and insert:

unenforceable; authorizing the Department of Legal Affairs

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: Regulatory Reform & Economic Development Subcommittee

Representative McFarland offered the following:

Amendment

Remove lines 971-980 and insert:

(11) JURISDICTION.—For purposes of bringing an action pursuant to subsection (10), any person who meets the definition of controller as defined in this section which collects, shares, or sells the personal information of Florida consumers is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business, and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

(12) PREEMPTION.—This section is a matter of statewide

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: Regulatory Reform & Economic Development Subcommittee
Representative McFarland offered the following:

Amendment (with title amendment)

Between lines 1025 and 1026, insert:

Section 4. Section 501.1735, Florida Statutes, is created to read:

501.1735 Protection of Children in Online Spaces.—

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

(a) "Child" or "Children" means a consumer or consumers who are under 18 years of age.

(b) "Dark pattern" means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making or choice and includes,

but is not limited to, any practice the Federal Trade Commission refers to as a "dark pattern."

(c) "Online platform" includes social media platforms as defined in s. 112.23 and online gaming platforms.

(d) "Personal information" means the same as in s. 501.173.

(e) "Profile" or "profiling" means any form of automated processing performed on personal information to evaluate, analyze or predict personal aspects related to a child's economic situation, health, personal preferences, interests, reliability, behavior, location or movements.

(f) "Precise geolocation data" means the same as in s. 501.173.

(g) "Substantial harm or privacy risk to children" means the processing of personal information in a manner that may result in any reasonably foreseeable substantial physical injury, economic injury, or offensive intrusion into the privacy expectations of a reasonable child under the circumstances, including:

1. Mental health disorders or associated behaviors, including the promotion or exacerbation of self-harm, suicide, eating disorders, and substance use disorders;

2. Patterns of use that indicate or encourage addiction-like behaviors;

3. Physical violence, online bullying, and harassment;

4. Sexual exploitation, including enticement, sex trafficking, and sexual abuse and trafficking of online sexual abuse material;

5. Promotion and marketing of narcotic drugs (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), tobacco products, gambling, or alcohol; and

6. Predatory, unfair, or deceptive marketing practices, or other financial harms.

(2) An online platform that provides an online service, product, game, or feature likely to be predominantly accessed by children may not:

(a) Process the personal information of any child if the online platform has actual knowledge or willfully disregards that the processing may result in substantial harm or privacy risk to children.

(b) Profile a child unless both of the following criteria are met:

1. The online platform can demonstrate it has appropriate safeguards in place to protect children.

2. Either of the following is true:

a. Profiling is necessary to provide the online service, product, or feature requested and only with respect to the aspects of the online service, product, or feature with which the child is actively and knowingly engaged.

b. The online platform can demonstrate a compelling reason that profiling does not pose a substantial harm or privacy risk to children.

(c) Collect, sell, share, or retain any personal information that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged, or as described below, unless the online platform can demonstrate a compelling reason that the collecting, selling, sharing, or retaining of the personal information does not pose a substantial harm or privacy risk to children likely to routinely access the online service, product, or feature.

(d) Use personal information of a child for any reason other than a reason for which that personal information was collected, unless the online platform can demonstrate a compelling reason that use of the personal information does not pose a substantial harm or privacy risk to children.

(e) Collect, sell, or share any precise geolocation data of children unless the collection of that precise geolocation data is strictly necessary for the online platform to provide the service, product, or feature requested and then only for the limited time that the collection of precise geolocation data is necessary to provide the service, product, or feature.

(f) Collect any precise geolocation data of a child without providing an obvious sign to the child for the duration

of that collection that precise geolocation data is being collected.

(g) Use dark patterns to lead or encourage children to provide personal information beyond what is reasonably expected to provide that online service, product, game, or feature, to forego privacy protections, or to take any action that the online platform has actual knowledge or willfully disregards may result in substantial harm or privacy risk to children.

(h) Use any personal information collected to estimate age or age range for any other purpose or retain that personal information longer than necessary to estimate age. Such age estimate shall be proportionate to the risks and data practice of an online service, product, or feature.

(3) If an online platform processes personal information pursuant to this section, the online platform bears the burden of demonstrating that such processing is not in violation of this section.

(4) An online platform that violates subsection (2) is subject to enforcement actions in s. 501.173, and such enforcement actions are the exclusive remedy. This section does not establish a private cause of action.

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

Between lines 73 and 74, insert:

creates s. 501.1735, F.S.; providing operating requirements for certain online platforms who are likely to be predominantly accessed by children; providing enforcement;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1549 Pub. Rec./Investigations by the Department of Legal Affairs
SPONSOR(S): McFarland
TIED BILLS: HB 1547 **IDEN./SIM. BILLS:** SB 1648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Ethics, Elections & Open Government Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

As technologies that capture and analyze data proliferate, so, too, do businesses' abilities to contextualize consumer data. Businesses use it for a range of purposes. The European Union, California, and a few other states have enacted data privacy regulations to protect consumers' personal information and give consumers more control over how their information is used.

HB 1574, to which this bill is linked, gives certain consumer rights related to personal information, including:

- The right to access personal information collected about them;
- The right to delete or correct their personal information; and
- The right to opt-out of the sale or sharing of their personal information to third parties.

The Department of Legal Affairs (DLA), upon belief that any controller, processor, or third party is in violation of HB 1574's provisions, may bring an action under the Florida Unfair or Deceptive Trade Practices Act against a controller, processor, or third party.

This bill, which is linked to the passage of HB 1574, provides that all information received by DLA pursuant to a notification or investigation by DLA or a law enforcement agency of a violation is confidential and exempt from public record requirements. The bill provides that the information may be released during an active investigation:

- In the furtherance of official duties and responsibilities;
- For print, publication, or broadcast to notify the public of a data breach; or
- To another governmental entity in the furtherance of its official duties and responsibilities.

Once an investigation is completed, the following information will remain confidential and exempt:

- All information to which another public records exemption applies;
- Personal information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in data security; and
- Information that would otherwise disclose proprietary information.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2027, unless the Legislature reviews and reenacts the exemption by that date.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a).[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no more broad than necessary to accomplish its purpose.[3]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act[4] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[5]

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[6]

Consumer Data Privacy

As technologies that capture and analyze data proliferate, so, too, do businesses' abilities to contextualize consumer data. Businesses use it for a range of purposes, including better understanding day-to-day operations, making more informed business decisions and learning about their customers.[7]

The European Union, several other countries, California, and a few other states have enacted data privacy regulations to protect such data and give consumers more control over how their information is used. Florida does not have a broad data privacy law, but there is a law which governs what actions must be taken by certain government and business entities in the event of a data breach of personal information.[8]

Department of Legal Affairs

The Office of the Attorney General, also known as the Department of Legal Affairs (DLA), provides a wide variety of legal services, including defending the state in civil litigation cases, representing the

[1] Art. I, s. 24(c), FLA. CONST.
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] Art. I, s. 24(c), FLA. CONST.
[4] Section 119.15, F.S.
[5] Section 119.15(6)(b), F.S.
[6] Section 119.15(3), F.S.
[7] Max Freedman, How Businesses Are Collecting Data (And What They're Doing With It), Business News Daily (Jun. 17, 2020) https://www.businessnewsdaily.com/10625-businesses-collecting-data.html.
[8] S. 501.171, F.S.

people of Florida in criminal appeals in state and federal courts, protecting rights of children, consumers, and victims through its various protection programs, and investigating and litigating against businesses that seek to limit competition and defraud taxpayers.[9]

HB 1547

HB 1547, to which this bill is linked, gives certain consumer rights related to personal information, including:

- The right to access personal information collected on them by a controller;
- The right to delete or correct their personal information; and
- The right to opt-out of the sale or sharing of their personal information to third parties.

A "controller" is a for profit entity that does business in Florida, collects and controls personal information, and satisfies two or more of the following thresholds:

- Has global annual gross revenues in excess of $50 million, as adjusted in January of every odd-numbered year to reflect any increase in the Consumer Price Index.
- Annually buys, receives, sells, or shares the personal information of 50,000 or more consumers, households, or devices for targeted advertising in conjunction with third parties or that is not covered by an exception.
- Derives 50 percent or more of its global annual revenues from selling or sharing personal information about consumers.

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

The bill proscribes certain operational requirements on controllers with respect to collecting, selling, or sharing personal information with processors or third parties.

DLA, upon belief that any controller, processor, or third party is in violation of the consumer data requirement provisions, may bring an action under the Florida Unfair or Deceptive Trade Practices Act against a controller, processor, or third party.

Effect of Proposed Changes

The bill creates a public record exemption for all information received by DLA pursuant to a notification or investigation by DLA or a law enforcement agency of a violation of certain statutory requirements. Such information is made confidential and exempt[10] from public record requirements.

During an active investigation, information made confidential and exempt may be disclosed by DLA:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if DLA determines that such release would assist in notifying the public or locating or identifying a person that DLA believes to be a victim of a data breach or improper use or disposal of customer records, except that information made confidential and exempt after an investigation may not be released in this manner; or
- To another governmental entity in the furtherance of its official duties and responsibilities.

[9] OPPAGA, Office of the Attorney General (Department of Legal Affairs), https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1026 (last visited Mar. 25, 2023).

[10] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. (1985).

Once an investigation is completed or once an investigation ceases to be active, the following information received by DLA will remain confidential and exempt:

- All information to which another public records exemption applies;
- Personal information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a controller's, processor's, or third party's data security; and
- Information that would otherwise disclose a controller's, processor's, or third party's proprietary information.

The term "proprietary information" means information that:

- Is owned or controlled by the controller, processor, or third party;
- Is intended to be private and is treated by the controller, processor, or third party as private because disclosure would harm the controller, processor, or third party or its business operations;
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public;
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by DLA; and
- Includes trade secrets and competitive interests.

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that, if released, information received by DLA pursuant to an investigation by DLA or a law enforcement agency could:

- Frustrate or thwart the investigation and impair the ability of DLA to perform assigned functions;
- Undo a specific statutory exemption protecting the information;
- Be used for the purpose of identity theft;
- Result in the identification of vulnerabilities; and
- Result in economic harm.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2028, unless the Legislature reviews and reenacts the exemption by that date.

The bill will become effective on the same date that HB 1547 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1: Creates a public records exemption for investigations related to s. 501.173, F.S.
Section 2: Provides a public necessity statement as required by the Florida Constitution.
Section 3: Provides an effective date of the same date that HB 1547 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on DLA because agency staff responsible for complying with public records requests may require training related to the creation of the public records exemption. DLA could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for sensitive investigative materials and personal information, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; amending s. 501.173, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (14) is added to section 501.173, Florida Statutes, as created by HB 1547, 2023 Regular Session, to read:

501.173 Consumer data privacy.—

(14) PUBLIC RECORDS EXEMPTION.—

(a) All information received by the department pursuant to a notification of a violation under this section, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of this section, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be

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

construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in

the data security of a controller, processor, or third party.

5. Information that would disclose the proprietary information of a controller, processor, or third party.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the controller, processor, or third party.

2. Is intended to be private and is treated by the controller, processor, or third party as private because disclosure would harm the controller, processor, or third party or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive advantage of the controller, processor, or third party who is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from

repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.173, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of s. 501.173, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.173, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 501.173, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information to which another public record exemption applies once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information.

(3) An investigation of a violation of s. 501.173, Florida Statutes, is likely to result in the gathering of sensitive personal information, including identification numbers, unique

identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.

(4) Notices received by the department and information received during an investigation of a violation of s. 501.173, Florida Statutes, are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual, or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the controller, processor, or third party submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary information in the marketplace.

(5) Information received by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of a controller, processor, or third party. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the controller, processor, or third party and be used to harm

the controller, processor, or third party and clients.

(6) The harm that may result from the release of information received by the department pursuant to a notification or investigation by the department or a law enforcement agency of a violation of s. 501.173, Florida Statutes, could impair the effective and efficient administration of the investigation and thus, outweighs the public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect on the same date that HB 1547 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1549 by Rep. McFarland
Pub. Rec./Investigations by the Department of Legal Affairs

AMENDMENT SUMMARY
March 28, 2023

Amendment 1 by Rep. McFarland (line 14):

- Conforms the bill to changes made in the linked bill.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform & Economic Development Subcommittee
Representative McFarland offered the following:

Amendment

Remove lines 14-130 and insert:

Section 1. Subsection (13) is added to section 501.173, Florida Statutes, as created by HB 1547, 2023 Regular Session, to read:

501.173 Consumer data privacy.—

(13) PUBLIC RECORDS EXEMPTION.—

(a) All information received by the department pursuant to a notification of a violation under this section, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of this section or s. 501.1735, is confidential and exempt from s. 119.07(1) and s.

24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in the data security of a controller, processor, or third party.

5. Information that would disclose the proprietary information of a controller, processor, or third party.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the controller, processor, or third party.

2. Is intended to be private and is treated by the controller, processor, or third party as private because disclosure would harm the controller, processor, or third party or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive advantage of the controller, processor, or third party who is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.173 or s. 501.1735, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of s. 501.173 or s. 501.1735, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.173 or s. 501.1735, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 501.173 or s. 501.1735, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information to which another public record exemption applies once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information.

(3) An investigation of a violation of s. 501.173 or s. 501.1735, Florida Statutes, is likely to result in the gathering of sensitive personal information, including identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.

(4) Notices received by the department and information received during an investigation of a violation of s. 501.173 or s. 501.1735, Florida Statutes, are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual, or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the controller, processor, or third party submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary information in the marketplace.

(5) Information received by the department may contain a computer forensic report or information that could reveal

weaknesses in the data security of a controller, processor, or third party. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the controller, processor, or third party and be used to harm the controller, processor, or third party and clients.

(6) The harm that may result from the release of information received by the department pursuant to a notification or investigation by the department or a law enforcement agency of a violation of s. 501.173 or s. 501.1735, Florida

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RRS 23-02 Tourism Development
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform & Economic Development Subcommittee		Walsh	Anstead

SUMMARY ANALYSIS

The Florida Tourism Industry Marketing Corporation, otherwise known as "VISIT FLORIDA" (VF), is a nonprofit corporation established by the Florida Legislature to serve as Florida's statewide destination marketing organization, representing the state's tourism industry.

The Local Option Tourist Development Act authorizes counties to levy five separate taxes on transient rental transactions (tourist development taxes or TDTs). Depending on a county's eligibility and whether the county chooses to levy such taxes, the current TDT rate across the counties varies from zero percent to six percent. Statewide TDT revenue has more than doubled over the past decade – from a total of $600 million statewide in FY 12-13 to a total of $1.5 billion statewide in FY 22-23.

The bill requires VF to be funded by local TDTs.

The bill requires:

- A percentage of each county's TDT revenue to be used to fully fund VF for a mandatory period of three years.
    - After three years, it will be optional for counties to fund VF through the TDTs, if the county commission votes to continue funding.
- VF to expend at least seventy-five percent of all funds to directly assist rural counties and Florida's state parks and forests.
- VF not accept any financial assistance or specific appropriation from the state.
- VF to be dissolved if funding falls below a certain level, or VF accepts financial assistance from the state.
- Counties to hold additional referendums before imposing any of TDT.
    - TDTs expire after six years and must be renewed by a referendum.
- Counties to submit six-year plans for the expenditure of TDT funds to the governing board of the county prior to a referendum.

The bill also repeals the Tourism Promotional Trust Fund.

The bill will not impact state revenues. The bill may impact local revenues and state and local expenditures. *See* Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2023.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Tourism Industry Marketing Corporation (VISIT Florida)

The Florida Tourism Industry Marketing Corporation, otherwise known by the service mark "VISIT FLORIDA"[1] (VF), is a nonprofit corporation established by the Florida Legislature to serve as a direct support organization of Enterprise Florida, Inc.[2] (EFI).[3] VF was created by the legislature in 1996 and operates as a non-profit corporation that serves as Florida's statewide destination marketing organization, representing the state's tourism industry.[4] Florida law requires that EFI contract with VF "to execute tourism promotion and marketing services, functions, and programs for the state."[5]

EFI's Division of Tourism Marketing (division) is the entity created through statute that interacts and contracts with VF. In practice, VF is EFI's tourism marketing division. The division is staffed by VF and that staff is not employed by EFI.[6] VF's primary responsibilities include:

- Administering domestic and international advertising campaigns;
- Coordinating domestic and international marketing activities;
- Coordinating marketing efforts with local tourism marketing organizations;
- Managing Florida's four welcome centers;
- Conducting research on tourism and travel trends;
- Administering marketing activities for Veterans Florida;[7] and
- Marketing to assist the state following critical events, such as storms.[8]

Through a contractual relationship with the Department of Economic Opportunity (DEO), VF is held to performance measures and standards. VF's 31-member board of directors is appointed by DEO in conjunction with EFI and meets three times a year to provide guidance, input, and insight to, and work directly with VF executive staff.[9] VF's board of directors is composed of 16 regional members, with at least two representing each of six statutorily designated geographic areas of the state, and 15 additional tourism industry related members that serve two-year terms, including:

- One from the statewide rental car industry;
- Seven from tourist-related statewide associations;[10]
- Three from county destination marketing organizations;
- One from the cruise industry;
- One from an automobile and travel services membership organization;[11]
- One from the airline industry; and

[1] The fictitious name "VISIT FLORIDA" is registered with the Department of State, registration no. G18000088414.
[2] Enterprise Florida, Inc., (EFI) is a non-profit corporation created to act as the state's economic development organization, using expertise from both the private and public sectors. EFI is not a unit or entity of state government. S. 288.901(1) and (2), F.S.
[3] S. 288.1226(2), F.S.
[4] S. 288.1226, F.S.
[5] S. 288.923(3), F.S.
[6] S. 288.923(5), F.S.
[7] Veterans Florida is a non-profit corporation created by the State of Florida to help military veterans transition to civilian life and to promote Florida's status as the nation's most veteran-friendly state. *See* Veterans Florida, *About Us*, https://www.veteransflorida.org/about/ (last visited Mar. 20, 2023).
[8] Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 8*, 13 (December 2020), available at https://oppaga.fl.gov/Documents/Reports/20-08.pdf (last visited Mar. 20, 2023).
[9] *Id.* at 12.
[10] This includes tourist-related associations that represent hotels, campgrounds, county destination marketing organizations, museums, restaurants, retail, and attractions. *See* S. 288.1226(4) (b).
[11] Such organization must have at least 2.8 million members in Florida. *See Id.*

- One from the space tourism industry.[12]

VF is required to develop a four-year marketing plan[13] for the state that addresses issues such as continuation of tourism growth in Florida, expansion to new or underrepresented markets, coordination with local and private sector partners on tourism advertising, and addressing emergency responses to disasters from a marketing standpoint.[14]

For Fiscal Year 2022-2023, VF received a total appropriation of $50 million,[15] and for Fiscal Year 2021-2022, VF received a total appropriation of $75 million.[16] Payments are made to VF through EFI from DEO. VF enters into a funding agreement with EFI and DEO and an operating agreement with EFI.[17]

As a public-private partnership, VF is required to obtain private sector contributions to match public contributions. Eligible matching contributions come from four categories:
- Direct cash contributions;
- Fees for services;
- Cooperative advertising, which is limited to partner expenditures for paid media placement and actual market value of contributed products, air time, and print space; and
- In-kind contributions, which is limited to the actual market value of promotional contributions of partner-supplied benefits or of non-partner supplied airtime or print space.[18]

Both VF and the Division of Tourism Marketing will sunset on October 1, 2028, unless reviewed and saved from repeal by the Legislature.[19]

Tourism Promotional Trust Fund

Moneys deposited in the Tourism Promotional Trust Fund may only be used to support the authorized activities and operations and the tourism promotion and marketing activities, services, functions, and programs administered by EFI, through a contract with VF. The Tourism Promotional Trust Fund receives 15.75% of the state's rental car surcharge tax.[20]

Tourist Development Taxes

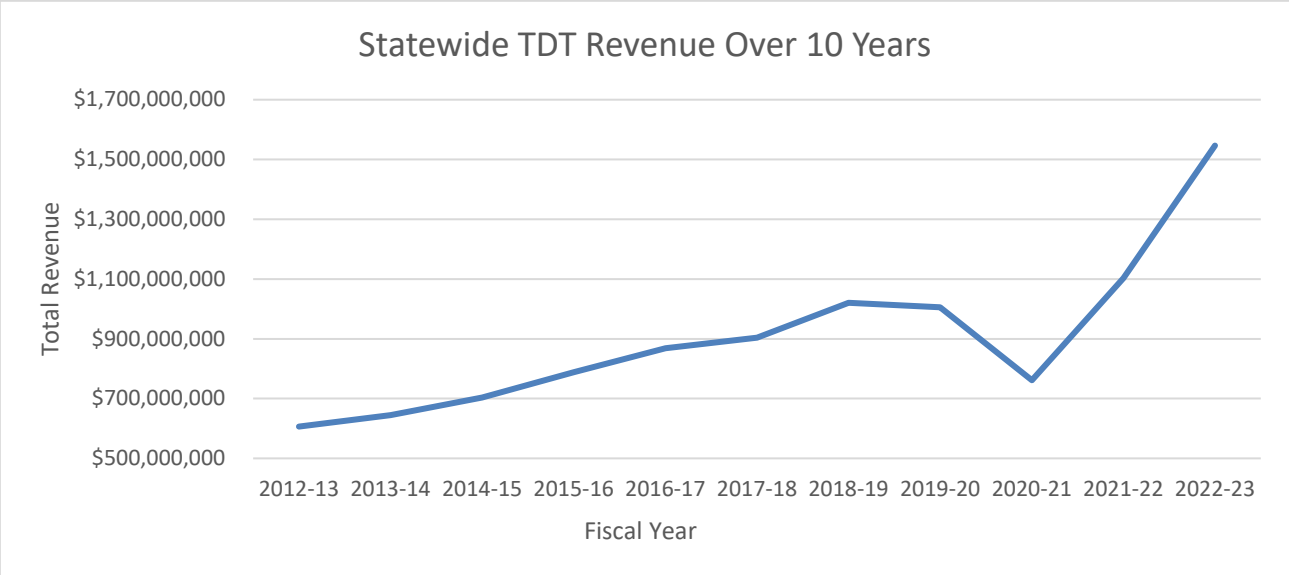
Overview

Currently, sixty-two of the sixty-seven counties in the state levy at least one type of TDT.[21]

Statewide TDT revenue has more than doubled over the past decade – from a total of $600 million statewide in FY 12-13 to a total of $1.5 billion statewide in FY 22-23. In Fiscal Year 2012-13, Florida counties realized a total of $606,389,013 in TDT revenue. In Fiscal Year 2022-23, Florida counties collected $1,546,495,275 in TDT revenue.
Local counties have seen revenues from TDTs grow exponentially. For example, Orange county, which currently levies the maximum potential tax rate of 6%, jumped from collecting over $187 million in Fiscal Year 2012-13 to collecting over $302 million in Fiscal Year 2022-23. Wakulla county, which

[12] S. 288.1226(4), F.S.
[13] This plan is annual in construction and ongoing in nature. *See* S. 288.923(4)(c), F.S.
[14] S. 288.923(4)(c), F.S.
[15] Specific Appropriation 2303, s. 6, ch. 2022-156, Laws of Fla.
[16] Specific Appropriation 2244, s. 6, ch. 2021-36, Laws of Fla.; S.A. 2244, s. 152, ch. 2021-36, Laws of Fla.
[17] *See Funding Agreement SB23-003- Agreement between the Department of Economic Opportunity, Enterprise Florida, Inc., and the Florida Tourism Industry Marketing Corporation*, executed August 26, 2022, available at https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=400000&ContractId=S0198 (last visited Mar. 20, 2023).
[18] S. 288.1226(6), F.S.
[19] Ss. 288.1226(14) and 288.923(6), F.S.
[20] S. 212.0606(5)(a), F.S.
[21] *Id*.

currently levies a tax rate of 4%, went from collecting $131,532 in Fiscal Year 2012-13 to collecting $306,528 in Fiscal Year 2022-23.[22]



[23]

The Local Option Tourist Development Act

The Local Option Tourist Development Act[24] authorizes counties to levy five separate taxes on transient rental[25] transactions, which are known as tourist development taxes or TDTs. These taxes are raised on local accommodations or short term rentals and are sometimes known as "resort taxes," "bed taxes," or "local option tourist taxes." However, these taxes are not limited to tourists - anyone staying in a hotel regardless of whether they reside in Florida or another state typically pays them.

Prior to the authorization of the initial one or two percent TDT, the levy must be approved by a countywide referendum held at a general election[26] and approved by a majority of the electors voting in the county.[27]

Depending on a county's eligibility to levy such taxes, the maximum potential tax rate varies. The original TDT[28] may be levied at the rate of one or two percent on the total consideration charged for transient rental transactions.[29] All sixty-seven of Florida's counties are eligible to levy the one or two percent tax, but only sixty-two counties have done so, all at a rate of two percent.[30] These counties are estimated to realize $612 million in revenue from these taxes in the 2022-23 fiscal year.[31]

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[22] EDR, *Realized and Unrealized Revenues by County: LFY 2005-2023 [xls]* (November 2022), available at http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm (last visited Mar. 26, 2023).
[23] *Id*.
[24] S. 125.0104, F.S.
[25] Section 125.0104(3)(a)(1), F.S., considers "transient rental" to be the rental or lease of any accommodation for a term of six months or less.
[26] "General election" means an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law. S. 97.021(17), F.S.
[27] S. 125.0104(6), F.S.
[28] S. 125.0104(3)(c), F.S.
[29] Office of Economic & Demographic Research (EDR), *Local Government Financial Information Handbook* (December 2022), p. 251, http://edr.state.fl.us/Content/local-government/reports/lgfih22.pdf (last visited Mar. 23, 2023).
[30] EDR, *County Tax Rates: CY 2007-2023*, available at http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm (last visited Mar. 23, 2023).
[31] EDR, *2022 Local Government Financial Information Handbook* (December 2022) *supra* n. 24, p. 251.

County Participation and Estimated Revenue for the 2022-23 State Fiscal Year

TDT Type	Number of Eligible Counties	Number of Counties that Levy	Estimated Revenue
1 or 2 percent	67	62	$612 million
Additional 1 percent	59	56	$250 million
High tourism impact	14*	9	$162 million
Professional sports franchise facility	67	45	$285 million
Additional professional sports franchise facility tax	34	65	$217 million

* This number is an estimate.[32]

Additional Types of TDTs

An additional one percent tax may be levied by counties who have previously levied the original TDT at the one or two percent rate for at least three years.[33] Fifty-six of the eligible fifty-nine counties levy this tax, with an estimated 2022-23 state fiscal year collection of $250 million in revenue.[34]

Eligible counties may levy a high tourism impact tax at an additional one percent on the total consideration charged for transient rental transactions.[35] A county is considered a high tourism impact county after the Department of Revenue has certified to the county that its sales subject to the tax exceeded $600 million during the prior calendar year or were at least eighteen percent of the county's total taxable sales under ch. 212, F.S.[36] Nine of the estimated fourteen eligible counties currently levy this tax, and these counties will realize an estimated $162 in revenue during the 2022-23 state fiscal year.[37]

In addition to any other TDT imposed, a county may levy a professional sports franchise facility tax, which may be up to an additional one percent tax on the total consideration charged for transient rental transactions.[38] Revenue from this tax can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and convention centers and to promote and advertise tourism. Forty-five of the sixty-seven counties levy this additional tax, with an estimated 2022-23 state fiscal year collection of $285 million in revenue.[39]

An additional professional sports franchise facility tax no greater than one percent may be imposed by a county that has already levied the professional sports franchise facility tax.[40] Thirty-four out of the

[32] EDR, *2022 Local Government Financial Information Handbook* (December 2022) *supra* n. 24.
[33] S. 125.0104(3)(d), F.S.
[34] EDR, *2022 Local Government Financial Information Handbook* (December 2022) *supra* n. 24, p. 255.
[35] S. 125.0104(3)(m), F.S.
[36] EDR, *2022 Local Government Financial Information Handbook* (December 2022) *supra* n. 24, p. 261.
[37] *Id*.
[38] S. 125.0104(3)(l), F.S. *Id.* at 263.
[39] EDR, *2022 Local Government Financial Information Handbook* (December 2022) *supra* n. 24, p. 259.
[40] S. 125.0104(3)(n), F.S..

eligible sixty-five counties levy the additional professional sports franchise facility tax, with an estimated 2022-23 state fiscal year collection of $217 million in revenue.[41]

TDT Process

Each county that levies the original one or two percent TDT is required to have a tourist development council. The tourist development council is a group of residents from the county who are appointed by the county governing board. The tourist development council, among other duties, makes recommendations to the county governing board for the effective operation of special projects or for uses of the TDT revenue.[42]

Prior to the authorization of the original one or two percent TDT, the levy must be approved by a countywide referendum held at a general election[43] and approved by a majority of the electors voting in the county.[44] Additional TDT levies must be authorized by a vote of the county's governing board or by voter approval in a countywide referendum.[45]

Each county proposing to levy the original one or two percent tax must then adopt an ordinance for the levy and imposition of the tax,[46] which must include a plan for tourist development prepared by the tourist development council.[47] The plan for tourist development must include the anticipated net tax revenue to be derived by the county for the two years following the tax levy, as well as a list of the proposed uses of the tax and the approximate cost for each project or use.[48] The plan for tourist development may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.[49]

Currently, once a county has obtained approval to levy the original one or two percent TDT tax through a referendum, that county is not required to seek electorate approval through a referendum to continue levying the original TDT tax or to initially impose any of the additional TDT taxes.

TDT Uses

Current law authorizes counties to levy and spend TDTs as a mechanism for funding a variety of tourist-related uses, including tourism promotion and the financing and construction of public facilities needed to increase tourist-related business activities in the county, beach restoration and maintenance projects, and convention centers and professional sports franchise facilities.[50] More specifically, the revenues derived from TDTs may be used for:[51]

- The acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, or promotion of a zoo.
- Promotion and advertising of tourism in the state.

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[41] EDR, *2022 Local Government Financial Information Handbook* (December 2022) *supra* n. 24, p. 265.
[42] S. 125.0104(4)(e), F.S.
[43] "General election" means an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law. S. 97.021(17), F.S.
[44] S. 125.0104(6), F.S.
[45] Section 125.0104(3)(d), F.S.
[46] S. 125.0104(4)(a), F.S.
[47] S. 125.0104(4), F.S.
[48] *See* s. 125.0104(4), F.S.
[49] *See* s. 125.0104(4), F.S. The provisions found in s. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.
[50] Florida Legislative Committee on Intergovernmental Relations, *Issue Brief: Utilization of Local Option Tourist Taxes by Florida Counties in Fiscal Year 2009-10* (December 2009), http://edr.state.fl.us/Content/local-government/reports/localopttourist09.pdf (last visited Mar. 23, 2023).
[51] S. 125.0104, F.S.

- Funding of convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies, or by contract with chambers of commerce or similar associations in the county.
- Financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river.[52]
- In counties with populations less than 950,000, the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are publicly owned and operated or owned and operated by a not-for-profit organization and open to the public.[53]
- Securing revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum, or financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.

In addition, up to 10 percent of the tax revenue received by a county located adjacent to the Gulf of Mexico or the Atlantic Ocean may be used to reimburse for expenses incurred in providing public safety services[54] that are needed to address impacts related to increased tourism and visitors to an area. However, a county or municipality that does so may not use these funds to supplant the normal operating expenses of an emergency medical services department, a fire department, a sheriff's office, or a police department.[55] To receive reimbursement the county must:

- Generate a minimum of $10 million in annual proceeds from any tax, or any combination of taxes, authorized to be levied pursuant to this section;
- Have at least three municipalities; and
- Have an estimated population of less than 225,000.[56]

Revenues received by a county from the original one percent levy or the additional one percent levy can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and to promote and advertise tourism. The original one percent levy may also be used to operate or maintain a convention center.[57]

The use of TDT revenue for any purpose not expressly authorized in statute is expressly prohibited.[58]

Effect of the Bill

Under the bill, VISIT FLOIRDA (VF) must be **funded by the local tourist development taxes** (TDTs) collected by counties.

The bill requires:

- **Five percent** of all TDT revenue derived from a county that imposes such a tax to be quarterly remitted to VF, for three years, beginning July 1, 2023, and ending July 1, 2026.

[52] In counties with populations less than 100,000, up to 10 percent of tourist development tax revenues may be used for financing beach park facilities. *See* s. 125.0104(5)(a), F.S.
[53] S. 125.0104(5)(b), F.S.
[54] Public safety services include emergency medical services as defined in s. 401.107(3), F.S., and law enforcement services. S. 125.0104(5)(c), F.S.
[55] *Id*.
[56] S. 125.0104(5)(c), F.S.
[57] S. 125.0104(5)(d). F.S.
[58] S. 125.0104(5)(e), F.S.

    - Unless the county is a rural county,[59] in which case **two percent** of all TDT revenue derived from such a county must be quarterly remitted to VF.[60]
    - After July 1, 2026, counties may elect by a majority vote of the board of county commissioners to quarterly remit TDT revenue to fund VF, making it optional.
- **Seventy-five percent** of all VF's expenditures must be spent on programs that directly assist **rural counties and Florida's state parks and forests**.
- Any ordinance enacted to levy any of the TDTs (not just the initial one or two percent) must be approved in a referendum by at least sixty percent of the electors voting in the county.
- Ordinances, that levy and impose a TDT, expire six years after the date the ordinance is approved in a referendum, but the county may renew a TDT imposed by an expired ordinance in the same manner as the original TDT was approved.
- A county, through the county tourist development council, to submit six-year plans for the expenditure of TDT funds to the governing board of the county prior to a referendum.
    - Such plans must include the anticipated amount of tourist development revenue to be remitted to VF.

VF must still meet a one-to-one match requirement for all public funds received, which includes TDT revenues VF receives from counties. If VF fails to meet the one-to-one match requirement, VF shall remit all unmatched funds received from counties, which were derived from TDT revenue, to the counties that remitted funds to the corporation, on a pro rata basis, based on the amount of funds received from each county.

VF may not receive any financial support or specific appropriation from the state. If VF accepts any financial support or specific appropriation from the state after July 1, 2023, or if VF receives less than $1 million in public contributions within a fiscal year, VF will be dissolved and funds or liquidated assets held by VF will either be returned to the counties which remitted the funds or transferred to the General Revenue Fund.

The bill also repeals the Tourism Promotional Trust Fund and removes the allocation to the trust fund from the rental car surcharge.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.0104, F.S., relating to tourist development tax.

Section 2: Amends s. 212.0606, F.S., relating to rental car surcharge.

Section 3: Amends s. 288.0001, F.S., relating to economic development programs evaluation.

Section 4: Repeals s. 288.122, F.S., relating to Tourism Promotional Trust Fund.

Section 5: Amends s. 288.1226, F.S., relating to Florida Tourism Industry Marketing Corporation.

Section 6: Terminates the Tourism Promotional Trust Fund.

Section 7: Provides a declaration of important state interest.

Section 8: Provides an effective date of July 1, 2023.

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[59] Under the bill, a rural county is defined as a county:
- With a population of 75,000 or fewer; or
- With a population of 125,000 or fewer which is contiguous to a county of 75,000 or fewer.

A county's population will be determined in accordance with the most recent official estimate pursuant to s. 186.901, F.S.

[60] The bill requires that either the Department of Revenue or the county itself remit the required percentage of TDT revenue to VF, depending on whether the county has elected to self-administer the tax.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will likely have a recurring negative impact on state government expenditures, since the state will no longer be funding VF.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a positive impact on local revenues in rural counties, since VF will be required to expend a certain percentage of funds on assisting rural counties and state parks and forests. The bill will likely have a recurring indeterminate impact on local government expenditures for the three years that counties which impose TDTs must transfer funds to VF, depending on whether such counties already provide funds to VF.

2. Expenditures:

Insignificant. There may be additional expense for local governments to renew TDTs in a general election every 6 years.

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(a), of the Florida Constitution may apply because this bill requires counties to remit funds derived from local tourist development taxes to the Florida Tourism Industry Marketing Corporation. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, the law must fulfill an important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to tourism development; amending s. 125.0104, F.S.; providing a definition; revising the method of approval of the levy and imposition of certain county taxes; requiring the Department of Revenue and certain counties to remit a specified percentage of certain tax revenues to the Florida Tourism Industry Marketing Corporation during a certain period; authorizing a county to remit or direct the Department of Revenue to remit such tax revenues after a certain date; providing for the expiration of an ordinance that levies and imposes certain taxes; authorizing the renewal of such an ordinance; providing that certain taxes must be renewed by an ordinance in a referendum by a certain date to remain in effect; providing applicability; amending ss. 212.0606 and 288.0001, F.S.; conforming provisions to changes made by the act; repealing s. 288.122, F.S., relating to the Tourism Promotional Trust Fund; amending s. 288.1226, F.S.; revising the purpose of the Florida Tourism Industry Marketing Corporation; revising the authority of Enterprise Florida, Inc., to permit the corporation to use certain property and facilities; prohibiting Enterprise Florida, Inc., from conferring certain

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benefits upon the corporation; prohibiting the corporation from receiving state funds except for certain county tax revenues; requiring the corporation to expend a percentage of such funds for certain purposes; revising matching funds requirements applicable to the corporation; requiring the corporation to take certain actions and be dissolved upon accepting certain state funds or receiving less than a certain amount of public contributions in a fiscal year; terminating the Tourism Promotional Trust Fund; providing for the transfer of current balances in and revenues of the trust fund to the General Revenue Fund; requiring the Department of Economic Opportunity to pay certain debts and obligations; requiring the Chief Financial Officer to take certain actions; 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 (b) of subsection (2), paragraphs (d), (l), (m), and (n) of subsection (3), subsection (4), paragraphs (d) and (e) of subsection (5), and subsection (6) of section 125.0104, Florida Statutes, are amended, and paragraphs (f) through (i) are added to subsection (4), to read:

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125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(2) APPLICATION; DEFINITIONS.—

(b) Definitions.—For purposes of this section:

1. "Promotion" means marketing or advertising designed to increase tourist-related business activities.

2. "Tourist" means a person who participates in trade or recreation activities outside the county of his or her permanent residence or who rents or leases transient accommodations as described in paragraph (3)(a).

3. "Retained spring training franchise" means a spring training franchise that had a location in this state on or before December 31, 1998, and that has continuously remained at that location for at least the 10 years preceding that date.

4. "Rural county" means:

a. A county with a population of 75,000 or fewer.

b. A county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer.

For purposes of this subparagraph, population shall be determined in accordance with the most recent official estimate pursuant to s. 186.901.

(3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—

(d) In addition to any 1-percent or 2-percent tax imposed under paragraph (c), the governing board of the county may levy,

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impose, and set an additional 1 percent of each dollar above the tax rate set under paragraph (c) ~~by the extraordinary vote of the governing board~~ for the purposes set forth in subsection (5) ~~or~~ by ordinance approved in a referendum of ~~approval by~~ the registered electors within the county or subcounty special district pursuant to subsection (6). A county may not~~. No county shall~~ levy, impose, and set the tax authorized under this paragraph unless the county has imposed the 1-percent or 2-percent tax authorized under paragraph (c) for a minimum of 3 years before ~~prior to~~ the effective date of the levy and imposition of the tax authorized by this paragraph. Revenues raised by the additional tax authorized under this paragraph may ~~shall~~ not be used for debt service on or refinancing of existing facilities as specified in subparagraph (5)(a)1. unless approved by referendum pursuant to subsection (6) ~~by a resolution adopted by an extraordinary majority of the total membership of the governing board of the county~~. If the 1-percent or 2-percent tax authorized in paragraph (c) is levied within a subcounty special taxing district, the additional tax authorized in this paragraph shall only be levied therein. ~~The provisions of paragraphs (4)(a)-(d) shall not apply to the adoption of the additional tax authorized in this paragraph.~~ The effective date of the levy and imposition of the tax authorized under this paragraph is ~~shall be~~ the first day of the second month following approval of the ordinance by referendum ~~the governing board~~ or the first day of

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any subsequent month ~~as may be~~ specified in the ordinance. A certified copy of such ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of such ordinance.

(l) In addition to any other tax which is imposed pursuant to this section, a county may impose up to an additional 1-percent tax on the exercise of the privilege described in paragraph (a) by ordinance approved by referendum pursuant to subsection (6) ~~majority vote of the governing board of the county in order~~ to:

1. Pay the debt service on bonds issued to finance the construction, reconstruction, or renovation of a professional sports franchise facility, or the acquisition, construction, reconstruction, or renovation of a retained spring training franchise facility, either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds.

2. Pay the debt service on bonds issued to finance the construction, reconstruction, or renovation of a convention center, and to pay the planning and design costs incurred prior to the issuance of such bonds.

3. Pay the operation and maintenance costs of a convention

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center for a period of up to 10 years. Only counties that have elected to levy the tax for the purposes authorized in subparagraph 2. may use the tax for the purposes enumerated in this subparagraph. Any county that elects to levy the tax for the purposes authorized in subparagraph 2. after July 1, 2000, may use the proceeds of the tax to pay the operation and maintenance costs of a convention center for the life of the bonds.

4. Promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.

The provision of paragraph (b) which prohibits any county authorized to levy a convention development tax pursuant to s. 212.0305 from levying more than the 2-percent tax authorized by this section~~, and the provisions of paragraphs (4)(a)-(d),~~ shall not apply to the additional tax authorized in this paragraph. The effective date of the levy and imposition of the tax authorized under this paragraph is ~~shall be~~ the first day of the second month following approval of the ordinance by referendum ~~the governing board~~ or the first day of any subsequent month ~~as may be~~ specified in the ordinance. A certified copy of such

ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of such ordinance.

(m)1. In addition to any other tax which is imposed pursuant to this section, a high tourism impact county may impose an additional 1-percent tax on the exercise of the privilege described in paragraph (a) by ordinance approved by referendum pursuant to subsection (6) ~~extraordinary vote of the governing board of the county~~. The tax revenues received pursuant to this paragraph shall be used for one or more of the authorized uses pursuant to subsection (5).

2. A county is considered to be a high tourism impact county after the Department of Revenue has certified to such county that the sales subject to the tax levied pursuant to this section exceeded $600 million during the previous calendar year, or were at least 18 percent of the county's total taxable sales under chapter 212 where the sales subject to the tax levied pursuant to this section were a minimum of $200 million, except that no county authorized to levy a convention development tax pursuant to s. 212.0305 shall be considered a high tourism impact county. Once a county qualifies as a high tourism impact county, it shall retain this designation for the period the tax is levied pursuant to this paragraph.

3. ~~The provisions of paragraphs (4)(a)-(d) shall not apply to the adoption of the additional tax authorized in this paragraph.~~ The effective date of the levy and imposition of the

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tax authorized under this paragraph is ~~shall be~~ the first day of the second month following approval of the ordinance by referendum ~~the governing board~~ or the first day of any subsequent month ~~as may be~~ specified in the ordinance. A certified copy of such ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of such ordinance.

(n) In addition to any other tax that is imposed under this section, a county that has imposed the tax under paragraph (l) may impose an additional tax that is no greater than 1 percent on the exercise of the privilege described in paragraph (a) by ordinance approved by referendum pursuant to subsection (6) ~~a majority plus one vote of the membership of the board of county commissioners in order~~ to:

1. Pay the debt service on bonds issued to finance:

a. The construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a new professional sports franchise as defined in s. 288.1162.

b. The acquisition, construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional

sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a retained spring training franchise.

2. Promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.

A county that imposes the tax authorized in this paragraph may not expend any ad valorem tax revenues for the acquisition, construction, reconstruction, or renovation of a facility for which tax revenues are used pursuant to subparagraph 1. The provision of paragraph (b) which prohibits any county authorized to levy a convention development tax pursuant to s. 212.0305 from levying more than the 2-percent tax authorized by this section shall not apply to the additional tax authorized by this paragraph in counties which levy convention development taxes pursuant to s. 212.0305(4)(a). ~~Subsection (4) does not apply to the adoption of the additional tax authorized in this paragraph.~~ The effective date of the levy and imposition of the tax authorized under this paragraph is the first day of the second month following approval of the ordinance by referendum ~~the~~

~~board of county commissioners~~ or the first day of any subsequent month specified in the ordinance. A certified copy of such ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of the ordinance.

(4) ORDINANCE LEVY TAX; PROCEDURE.—

(a) The tourist development tax shall be levied and imposed pursuant to an ordinance containing the county tourist development plan prescribed under paragraph (c), enacted by the governing board of the county. The ordinance levying and imposing the tourist development tax shall not be effective unless the electors of the county or the electors in the subcounty special district in which the tax is to be levied approve the ordinance authorizing the levy and imposition of the tax, in accordance with subsection (6). The effective date of the levy and imposition of the tax is ~~shall be~~ the first day of the second month following approval of the ordinance by referendum~~, as prescribed in subsection (6),~~ or the first day of any subsequent month ~~as may be~~ specified in the ordinance. A certified copy of the ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of such ordinance. The governing authority of any county levying such tax shall notify the department, within 10 days after approval of the ordinance by referendum, of the time period during which the tax will be levied.

(b) At least 60 days before ~~prior to~~ the enactment or

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renewal of the ordinance levying the tax, the governing board of the county shall adopt a resolution establishing and appointing the members of the county tourist development council, as prescribed in paragraph (e), and indicating the intention of the county to consider the enactment or renewal of an ordinance levying and imposing the tourist development tax.

(c) Before a referendum to enact or renew ~~Prior to enactment of~~ the ordinance levying and imposing the tax, the county tourist development council shall prepare and submit to the governing board of the county for its approval a plan for tourist development. The plan shall set forth the anticipated net tourist development tax revenue to be derived by the county for the 6 years after ~~24 months following~~ the levy of the tax; the tax district in which the enactment or renewal of the ordinance levying and imposing the tourist development tax is proposed; the anticipated tourist development revenue to be remitted to the Florida Tourism Industry Marketing Corporation; and a list, in the order of priority, of the proposed uses of the tax revenue by specific project or special use as the same are authorized under subsection (5). The plan shall include the approximate cost or expense allocation for each specific project or special use.

(d) The governing board of the county shall adopt the county plan for tourist development as part of the ordinance levying the tax. After enactment or renewal of the ordinance

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levying and imposing the tax, the plan of tourist development may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.

(e) The governing board of each county which levies and imposes a tourist development tax under this section shall appoint an advisory council to be known as the " (name of county) Tourist Development Council." The council shall be established by ordinance and composed of nine members who shall be appointed by the governing board. The chair of the governing board of the county or any other member of the governing board as designated by the chair shall serve on the council. Two members of the council shall be elected municipal officials, at least one of whom shall be from the most populous municipality in the county or subcounty special taxing district in which the tax is levied. Six members of the council shall be persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, of which members, not less than three nor more than four shall be owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the county and subject to the tax. All members of the council shall be electors of the county. The governing board of the county shall have the option of designating the chair of the council or allowing the council to elect a chair. The chair shall be appointed or elected annually and may be

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reelected or reappointed. The members of the council shall serve for staggered terms of 4 years. The terms of office of the original members shall be prescribed in the resolution required under paragraph (b). The council shall meet at least once each quarter and, from time to time, shall make recommendations to the county governing board for the effective operation of the special projects or for uses of the tourist development tax revenue and perform such other duties as may be prescribed by county ordinance or resolution. The council shall continuously review expenditures of revenues from the tourist development trust fund and shall receive, at least quarterly, expenditure reports from the county governing board or its designee. Expenditures which the council believes to be unauthorized shall be reported to the county governing board and the Department of Revenue. The governing board and the department shall review the findings of the council and take appropriate administrative or judicial action to ensure compliance with this section. The changes in the composition of the membership of the tourist development council mandated by chapter 86-4, Laws of Florida, and this act shall not cause the interruption of the current term of any person who is a member of a council on October 1, 1996.

(f) To the extent not prohibited by contracts or bond covenants in effect on July 1, 2023:

1. Beginning July 1, 2023, for each county that levies a

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tax under this section, except as provided in subparagraph 2., the Department of Revenue shall quarterly remit 5 percent of all revenues received between July 1, 2023, and July 1, 2026, from such tax to the Florida Tourism Industry Marketing Corporation, unless the county is a rural county. For rural counties, the Department of Revenue shall quarterly remit 2 percent of all revenues received between July 1, 2023, and July 1, 2026, from such tax to the Florida Tourism Industry Marketing Corporation.

2. Beginning July 1, 2023, a county that has elected to self-administer a tax under subsection (10) shall quarterly remit 5 percent of all revenues received between July 1, 2023, and July 1, 2026, from such tax to the Florida Tourism Industry Marketing Corporation, unless the county is a rural county. A rural county that has elected to self-administer a tax under subsection (10) shall quarterly remit 2 percent of all revenues received between July 1, 2023, and July 1, 2026, from such tax to the Florida Tourism Industry Marketing Corporation.

3. Beginning July 1, 2026, a county that levies a tax under this section may elect, by majority vote of the board of county commissioners, to quarterly remit, or to direct the Department of Revenue to remit if the department collects and administers the tax on behalf of the county, a portion of revenues received from such tax to the Florida Tourism Industry Marketing Corporation.

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A county that levies a tax under this section may not place any terms or conditions on revenues received under this section and remitted to the Florida Tourism Industry Marketing Corporation under this paragraph.

(g) An ordinance that levies and imposes a tax pursuant to this section expires 6 years after the date the ordinance is approved in a referendum, but may be renewed for subsequent 6-year periods if each 6-year period is approved in a referendum held pursuant to subsection (6).

(h) Any tax imposed pursuant to this section and in effect on June 30, 2023, must be renewed by an ordinance approved in a referendum held pursuant to subsection (6) on or before July 1, 2028, in order to remain in effect after July 1, 2028.

(i) The state covenants with holders of bonds or other instruments of indebtedness issued by counties before July 1, 2023, that it is not the intent of this subsection to impair or materially alter the rights of those holders or relieve counties of the duty to meet their obligations as a result of previous pledges or assignments entered into under this section as it applied before July 1, 2023. Therefore, paragraph (h) does not apply in any case in which the proceeds of a tax levied pursuant to this section on or before June 30, 2023, have been pledged to secure and liquidate revenue bonds or revenue refunding bonds as authorized by this section, unless such bonds are retired before July 1, 2028. If the bonds are not yet retired on July 1, 2028,

paragraph (h) shall apply as though July 1, 2028, was instead replaced with July 1 of the year following the retirement of such bonds.

(5) AUTHORIZED USES OF REVENUE.—

(d) The revenues to be derived from the tourist development tax may be pledged to secure and liquidate revenue bonds issued by the county for the purposes set forth in subparagraphs (a)1., 2., ~~and~~ 5., and 6. or for the purpose of refunding bonds previously issued for such purposes, or both; however, no more than 50 percent of the revenues from the tourist development tax may be pledged to secure and liquidate revenue bonds or revenue refunding bonds issued for the purposes set forth in subparagraph (a)5. Such revenue bonds and revenue refunding bonds may be authorized and issued in such principal amounts, with such interest rates and maturity dates, and subject to such other terms, conditions, and covenants as the governing board of the county shall provide. The Legislature intends that this paragraph be full and complete authority for accomplishing such purposes, but such authority is supplemental and additional to, and not in derogation of, any powers now existing or later conferred under law.

(e) Any use of the local option tourist development tax revenues collected pursuant to this section for a purpose not expressly authorized by paragraph (3)(l), ~~or~~ paragraph (3)(n), paragraph (4)(f), or paragraphs (a)-(d) ~~of this subsection~~ is

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expressly prohibited.

(6) REFERENDUM.—

(a) An ~~No~~ ordinance enacted or renewed by a ~~any~~ county levying the tax authorized by this section may not ~~paragraphs (3)(b) and (c) shall~~ take effect until the ordinance levying and imposing the tax has been approved in a referendum held at a general election, as defined in s. 97.021, by at least 60 percent ~~a majority~~ of the electors voting in such election in the county or by at least 60 percent ~~a majority~~ of the electors voting in the subcounty special tax district affected by the tax.

(b) The governing board of the county levying the tax shall arrange to place a question on the ballot at a general election, as defined in s. 97.021, to be held within the county, which question shall be in substantially the following form:

....FOR the Tourist Development Tax

....AGAINST the Tourist Development Tax.

(c) If at least 60 percent ~~a majority~~ of the electors voting on the question approve the levy, the ordinance shall be deemed to be in effect.

(d) In any case where an ordinance ~~a referendum~~ levying and imposing the tax has been approved by referendum pursuant to this section and 15 percent of the electors in the county or 15 percent of the electors in the subcounty special district in which the tax is levied file a petition with the board of county

commissioners for a referendum to repeal the tax, the board of county commissioners shall cause an election to be held for the repeal of the tax which election shall be subject only to the outstanding bonds for which the tax has been pledged. However, the repeal of the tax shall not be effective with respect to any portion of taxes initially levied in November 1989, which has been pledged or is being used to support bonds under paragraph (3)(d) or paragraph (3)(l) until the retirement of those bonds.

Section 2. Paragraph (a) of subsection (5) of section 212.0606, Florida Statutes, is amended to read:

212.0606 Rental car surcharge.—

(5)(a) Notwithstanding s. 212.20, and less the costs of administration, 80 percent of the proceeds of this surcharge shall be deposited in the State Transportation Trust Fund~~, 15.75 percent of the proceeds of this surcharge shall be deposited in the Tourism Promotional Trust Fund created in s. 288.122,~~ and 20 ~~4.25~~ percent of the proceeds of this surcharge shall be deposited in the Florida International Trade and Promotion Trust Fund. For the purposes of this subsection, the term "proceeds of this surcharge" means all funds collected and received by the department under this section, including interest and penalties on delinquent surcharges. The department shall provide the Department of Transportation rental car surcharge revenue information for the previous state fiscal year by September 1 of each year.

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Section 3. Paragraph (b) of subsection (2) of section 288.0001, Florida Statutes, is amended to read:

288.0001 Economic Development Programs Evaluation.—The Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall develop and present to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees the Economic Development Programs Evaluation.

(2) The Office of Economic and Demographic Research and OPPAGA shall provide a detailed analysis of economic development programs as provided in the following schedule:

(b) By January 1, 2015, and every 3 years thereafter, an analysis of the following:

1. The entertainment industry financial incentive program established under s. 288.1254.

2. The entertainment industry sales tax exemption program established under s. 288.1258.

3. VISIT Florida and its programs established or funded under ss. ~~288.122,~~ 288.1226, 288.12265, and 288.124.

4. The Florida Sports Foundation and related programs established under ss. 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171.

Section 4. Section 288.122, Florida Statutes, is repealed.

Section 5. Subsection (13) of section 288.1226, Florida

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Statutes, is renumbered as subsection (14), paragraph (b) of subsection (2), subsection (3), paragraph (k) of subsection (5), and subsection (6) are amended, paragraphs (q) and (r) are added to subsection (5), and a new subsection (13) is added to that section, to read:

288.1226 Florida Tourism Industry Marketing Corporation; use of property; board of directors; duties; audit.—

(2) ESTABLISHMENT.—The Florida Tourism Industry Marketing Corporation is a direct-support organization of Enterprise Florida, Inc.

(b) The corporation is organized and operated exclusively to request, receive, hold, invest, and administer property and to manage and make expenditures for the operation of the activities, services, functions, and programs of this state which relate to the statewide, national, and international promotion and marketing of tourism, without any financial support or specific appropriations from the state.

(3) USE OF PROPERTY.—Enterprise Florida, Inc.:

(a) Is authorized to permit the use of property and facilities of Enterprise Florida, Inc., by the corporation, subject to the provisions of this section, so long as the corporation reimburses Enterprise Florida, Inc., for any applicable costs to keep, operate, and maintain the property.

(b) Shall prescribe conditions with which the corporation must comply in order to use property and facilities of

Enterprise Florida, Inc. Such conditions shall provide for budget and audit review and for oversight by Enterprise Florida, Inc.

(c) May not permit the use of property and facilities of Enterprise Florida, Inc., if the corporation does not provide equal employment opportunities to all persons, regardless of race, color, national origin, sex, age, or religion.

(d) May not confer a monetary or nonmonetary benefit upon the corporation unless the corporation pays fair market value for the benefit.

(5) POWERS AND DUTIES.—The corporation, in the performance of its duties:

(k) May request or accept any grant, payment, or gift, of funds or property made by this state or by the United States or any department or agency thereof or by any individual, firm, corporation, municipality, county, or organization for any or all of the purposes of the 4-year marketing plan and the corporation's contract with Enterprise Florida, Inc., that are not inconsistent with this or any other provision of law. Such funds shall be deposited in a bank account established by the corporation's board of directors. The corporation may expend such funds in accordance with the terms and conditions of any such grant, payment, or gift, in the pursuit of its administration or in support of the programs it administers. The corporation shall separately account for ~~the~~ public funds

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received from counties pursuant to s. 125.0104, all other public funds, and ~~the~~ private funds deposited into the corporation's bank account.

(q) May not receive any financial support or specific appropriation from the state other than funds received from counties pursuant to s. 125.0104.

(r) Shall ensure that 75 percent of all expenditures go towards activities, services, functions, and programs that directly assist state parks, state forests, and rural counties as defined in s. 125.0104(2)(b).

(6) MATCHING REQUIREMENTS.—

(a) A one-to-one match is required of private to public contributions to the corporation. Public contributions include all funds remitted from counties ~~state appropriations~~ to the corporation ~~and exclude taxes derived~~ pursuant to s. 125.0104.

(b) For purposes of calculating the required one-to-one match, the corporation shall receive matching private contributions in one of four private match categories. The corporation shall maintain documentation of such categorized contributions on file and make such documentation available for inspection upon reasonable notice during its regular business hours. Contribution details shall be included in the quarterly reports required under subsection (8). The private match categories are:

1. Direct cash contributions from private sources, which

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

include, but are not limited to, cash derived from strategic alliances, contributions of stocks and bonds, and partnership contributions.

2. Fees for services, which include, but are not limited to, event participation, research, and brochure placement and transparencies.

3. Cooperative advertising, which is limited to partner expenditures for paid media placement, partner expenditures for collateral material distribution, and the actual market value of contributed productions, air time, and print space.

4. In-kind contributions, which is limited to the actual market value of promotional contributions of partner-supplied benefits to target audiences and the actual market value of nonpartner-supplied air time or print space contributed for the broadcasting or printing of such promotions, which would otherwise require tourist promotion expenditures by the corporation for advertising, air travel, rental car fees, hotel rooms, RV or campsite space rental, onsite guest services, and admission tickets. The net value of air time or print space, if any, shall be deemed to be the actual market value of the air time or print space, based on an average of actual unit prices paid contemporaneously for comparable times or spaces, less the value of increased ratings or other benefits realized by the media outlet as a result of the promotion.

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

Contributions from a government entity or from an entity that received more than 50 percent of its revenue in the previous fiscal year from public sources, including revenue derived from taxes, ~~other than taxes collected pursuant to s. 125.0104,~~ from fees, or from other government revenues, are not considered private contributions for purposes of calculating the required one-to-one match.

(c) If the corporation fails to meet the one-to-one match requirements of this subsection, the corporation shall revert all unmatched public contributions received from counties pursuant to s. 125.0104 to the counties that remitted funds to the corporation ~~state treasury~~ by June 30 of each fiscal year. The corporation shall do so on a pro rata basis, which shall be based on the amount of such funds received from each county.

(13) MANDATORY TRANSFER OF FUNDS.—If the corporation accepts any financial support or specific appropriation from the state after July 1, 2023, or if the corporation receives less than $1 million in public contributions within a fiscal year:

(a) The corporation shall immediately notify the Department of Economic Opportunity.

(b) All funds held by the corporation which were received pursuant to s. 125.0104 shall proportionally be returned to the counties that remitted such funds.

(c) The corporation shall immediately transfer all other funds held by the corporation to the General Revenue Fund.

(d) The corporation shall immediately liquidate all assets held by the corporation and all proceeds of the sales of such assets shall revert to the General Revenue Fund.

(e) The corporation shall be dissolved.

Section 6. (1) The Tourism Promotional Trust Fund, FLAIR number 40-2-722, within the Department of Economic Opportunity is terminated.

(2) All current balances remaining in, and all revenues of, the trust fund shall be transferred to the General Revenue Fund.

(3) The Department of Economic Opportunity shall pay any outstanding debts and obligations of the terminated fund as soon as practicable, and the Chief Financial Officer shall close out and remove the terminated fund from various state accounting systems using generally accepted accounting principles concerning warrants outstanding, assets, and liabilities.

Section 7. The Legislature finds and declares that this act fulfills an important state interest.

Section 8. This act shall take effect July 1, 2023.

PCS for HB 919

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 919 Homeowners' Associations
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform & Economic Development Subcommittee		Wright	Anstead

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel. HOAs may levy fines against or suspend certain access rights of a parcel owner for failing to comply with the HOA's governing documents. In addition, Florida law requires officers and directors of an HOA to comply with certain requirements and may be removed from office under certain circumstances.

Related to HOA officers and directors, the bill:

- Provides that an officer or a director must be removed from office if charged with the following crimes:
  - Forgery of a ballot envelope or voting certificate used in a homeowners' association election.
  - Theft or embezzlement of funds of an HOA.
  - Destruction of refusing to allow inspection of certain HOA records in furtherance of any crime.
  - Obstruction of justice.
- Provides criminal penalties for accepting kickbacks and certain actions of fraudulent voting activities.
- Provides additional requirements for disclosing officer or director conflicts of interest.

Related to HOA fines and suspensions, the bill:

- Provides that fines may not be aggregated to create a lien against a parcel.
- Provides that a fine or suspension levied for a violation by the HOA board of administration may not be imposed unless the board first provides at least 30 days' notice to the parcel owner of a hearing before a committee. If the committee determines that a violation does not exist, then no other action may be taken related to that alleged violation.
- Allows a member to cure a violation. If a violation is cured before the hearing, a fine or suspension may not be imposed and attorney fees and costs may not be awarded. If the violation is cured within 30 days after delivery of the written notice of what fine or suspensions the committee imposed, the fine is reduced by 50 percent, any applicable suspensions must be lifted, and attorney fees and costs may not be awarded.

Related to HOA funds, the bill:

- Requires that if an HOA collects a deposit from a member to pay for expenses that may be incurred as a result of construction on a member's parcel, or other reason for such deposit, such funds must not be comingled with any other HOA funds.
  - The member may request an accounting of such funds and the HOA must remit payment of unused funds within 30 days after completion.

Related to HOA official records, the bill requires an HOA to allow a member to keep an address different than the property address to be used for all required notices.

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

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.[1]

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.[2]

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located. The powers and duties of an association include those set forth in the HOA Act and in the governing documents, except as expressly limited or restricted in the HOA Act.

After control of the HOA is obtained by members other than the developer, the HOA may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members. The HOA may defend actions in eminent domain or bring inverse condemnation actions. Any individual member or class of members may bring any action without participation by the HOA, but member does not have authority to act for the HOA by virtue of being a member.[3]

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.[4]

Powers and Duties of Officers and Directors – Current Situation

The officers and directors of an HOA have a fiduciary relationship to the members who are served by the HOA.[5]

A director or officer charged by information or indictment with felony theft or embezzlement involving the HOA's funds or property is removed from office. The board must fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer must be reinstated for any remainder of term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer.[6]

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[1] S. 720.301(9), F.S.
[2] *See generally* ch. 720, F.S.
[3] S. 720.303(1), F.S.
[4] S. 720.311, F.S.
[5] S. 720.303(1), F.S.
[6] S. 720.3033(4), F.S.

An officer, director, or manager may not solicit, offer to accept, or accept any good or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the HOA.[7] If the board finds that an officer or director has violated this condition, the board must immediately remove the officer or director from office. The vacancy must be filled according to law until the end of the director's term of office. However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs.[8]

If the HOA enters into a contract or other transaction with any of its directors or a corporation, firm, association that is not an affiliated HOA, or other entity in which a director is also a director or officer or is financially interested, the board must:[9]

- Comply with the requirements for conflicts of interest in a corporation not for profit.[10]
- Enter certain disclosure requirements into the written minutes of the meeting.
- Approve the contract or other transaction by an affirmative vote of two-thirds of the directors present.
- At the next regular or special meeting of the members, disclose the existence of the contract or other transaction to the members. Upon motion of any member, the contract or transaction must be brought up for a vote and may be canceled by a majority vote of the members present. If the members cancel the contract, the HOA is only liable for the reasonable value of goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other penalty for such cancellation.

Powers and Duties of Officers and Directors – Effect of the Bill

In addition to current requirements, the bill provides that an officer or a director charged by information or indictment with one of the following crimes must be removed from office, and the vacancy must be filled as provided by the HOA Act until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first:

- Forgery of a ballot envelope or voting certificate used in a homeowners' association election under s. 831.01, F.S.
- Theft or embezzlement of funds of a homeowners' association under s. 812.014, F.S.
- Destruction of or the refusal to allow inspection or copying of an official record of a homeowners' association that is accessible to parcel owners within the time periods required by general law in furtherance of any crime as tampering with physical evidence under s. 918.13, F.S.
- Obstruction of justice under ch. 843, F.S.

If such a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any HOA and may not have access to the official records of any HOA, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

The bill provides that an officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback commits a misdemeanor of the first degree, , for amounts less than $1,000, and a felony of the third degree, for amounts $1,000 or more, and is subject to a civil penalty. Such person may be removed from office.

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[7] However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs. S. 720.303(3), F.S.

[8] S. 720.3033(3), F.S.

[9] S. 720.3033(2), F.S.

[10] A contract or transaction with a conflict of interest is not voidable if the relationship or interest is disclosed or known to the board; the board authorized, approved, or ratified it by vote or written consent; or the contract or transaction is fair and reasonable at the time it is authorized. Such contract or transaction must be authorized, approved, or ratified by a majority of the directors on the board who have no relationship or interest in such transaction. S. 617.0832, F.S.

The bill requires directors and officers of an HOA to disclose to the HOA any activity that may reasonably be construed to be a conflict of interest at least 14 days prior to voting on the subject of such conflict or entering into such contract. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior disclosure to the association:

- A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the HOA.
- A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the HOA or proposes to enter into a contract or other transaction with the HOA.

Criminal Violations for Fraudulent Voting Activities

The bill provides that the following actions relating to HOA elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:

- Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.
- Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This paragraph does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.
- Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

Fines and Suspension – Current Situation

Owners, tenants, and guests must comply with an HOA's declaration, bylaws, and rules. HOAs may levy fines against or suspend the right of a parcel owner, occupant, or a guest of an owner or occupant, to use the common areas[11] or any other association property for failing to comply with any provision in the HOA's governing documents. A suspension for failing to comply with an HOA's declaration, bylaws, or rules may not be for an unreasonable amount of time.[12]

No fine may exceed $100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed **$1,000** in the aggregate. However, a fine may exceed $1,000 if the HOA's governing documents authorize it. Fines may not become a lien on the property unless the fines exceed **$1,000**.[13]

Before an HOA levies a fine or a suspension, it must give the person receiving the fine or suspension at least **14 days' notice of an opportunity for a hearing**. A fine and suspension committee of at least three members selected by the board must hold a hearing to reject or approve the fine or suspension.

[11] This does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. S. 720.305(2)(a), F.S.
[12] S. 720.305, F.S.
[13] S. 720.305(2), F.S.

Board directors, officers, and employees of the HOA and family of such people may not serve on the committee. The committee must approve the fine or suspension by majority vote otherwise the proposed fine or suspension may not be imposed.[14]

A fine is due five days after written notice of the approved fine is provided to the parcel owner, occupant, or guest. Written notice of the fine or suspension must be provided to the person by mail or hand delivery.[15]

If a member is more than 90 days delinquent in paying any fee, fine, or other monetary obligation due to the HOA, the HOA may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities[16] until it is paid in full.[17]

An HOA may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the HOA that is more than 90 days delinquent. The suspension ends upon full payment of all obligations currently due or overdue to the HOA.[18]

The notice and hearing requirements for levying fines do not apply to a suspension imposed for delinquent payment.[19]

All suspensions imposed for delinquent payment of any fee, fine, or other monetary obligation due to the HOA must be approved at a properly noticed board meeting. Upon approval, the HOA must notify the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery.[20]

Fines and Suspension – Effect of the Bill

The bill limits when an HOA may levy a fine to violations of the declaration, association's bylaws, or reasonable rules of the association.

The bill provides that a fine may not exceed $1,000 per violation and that fines may not be aggregated to create a lien against a parcel.

The bill provides **new hearing procedures and notice requirements** for when an HOA wishes to impose a fine or suspension, as described below.

The bill provides that a fine or suspension levied for a violation by the board of administration may not be imposed unless the board first provides at least 30 days' notice to the parcel owner at the designated mailing or e-mail address in the HOA's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The notice must include a description of the alleged violation, the specific action required to cure such violation, and the date and location of the hearing. A parcel owner has the right to attend a hearing by telephone or other electronic means.

If the committee, by majority vote, determines that a violation does not exist, then no other action may be taken related to that alleged violation. The role of the committee is limited to determining whether a violation exists and whether to approve or reject the fine or suspension levied by the board.

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[14] *Id.*
[15] *Id.*
[16] A suspension may not prohibit an owner or tenant of a parcel from having access a portion of common areas used to provide access or utility services to the parcel, or from having vehicular and pedestrian ingress to and egress from the parcel. S. 720.305(4), F.S.
[17] S. 720.305(3), F.S.
[18] S. 720.305(4), F.S.
[19] S. 720.305(3), (4), F.S.
[20] S. 720.305(5), F.S.

The bill requires the committee to provide written notice to the parcel owner at the designated mailing or e-mail address in the association's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, of the committee's findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected, and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation after the hearing.

The bill requires fines, suspensions, attorney fees, and costs to be imposed as follows:

- If a violation is found by the committee, but is cured before the hearing, a fine or suspension may not be imposed and attorney fees and costs may not be awarded.
- If a violation is found and the proposed fine or suspension levied by the board is approved by the committee, the committee must decide, by majority vote, a date that the fine payment is due, which date must be at least 30 days after delivery of the required written notice.
- If a violation is found and the proposed fine or suspension levied by the board is approved by the committee, but the violation is cured within 30 days after delivery of the required written notice, the fine must be reduced by 50 percent, any applicable suspensions must be lifted, and attorney fees and costs may not be awarded.
- If a violation is found and the proposed fine or suspension levied by the board is approved by the committee and the violation is not cured or the fine is not paid within 30 days after delivery of the required written notice, reasonable attorney fees and costs may be awarded to the association.

The bill allows a parcel owner or any occupant, licensee, or invitee of the parcel owner may, at any time, to make a written request for a detailed accounting of any amounts he or she owes to the association and the board must provide such information within 10 days after receipt of the written request. Failure by the board to respond to a written request for a detailed accounting constitutes a complete waiver of the violation.

The bill requires that, upon receipt of a payment for any outstanding fines from a parcel owner or any occupant, licensee, or invitee of the parcel owner, the board must apply the payment first to the fine before satisfying any other amounts due to the HOA. Attorney fees and costs may not continue to accrue after a parcel owner or any occupant, licensee, or invitee of the parcel owner pays the fine.

The bill allows a parcel owner or any occupant, licensee, or invitee of the parcel owner to request a hearing before the board to dispute the reasonableness of the attorney fees and costs awarded to the HOA.

The bill removes the option for an HOA to provide written notice of a fine by hand delivery.

The bill requires the board to send written notice to the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery to the parcel owner's designated mailing or e-mail address in the association's official records for any suspension imposed for delinquent payment of any fee, fine, or other monetary obligation due to the HOA.

The bill provides that the failure of the HOA or committee to comply with these procedural requirements constitutes a waiver of all fines or suspensions imposed or proposed for a violation. Any fines, fees, or other costs incurred by a parcel owner or any occupant, licensee, or invitee of the parcel owner which is related to a fine that is waived must also be waived or paid by the HOA if such fine, fee, or other cost is not waivable.

Official Records – Current Situation

An HOA’s governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA’s articles of incorporation and bylaws and any duly adopted amendments thereto; and

- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.[21]

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.[22] The articles of incorporation establish the HOA's existence, basic structure, and governance.[23] The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.[24]

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.[25] Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.[26]

An HOA must maintain each of the following items, when applicable, which constitute the official records of the HOA:[27]

- A copy of the HOA's governing documents:
  - declaration of covenants and each amendment,
  - bylaws and each amendment,
  - articles of incorporation and each amendment, and
  - current rules.
- Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the HOA is obligated to maintain, repair, or replace.
- The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.
- A **current roster** of all members and their mailing addresses and parcel identifications. The HOA must maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission must be removed from HOA records when consent to receive notice by electronic transmission is revoked. However, the HOA is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.
- All of the HOA's insurance policies, which must be retained for at least 7 years.
- A current copy of all contracts to which the HOA is a party, including, without limitation, any management agreement, lease, or other contract under which the HOA has any obligation or responsibility. Bids received by the HOA for work to be performed must also be considered official records and must be kept for a period of 1 year.
- The financial and accounting records of the HOA, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:
  - Accurate, itemized, and detailed records of all receipts and expenditures.
  - A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
  - All tax returns, financial statements, and financial reports of the HOA.
  - Any other records that identify, measure, record, or communicate financial information.

[21] S. 720.301(8), F.S.
[22] Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/ (last visited Mar. 25, 2023).
[23] *Id.*
[24] *Id.*
[25] S. 720.306(1), F.S.
[26] *Id.*
[27] S. 720.303(4), F.S.

- A copy of the disclosure summary.
- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.
- All other written records of the HOA which are related to the operation of the HOA.

Official Records – Effect of the Bill

The bill amends what information must be kept as part of the **current roster** in the official records. The bill requires an HOA to keep a designated mailing address, which is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices.

The bill provides that the HOA must also maintain facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the HOA requesting that a different e-mail address be used for all required notices.

Commingling of HOA Funds – Current Situation

All HOA funds held by a developer must be maintained separately in the HOA's name. HOA reserve and operating funds must not be commingled prior to turnover except the HOA may jointly invest reserve funds if the funds are accounted for separately.[28]

A developer in control of an HOA may not commingle any HOA funds with the developer's funds or with the funds of any other HOA or community association.[29]

HOA funds may not be used by a developer to defend a civil or criminal action, administrative proceeding, or arbitration proceeding that has been filed against the developer or directors appointed to the HOA board by the developer, even when the subject of the action or proceeding concerns the operation of the developer-controlled HOA.[30]

Commingling of HOA Funds – Effect of the Bill

In addition to current requirements regarding commingling funds, the bill requires that if an HOA collects a deposit from a member to pay for expenses that may be incurred as a result of construction on a member's parcel, or other reason for such deposit, such funds must be maintained separately and may not be comingled with any other association funds. Upon completion of the member's construction project, or any other reason for such deposit, the member may request an accounting from the association of such funds that were deposited and the association must provide an accounting to the member within 7 days after the member's request. An association must remit payment of any and all unused funds to the member within 30 days after receiving notice that the member's construction project, or any other reason for which a deposit was collected, is complete.

The bill provides a short title, the "Homeowners' Associations Bill of Rights."

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Provides a short title.
Section 2: Amends s. 720.303, F.S.; relating to requirements for HOA officers and directors.

[28] S. 720.303(8)(a), F.S.
[29] S. 720.303(8)(b), F.S.
[30] S. 720.303(8)(c), F.S.

Section 3: Amends s. 720.3033, F.S.; relating to criminal violations for kickbacks.
Section 4: Amends s. 720.305, F.S.; relating to procedures for HOA fines and appeals.
Section 5: Creates s. 720.3065, F.S.; relating to criminal violations for certain HOA voting activities.
Section 6: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce fines paid by members to the HOA and provide greater fiscal responsibility of the officers and directors.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to homeowners' associations; providing a short title; amending s. 720.303, F.S.; requiring certain officers or directors be removed from office for a certain time period under certain circumstances; requiring an association to maintain designated mailing and e-mail addresses as official records; specifying what constitutes a designated address; prohibiting certain funds from being comingled with other association funds; authorizing a member to request an accounting from an association under certain circumstances; requiring an association to provide such accounting and remit unused funds to the member within specified timeframes; amending s. 720.3033, F.S.; providing criminal and civil penalties for certain actions by an officer, a director, or a manager of the association; providing requirements to report certain conflicts of interest; amending s. 720.305, F.S.; restricting certain attorney fees and fines; specifying the types of violations for which an association may levy fines; providing a maximum fine amount; prohibiting fines from being aggregated; revising amount of notice the board of administration must give a parcel owner before imposing a fine or suspension; specifying where such notice must be

delivered; providing requirements for such notice; authorizing parcel owners to attend certain hearings by telephone or other electronic means; expanding duties of a specified committee; requiring a specified notice after a hearing; specifying how fines, suspensions, attorney fees, and costs are determined; requiring a detailed accounting of amounts due to the association be given to certain persons within a certain timeframe upon written request; providing for a complete waiver of a violation under certain circumstances; specifying the priority of payments made by a parcel owner to an association; prohibiting the accrual of attorney fees and costs after a specified time; authorizing certain persons to request a hearing to dispute certain fees and costs; providing for the waiver of certain fines or suspensions; requiring certain fines, fees, or other costs be paid by an association; conforming provisions to changes made by the act; creating ss. 720.3065, F.S.; providing criminal penalties for certain fraudulent voting activities; providing an effective date.

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

Section 1. This act may be cited as the "Homeowners'

Associations Bill of Rights."

Section 2. Subsection (1), and paragraph (g) of subsection (4), are amended, and paragraph (d) is added to subsection (8), to read:

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

(1) POWERS AND DUTIES.—

(a) An association which operates a community as defined in s. 720.301, must be operated by an association that is a Florida corporation. After October 1, 1995, the association must be incorporated and the initial governing documents must be recorded in the official records of the county in which the community is located. An association may operate more than one community.

(b)1. The officers and directors of an association have a fiduciary relationship to the members who are served by the association.

2. An officer or a director charged by information or indictment with one of the following crimes must be removed from office, and the vacancy must be filled as provided in s. 720.306(9) until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first:

a. Forgery of a ballot envelope or voting certificate used

in a homeowners' association election under s. 831.01.

b. Theft or embezzlement of funds of a homeowners' association under s. 812.014.

c. Destruction of or the refusal to allow inspection or copying of an official record of a homeowners' association that is accessible to parcel owners within the time periods required by general law in furtherance of any crime as tampering with physical evidence under s. 918.13.

d. Obstruction of justice under chapter 843.

3. If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

(c) The powers and duties of an association include those set forth in this chapter and, except as expressly limited or restricted in this chapter, those set forth in the governing documents.

(d) After control of the association is obtained by members other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to

the members, including, but not limited to, the common areas; roof or structural components of a building, or other improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving an improvement or building for which the association is responsible; representations of the developer pertaining to any existing or proposed commonly used facility; and protesting ad valorem taxes on commonly used facilities. The association may defend actions in eminent domain or bring inverse condemnation actions. Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of $100,000, the association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained. This paragraph ~~subsection~~ does not limit any statutory or common-law right of any individual member or class of members to bring any action without participation by the association.

(e) A member does not have authority to act for the association by virtue of being a member. An association may have more than one class of members and may issue membership certificates.

(f) An association of 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner or owners.

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

(g) A current roster of all members and their designated mailing addresses and parcel identifications. A member's designated mailing address is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices. The association shall also maintain the e-mail ~~electronic mailing~~ addresses and the facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission unless the member has sent written notice to the association requesting that a different e-mail address be used for all required notices. The e-mail ~~electronic mailing~~ addresses and facsimile numbers provided by members ~~unit owners~~ to receive notice by electronic transmission must ~~shall~~ be removed from association records when the member revokes consent to receive notice by electronic transmission ~~is revoked~~. However, the association is not liable for an erroneous disclosure of the e-mail ~~electronic mail~~ address or the facsimile number for receiving electronic transmission of notices.

(8) ASSOCIATION FUNDS; COMMINGLING.—

(d) If an association collects a deposit from a member to pay for expenses that may be incurred as a result of construction on a member's parcel, or other reason for such deposit, such funds must be maintained separately and may not be comingled with any other association funds. Upon completion of the member's construction project, or any other reason for such deposit, the member may request an accounting from the association of such funds that were deposited and the association must provide an accounting to the member within 7 days after the member's request. An association must remit payment of any and all unused funds to the member within 30 days after receiving notice that the member's construction project, or any other reason for which a deposit was collected, is complete.

Section 3. Subsection (3) is amended, and subsection (6) is added, of section 720.3033, Florida Statutes, to read:

720.3033 Officers and directors.—

(3) An officer, a director, or a manager may not solicit, offer to accept, or accept any thing ~~good~~ or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the association. An officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any

thing or service of value or kickback commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for amounts less than $1,000 and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for amounts $1,000 or more, and is subject to a civil penalty pursuant to s. 718.501(1)(d). If the board finds that an officer or a director has violated this subsection, the board shall immediately remove the officer or director from office. The vacancy shall be filled according to law until the end of the officer's or director's term of office. However, an officer, a director, or a manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs.

(6) Directors and officers of an association must disclose to the association any activity that may reasonably be construed to be a conflict of interest at least 14 days prior to voting on the subject of such conflict or entering into such contract. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior disclosure to the association:

(a) A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the association.

(b) A director or an officer, or a relative of a director

or an officer, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

Section 4. Subsections (1), (2), and (5) of section 720.305, Florida Statutes, are amended, and subsection (7) is added to that section to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs as provided in paragraph (2)(e). A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(2) An association may levy reasonable fines for violations of the declaration, association's bylaws, or reasonable rules of the association. A fine may not exceed $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents; however, a fine may not exceed $1,000 per violation. ~~A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents.~~ A fine of ~~less than~~ $1,000 or less may not become a lien against a parcel

and fines may not be aggregated to create a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as provided in paragraph (e) ~~determined by the court~~.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied for a violation by the board of administration may not be imposed unless the board first provides at least 30 ~~14~~ days' notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and ~~an opportunity for~~ a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the

spouse, parent, child, brother, or sister of an officer, director, or employee. The notice must include a description of the alleged violation, the specific action required to cure such violation, and the date and location of the hearing. A parcel owner has the right to attend a hearing by telephone or other electronic means.

(c) If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. If the committee, by majority vote, determines that a violation does not exist then no other action may be taken related to that alleged violation. The role of the committee is limited to determining whether a violation exists and whether to approve ~~confirm~~ or reject the fine or suspension levied by the board.

(d) After the hearing, the committee shall provide written notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, of the committee's findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected, and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation.

(e) Fines, suspensions, attorney fees, and costs are imposed as follows:

1. If a violation is found by the committee, but is cured

before the hearing, a fine or suspension may not be imposed and attorney fees and costs may not be awarded.

2. If a violation is found and the proposed fine or suspension levied by the board is approved by the committee, the committee must decide, by majority vote, a date that the fine payment is due, which date must be at least 30 days after delivery of the written notice required in paragraph (d).

3. If a violation is found and the proposed fine or suspension levied by the board is approved by the committee, but the violation is cured within 30 days after delivery of the written notice required in paragraph (d), the fine must be reduced by 50 percent, any applicable suspensions must be lifted, and attorney fees and costs may not be awarded.

4. If a violation is found and the proposed fine or suspension levied by the board is approved by the committee and the violation is not cured or the fine is not paid within 30 days after delivery of the written notice required in paragraph (d), reasonable attorney fees and costs may be awarded to the association.

(f) A parcel owner or any occupant, licensee, or invitee of the parcel owner may, at any time, make a written request for a detailed accounting of any amounts he or she owes to the association and the board shall provide such information within 10 days after receipt of the written request. Failure by the board to respond to a written request for a detailed accounting

constitutes a complete waiver of the violation.

(g) Upon receipt of a payment for any outstanding fines from a parcel owner or any occupant, licensee, or invitee of the parcel owner, the board must apply the payment first to the fine before satisfying any other amounts due to the association. Attorney fees and costs may not continue to accrue after a parcel owner or any occupant, licensee, or invitee of the parcel owner pays the fine.

(h) A parcel owner or any occupant, licensee, or invitee of the parcel owner may request a hearing before the board to dispute the reasonableness of the attorney fees and costs awarded to the association ~~5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner. The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner~~.

(5) All suspensions imposed under ~~pursuant to~~ subsection (3) or subsection (4) must be approved at a properly noticed board meeting. Upon approval, the board ~~association~~ must send written notice to ~~notify~~ the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery to the parcel owner's designated mailing or e-mail address in the association's official records.

(7) The failure of the association or committee to comply with this section constitutes a waiver of all fines or suspensions imposed or proposed for a violation. Any fines, fees, or other costs incurred by a parcel owner or any occupant, licensee, or invitee of the parcel owner which is related to a fine that is waived under this subsection must also be waived or paid by the association if such fine, fee, or other cost is not waivable.

Section 5. Section 720.3065, Florida Statutes, is created to read:

720.3065 Fraudulent voting activities relating to association elections; penalties.—

(1) Each of the following acts is a fraudulent voting activity relating to association elections and constitutes a a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.

(b) Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.

(c) Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently

changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.

(d) Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.

(e) Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This paragraph does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

(f) Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

Section 6. This act shall take effect October 1, 2023.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

PCS for HB 919 by Rep. Porras
Homeowners' Associations

AMENDMENT SUMMARY
March 28, 2023

Amendment 1 by Rep. Porras (line 245):

- Clarifies that the maximum fine amount for a violation is $100.
- Clarifies that a fine may not become a lien.
- Clarifies that fines may not exceed $1,000 in the aggregate.

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: Regulatory Reform & Economic Development Subcommittee

Representative Porras offered the following:

Amendment

Remove lines 245-250 and insert:

documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate ~~unless otherwise provided in the governing documents~~. A fine ~~of less than $1,000~~ may not become a lien against a parcel

PCS for HB 1209

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1209 Rural Economic Development
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform & Economic Development Subcommittee		Walsh	Anstead

SUMMARY ANALYSIS

Under Florida law, a "rural community," as the term relates to counties, means a county with a population of 75,000 or fewer, or a county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer. The Florida Department of Economic Opportunity's (DEO) Regional Rural Development Grant Program encourages rural communities to leverage limited resources to develop and implement strategies to help attract new businesses.

The bill modifies provisions related to rural economic development, including:

- Removing the match requirements for grants awarded through the Rural Regional Development Grants Program.
- Increasing the funding cap on Rural Infrastructure Fund grants from 50 percent to 75 percent of the total infrastructure project cost.
- Providing that certain rural counties may receive a grant from the Rural Infrastructure Fund that covers 100 percent of the total infrastructure project cost.
- Specifies that DEO, in cooperation with CareerSource Florida, Inc., must prioritize grants under the Everglades Restoration Agricultural Community Employment Training Program that assist training programs located in Rural Areas of Opportunity.

The bill provides an effective date of July 1, 2023.

The bill does not impact state or local government revenues or expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Regional Rural Development Grants Program

The Regional Rural Development Grants Program was established to provide funding, through matching grants, to build the professional capacity of regionally based economic development organizations located in rural communities. The concept of building the "professional capacity" of an economic development organization includes hiring professional staff to develop, deliver, and provide economic development professional services. Professional services includes technical assistance, education and leadership development, marketing, and project recruitment.[1]

Applications submitted to the Department of Economic Opportunity (DEO) for funding through this program must provide proof:[2]

- Of official commitments of support from each of the units of local government represented by the regional organization;
- That each local government has made a financial or in-kind commitments to the regional organization;
- That the private sector has made financial or in-kind commitment to the regional organization;
- That the regional organization is in existence and actively involved in economic development activities serving the region; and
- Of the manner in which the organization coordinates its efforts with those other local and state organizations.

An organization may receive up to $50,000 a year or $250,000 if located in an RAO.[3] Grants must be matched by an amount of non-state resources equal to 25 percent of the state contribution. The DEO is authorized to spend up to $750,000 each fiscal year from funds appropriated to the Rural Community Development Revolving Loan Fund to carry out this program.[4]

Rural Infrastructure Fund

The Rural Infrastructure Fund is a grant program created to facilitate the planning, preparing, and financing of infrastructure projects in rural communities.[5] The program provides access to federal and state infrastructure funding programs, including, but not limited to, those offered by the United States Departments of Agriculture and Commerce.[6] The program funds total infrastructure project grants, infrastructure feasibility grants, and preclearance review grants.

DEO may award grants for up to 50 percent of the total infrastructure project cost.[7] Projects must be related to specific job-creation or job-retention opportunities. Additionally, projects may include improving any inadequate infrastructure that has resulted in regulatory action that prohibits economic or community growth or reducing the costs to community users of proposed infrastructure improvements that exceed such costs in comparable communities, and improving the access availability of broadband Internet service.

[1] S. 288.018(1)(b), F.S.
[2] S. 288.018(2), F.S.
[3] S. 288.018(1)(c), F.S.
[4] S. 288.018(4), F.S.
[5] *See* s. 288.0655, F.S.
[6] S. 288.0655(2)(b), F.S.
[7] *Id.*

Eligible uses of funds include improvements to public infrastructure for industrial or commercial sites, upgrades to or development of public tourism infrastructure, and improvements to broadband Internet service and access in unserved or underserved rural communities.[8] Infrastructure can include public or public-private partnership facilities, like storm water systems, telecommunication, broadband, roads, and nature-based tourism.[9]

The infrastructure feasibility grant provides awards of up to 30 percent of the total project costs for infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities.[10] Maximum awards are dependent on the number of jobs that a business commits to create and may be up to $300,000 if the project is located in a RAO. The total project participation grant may be used in conjunction with the infrastructure feasibility grant.

The preclearance review grant provides awards to help a local government participate in expedited permitting processes through technical assistance in preparing permit applications and local comprehensive plan amendments.[11] Grants may be used for surveys, feasibility studies, and other activities related to the identification and preclearance review of land use modifications. Grants are limited to $75,000 and must be matched 50 percent with local funds. However, projects in a RAO may receive up to $300,000 and must be matched 33 percent with local funds.[12]

Grant applications are reviewed and certified by DEO in consultation with Enterprise Florida, Inc., the Florida Tourism Industry Marketing Corporation, the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission.[13] Reviews include an evaluation of the economic benefit of the projects and their long-term viability.

A total of $30 million in funding was made through the Rural Infrastructure Fund for Fiscal Year 2022-2023. Twenty-five million was available for eligible rural communities statewide and an additional $5 million was available specifically for Florida Panhandle counties.[14]

Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community,[15] or region comprised of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster.[16] An area may also be designated as an RAO if it presents a unique economic development opportunity of regional impact. The designation of an RAO must be agreed upon by the Department of Economic Opportunity (DEO), as well as the county and municipal governments to be included in the RAO.[17]

[8] *Id.*
[9] Broadband Internet service must be provided in partnership with one or more dealers of communications services. S. 288.0655(2)(b), F.S.
[10] S. 288.0655(2)(c), F.S.
[11] S. 288.0655(2)(e), F.S. Expedited permitting is pursuant to s. 403.9739(18), F.S.
[12] S. 288.0655(2)(e), F.S.
[13] S. 288.0655(3), F.S.
[14] Department of Economic *Opportunity, Rural Infrastructure Fund*, https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-infrastructure-fund (last visited March 24, 2023).
[15] Section 288.0656(2)(e), F.S., defines a "rural community" as is any county with a population of 75,000 or fewer, any county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer, a municipality in a county that meets either of the aforementioned criteria, or an unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors.
[16] S. 288.0656(2)(d), F.S.
[17] S. 288.0656(7)(b), F.S.

Based on recommendations of the Rural Economic Development Initiative (REDI),[18] the Governor may designate up to three RAOs by executive order.[19] This designation establishes these areas as priority assignments for REDI and allows the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development initiative.

Currently, there are three designated RAO areas:

- Northwest RAO: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and portions of Walton County (the City of Freeport and lands north of the Choctawhatchee Bay and intercoastal waterway).
- South Central RAO: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay in Palm Beach County and the city of Immokalee in Collier County.
- North Central RAO: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.[20]

Fiscally Constrained Counties

Fiscally Constrained Counties are counties entirely within a rural area of opportunity or where a 1 mill levy would raise no more than $5 million in annual tax revenue.[21] A rural area of opportunity is a rural community[22] or region that has been adversely affected by an extraordinary economic event, severe distress, natural disaster, or that presents a unique economic development opportunity of regional impact, as designated by the Governor.[23] Florida's fiscally constrained counties are: Baker, Bradford, Calhoun, Columbia, Desoto, Dixie, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Okeechobee, Putnam, Suwannee, Taylor, Union, Wakulla, and Washington.[24]

Everglades Restoration Agricultural Community Employment Training Program

The Everglades Restoration Agricultural Community Employment Training Program (Everglades Training Program) requires DEO, in cooperation with CareerSource Florida, Inc., to use funds to provide grants to stimulate and support training and employment programs that seek to match persons who complete such training programs to nonagricultural employment opportunities in areas of high agricultural unemployment. The program also provides other training, educational, and information services necessary to stimulate the creation of jobs in the areas of high agricultural unemployment.[25]

Funds may be used for grants for tuition for public or private technical or vocational programs and matching grants to employers to conduct employer-based training programs, or for the purchase of equipment to be used for training purposes, the hiring of instructors, or any other purpose directly associated with the program.[26]

[18] Section 288.0656(1)(a), F.S. REDI was established by the Legislature to encourage and facilitate the location and expansion of major economic development projects of significant scale in rural communities.
[19] S. 288.0656(7)(a), F.S.
[20] Department of Economic Opportunity, *Rural Areas of Opportunity*, https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited March 24, 2023). The economic development organizations for these RAOs are named Opportunity Florida, Florida's Heartland Regional Economic Development Initiative, and the North Florida Economic Development Partnership, respectively.
[21] S. 218.67(1), F.S.
[22] A "rural community" as the term relates to counties means a county with a population of 75,000 or fewer, or a county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer. *See* s. 288.0656(1)(e), F.S.
[23] S. 288.0656(1)(d), F.S.
[24] Florida Department of Revenue, *Fiscally Constrained Counties*, https://floridarevenue.com/property/Documents/fcco081210.pdf (last visited Mar. 24, 2023).
[25] S. 446.71(1), F.S.
[26] S. 446.71(3), F.S.

DEO is prohibited from awarding a grant to any given training program which exceeds 50 percent of the total cost of the program, unless the training program is located within a RAO, in which case the grant may exceed 50 percent of the total cost of the program and up to100 percent.[27] Matching contributions may include in-kind services, including, but not limited to, the provision of training instructors, equipment, and training facilities.

DEO may grant up to 100 percent of the tuition for a participant who resides, and has resided for at least three of the last five immediately preceding years, within the Everglades Agricultural Area (EAA)[28] and in counties that provide for water storage and dispersed water storage that are located in RAOs.[29]

Programs established in the EAA must include opportunities to obtain the qualifications and skills necessary for jobs related to federal and state restoration projects, the Airglades Airport in Hendry County, or an inland port in Palm Beach County, or other industries with verifiable, demonstrated interest in operating within the EAA, as well as in counties that provide for water storage and dispersed water storage that are located in RAOs.[30]

In 2022, the Legislature awarded more than $700,000 to the program.[31]

Effect of the Bill

The bill removes the match requirements for grants awarded through the Rural Regional Development Grants Program. Accordingly, the bill removes the requirements that when awarding these grants, DEO consider whether each local government has made a financial or in-kind commitment to the regional organization, and whether the private sector has made financial or in-kind commitments to the regional organization.

The bill increases the funding cap on Rural Infrastructure Fund grants from 50 percent to 75 percent of the total infrastructure project cost. Under the bill, a rural community or rural area of opportunity located in a fiscally constrained county may receive a grant that covers 100 percent of the total infrastructure project cost. The bill eliminates a requirement capping grants for infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities at 30 percent of the total project costs.

The bill also deletes a cross reference in order to align a section of law relating to awards from Triumph Gulf Coast, Inc.,[32] with statutory changes made by the bill.

The bill specifies that DEO, in cooperation with CareerSource Florida, Inc., must prioritize using program funds from the Everglades Training Program to provide employer-based grants to training programs located in RAOs that provide for water storage and dispersed water storage as part of the Everglades restoration efforts.

The Everglades Training Program is required to award grants with priority given to employer-based training programs. However, grants may not be awarded to an employer-based training program if the

[27] S. 446.71(4), F.S.
[28] The Everglades Agricultural Area is an approximately 1,160 square-mile area south of Lake Okeechobee of productive agricultural land. *See* s. 373.4592(15), F.S., for the property description. *See also* Lake Okeechobee Business Alliance, *The Everglades Agricultural Area*, http://www.lakeoalliance.org/everglades-agricultural-area#:~:text=The%20Everglades%20Everglades%20Agricultural%20Area,vibrant%20and%20sustianable%20local%20economies. (last visited March 24, 2023).
[29] S. 446.71(6), F.S.
[30] S. 446.71(7), F.S.
[31] Department of Economic Opportunity, DEO Press Releases, *Governor DeSantis Awards More Than $700,000 for Workforce Training in Everglades Agricultural Communities,* https://www.floridajobs.org/news-center/DEO-Press/2022/04/18/governor-desantis-awards-more-than-$700-000-for-workforce-training-in-everglades-agricultural-communities (last visited March 24, 2023).
[32] Section 288.8017(1), F.S., provides that Triumph Gulf Coast, Inc., shall make awards from available funds to projects or programs that meet the priorities for economic recovery, diversification, and enhancement of the disproportionately affected counties.

grant exceeds 50 percent of the total cost of the program except that if the employer-based training program is in a RAO, then the DEO may grant an award up to 100 percent of the program costs. Program funds provided to employer-based training programs may be used for the purchase of equipment to be used for training, hiring, or any other purpose related to the program.

Under the bill, DEO must set aside up to 50 percent of the funds related to the Everglades Training Program for employer-based training programs for the first six months of each fiscal year. Any unused funds may be used for tuition. DEO must include the allocation of funds in the notice of grant opportunities.

The bill provides that in the event of a conflict with any of the provisions of House Bill 5, 2023 regular session, or similar legislation, the provisions of House Bill 5, 2023 regular session, or similar legislation, will control.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 288.018, F.S., relating to the Regional Rural Development Grants Program.

Section 2: Amends s. 288.0655, F.S., relating to the Rural Infrastructure Fund.

Section 3: Amends s. 288.8017, F.S., relating to Triumph Gulf Coast, Inc.

Section 4: Amends s. 446.71, F.S., relating to the Everglades Restoration Agricultural Community Employment Training Program.

Section 5: Provides implementation directions based on certain conflicts.

Section 6: Provides an effective date of July 1, 2023.

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 could increase private sector investment in rural areas.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Rural Economic Development; amending s. 288.018, F.S.; specifying that funding provided under the Regional Rural Development Grants Program are not matching grants; revising the required criteria the Department of Economic Opportunity must consider to approve a participant in the program; amending s. 288.0655, F.S.; revising the percentage of certain project costs for which the department may award certain grants; removing a local match requirement; amending s. 288.8017, F.S.; conforming provisions to changes made by the act; amending s. 446.71, F.S.; revising the areas in which the department may provide grants through the Everglades Restoration Agricultural Community Employment Training Program; authorizing the use of certain grant funds for certain purposes; requiring the department to set aside a certain percentage of funds for a certain purpose; prohibiting the department from awarding employer-based grants in excess of a certain amount; requiring the department to prioritize awarding employer-based grants to certain training programs; providing that certain accreditation or licensure meets a certain qualification requirement; revising requirements for the location in which a training

program participant must reside to receive a certain grant from the department; revising the requirements for employer-based training programs established in the Everglades Agricultural Area; providing that the provisions of this act shall not control to the extent of certain conflicts; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 288.018, Florida Statutes, are amended to read:

288.018 Regional Rural Development Grants Program.—

(1)(a) For the purposes of this section, the term "regional economic development organization" means an economic development organization located in or contracted to serve a rural area of opportunity, as defined in s. 288.0656(2)(d).

(b) The department shall establish a ~~matching~~ grant program to provide funding to regional economic development organizations for the purpose of building the professional capacity of those organizations. Building the professional capacity of a regional economic development organization includes hiring professional staff to develop, deliver, and provide needed economic development professional services, including technical assistance, education and leadership development, marketing, and project recruitment. ~~Matching~~ Grants

may also be used by a regional economic development organization to provide technical assistance to local governments, local economic development organizations, and existing and prospective businesses.

(c) A regional economic development organization may apply annually to the department for a ~~matching~~ grant. The department is authorized to approve, on an annual basis, grants to such regional economic development organizations. The maximum amount an organization may receive in any year will be $50,000, or $250,000 for any three regional economic development organizations that serve an entire region of a rural area of opportunity designated pursuant to s. 288.0656(7) if they are recognized by the department as serving such a region.

~~(d) Grant funds received by a regional economic development organization must be matched each year by nonstate resources in an amount equal to 25 percent of the state contribution.~~

(2) In approving the participants, the department shall consider the demonstrated need of the applicant for assistance and require the following:

(a) Documentation of official commitments of support from each of the units of local government represented by the regional organization.

(b) ~~Demonstration that each unit of local government has made a financial or in-kind commitment to the regional~~

~~organization.~~

~~(c) Demonstration that the private sector has made financial or in-kind commitments to the regional organization.~~

~~(d)~~ Demonstration that the organization is in existence and actively involved in economic development activities serving the region.

(c) ~~(e)~~ Demonstration of the manner in which the organization is or will coordinate its efforts with those of other local and state organizations.

Section 2. Paragraphs (b), (c), and (e) of subsection (2) of section 288.0655, Florida Statutes, are amended to read:

288.0655 Rural Infrastructure Fund.—

(2)

(b) To facilitate access of rural communities and rural areas of opportunity as defined by the Rural Economic Development Initiative to infrastructure funding programs of the Federal Government, such as those offered by the United States Department of Agriculture and the United States Department of Commerce, and state programs, including those offered by Rural Economic Development Initiative agencies, and to facilitate local government or private infrastructure funding efforts, the department may award grants for up to 75 ~~50~~ percent of the total infrastructure project cost, or up to 100 percent of the total infrastructure project cost for a project located in a rural community or a rural area of opportunity, as those terms are

defined in s. 288.0656(2), which is also located in a fiscally constrained county as described in s. 218.67(1). Eligible projects must be related to specific job-creation or job-retention opportunities. Eligible projects may also include improving any inadequate infrastructure that has resulted in regulatory action that prohibits economic or community growth, reducing the costs to community users of proposed infrastructure improvements that exceed such costs in comparable communities, and improving access to and the availability of broadband Internet service. Eligible uses of funds shall include improvements to public infrastructure for industrial or commercial sites, upgrades to or development of public tourism infrastructure, and improvements to broadband Internet service and access in unserved or underserved rural communities. Improvements to broadband Internet service and access must be conducted through a partnership or partnerships with one or more dealers, as defined in s. 202.11(2), and the partnership or partnerships must be established through a competitive selection process that is publicly noticed. Authorized infrastructure may include the following public or public-private partnership facilities: storm water systems; telecommunications facilities; broadband facilities; roads or other remedies to transportation impediments; nature-based tourism facilities; or other physical requirements necessary to facilitate tourism, trade, and economic development activities in the community. Authorized

infrastructure may also include publicly or privately owned self-powered nature-based tourism facilities, publicly owned telecommunications facilities, and broadband facilities, and additions to the distribution facilities of the existing natural gas utility as defined in s. 366.04(3)(c), the existing electric utility as defined in s. 366.02, or the existing water or wastewater utility as defined in s. 367.021(12), or any other existing water or wastewater facility, which owns a gas or electric distribution system or a water or wastewater system in this state where:

1. A contribution-in-aid of construction is required to serve public or public-private partnership facilities under the tariffs of any natural gas, electric, water, or wastewater utility as defined herein; and

2. Such utilities as defined herein are willing and able to provide such service.

(c) To facilitate timely response and induce the location or expansion of specific job creating opportunities, The department may award grants for infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities. Authorized grants shall be up to $50,000 for an employment project with a business committed to create at least 100 jobs; up to $150,000 for an employment project with a business committed to create at least 300 jobs; and up to $300,000 for a project in a rural area

of opportunity. Grants awarded under this paragraph may be used in conjunction with grants awarded under paragraph (b)~~, provided that the total amount of both grants does not exceed 30 percent of the total project cost~~. In evaluating applications under this paragraph, the department shall consider the extent to which the application seeks to minimize administrative and consultant expenses.

(e) To enable local governments to access the resources available pursuant to s. 403.973(18), the department may award grants for surveys, feasibility studies, and other activities related to the identification and preclearance review of land which is suitable for preclearance review. Authorized grants under this paragraph may not exceed $75,000 each, except in the case of a project in a rural area of opportunity, in which case the grant may not exceed $300,000. Any funds awarded under this paragraph must be matched at a level of 50 percent with local funds, except that any funds awarded for a project in a rural area of opportunity must be matched at a level of 33 percent with local funds. If an application for funding is for a catalyst site, as defined in s. 288.0656, the requirement for local match may be waived pursuant to the process in s. 288.06561. In evaluating applications under this paragraph, the department shall consider the extent to which the application seeks to minimize administrative and consultant expenses.

Section 3. Subsection (1) of section 288.8017, Florida

Statutes, is amended to read:

288.8017 Awards.—

(1) Triumph Gulf Coast, Inc., shall make awards from available funds to projects or programs that meet the priorities for economic recovery, diversification, and enhancement of the disproportionately affected counties. Awards may be provided for:

(a) Ad valorem tax rate reduction within disproportionately affected counties;

(b) Local match requirements ~~of s. 288.0655~~ for projects in the disproportionately affected counties;

(c) Public infrastructure projects for construction, expansion, or maintenance which are shown to enhance economic recovery, diversification, and enhancement of the disproportionately affected counties;

(d) Grants to local governments in the disproportionately affected counties to establish and maintain equipment and trained personnel for local action plans of response to respond to disasters, such as plans created for the Coastal Impacts Assistance Program;

(e) Grants to support programs that prepare students for future occupations and careers at K-20 institutions that have campuses in the disproportionately affected counties. Eligible programs include those that increase students' technology skills and knowledge; encourage industry certifications; provide

rigorous, alternative pathways for students to meet high school graduation requirements; strengthen career readiness initiatives; fund high-demand programs of emphasis at the bachelor's and master's level designated by the Board of Governors; and, similar to or the same as talent retention programs created by the Chancellor of the State University System and the Commission of Education, encourage students with interest or aptitude for science, technology, engineering, mathematics, and medical disciplines to pursue postsecondary education at a state university or a Florida College System institution within the disproportionately affected counties;

(f) Grants to support programs that provide participants in the disproportionately affected counties with transferable, sustainable workforce skills that are not confined to a single employer; and

(g) Grants to the tourism entity created under s. 288.1226 for the purpose of advertising and promoting tourism and Fresh From Florida, and grants to promote workforce and infrastructure, on behalf of all of the disproportionately affected counties.

Section 4. Section 446.71, Florida Statutes, is amended to read:

446.71 Everglades Restoration Agricultural Community Employment Training Program.—

(1) The Department of Economic Opportunity, in cooperation

with the state board as defined in s. 445.002, shall establish the Everglades Restoration Agricultural Community Employment Training Program within the Department of Economic Opportunity. The Department of Economic Opportunity shall use funds appropriated to the program by the Legislature to provide grants to stimulate and support training and employment programs that seek to match persons who complete such training programs to nonagricultural employment opportunities in the Everglades Agricultural Area as defined in s. 373.4592(2) and rural areas of opportunity as defined in s. 288.0656(2) ~~areas of high agricultural unemployment~~, and to provide other training, educational, and information services necessary to stimulate the creation of jobs in the Everglades Agricultural Area and rural areas of opportunity ~~areas of high agricultural unemployment~~. In determining whether to provide funds to a particular program, the Department of Economic Opportunity shall consider the location of the program in proximity to the program's intended participants.

(2) The Legislature supports projects that improve the economy in the Everglades Agricultural Area and in rural areas of opportunity in counties that provide for water storage and dispersed water storage as part of Everglades restoration efforts. In recognition of the employment opportunities and economic development generated by new and expanding industries in such areas ~~the area~~, such as the Airglades Airport in Hendry

County and the development of an inland port in Palm Beach County, the Legislature finds that training the citizens of the state to fill the needs of these industries significantly enhances the economic viability of such areas ~~the region~~.

(3) Funds may be used for grants for tuition for public or private technical or vocational programs and matching grants to employers to conduct employer-based training programs. Grant funds provided to employer-based training programs may be used~~,~~ ~~or~~ for the purchase of equipment to be used for training purposes, the hiring of instructors, or any other purpose directly associated with the program. For the first 6 months of each fiscal year, the Department of Economic Opportunity shall set aside up to 50 percent of the amount appropriated by the Legislature to fund employer-based training programs. Any unencumbered funds remaining undisbursed from the set-aside amount at the end of the 6-month period may be used to provide funding for tuition. The allocation of funds must be included in the notice of grant opportunities.

(4) The Department of Economic Opportunity may not award an employer-based ~~a~~ grant to any given training program which exceeds 50 percent of the total cost of the program, unless the training program is located within a rural area of opportunity, in which case the grant may exceed 50 percent of the total cost of the program and up to 100 percent. Matching contributions may include in-kind services, including, but not limited to, the

provision of training instructors, equipment, and training facilities. The department shall prioritize awarding employer-based grants to training programs located in rural areas of opportunity in counties that provide for water storage and dispersed water storage as part of Everglades restoration efforts.

(5) Before granting a request for funds made in accordance with this section, the Department of Economic Opportunity shall enter into a grant agreement with the requester of funds and the training institution receiving funding through the program. Such agreement must include all of the following information:

(a) An identification of the personnel necessary to conduct the instructional program, the qualifications of such personnel, and the respective responsibilities of the parties for paying costs associated with the employment of such personnel. National accreditation or licensure of an instructional program by the Commission for Independent Education is sufficient to meet the qualifications requirement.

(b) An identification of the estimated length of the instructional program.

(c) An identification of all direct, training-related costs, including tuition and fees, curriculum development, books and classroom materials, and overhead or indirect costs.

(d) An identification of special program requirements that are not otherwise addressed in the agreement.

(6) The Department of Economic Opportunity may grant up to 100 percent of the tuition for a training program participant who currently resides, and has resided for at least 3 of the 5 immediately preceding years, in ~~within~~ the Everglades Agricultural Area or ~~as described~~ in a rural area of opportunity ~~s. 373.4592 and~~ in a county ~~counties~~ that provides ~~provide~~ for water storage and dispersed water storage as part of Everglades restoration efforts ~~that are located in rural areas of opportunity as described in s. 288.0656~~.

(7) Employer-based training programs established in the Everglades Agricultural Area must include opportunities to obtain the qualifications and skills necessary for jobs related to federal and state restoration projects, the Airglades Airport in Hendry County, an inland port in Palm Beach County, or other industries with verifiable, demonstrated interest in operating in ~~within~~ the Everglades Agricultural Area or in rural areas of opportunity ~~and~~ in counties that provide for water storage and dispersed water storage as part of Everglades restoration efforts ~~that are located in rural areas of opportunity as described in s. 288.0656~~.

(8) The Department of Economic Opportunity shall adopt rules to implement this section.

Section 5. In the event of a conflict of any provision of this act with the provisions of House Bill 5, 2023 regular session, or similar legislation, the provisions of House Bill 5,

2023 regular session, or similar legislation, shall control to the extent of such conflict.

Section 6. This act shall take effect July 1, 2023.