

Commerce Committee

Monday, April 10, 2023
2:00 PM – 6:00 PM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee

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Bob Rommel
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Meeting Agenda

Monday, April 10, 2023
2:00 PM – 6:00 PM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Opening Remarks

IV. Consideration of the following bill(s):

HB 57 Motor Vehicle Liability Policies by Truenow

CS/HB 221 Sales of Firearms and Ammunition by Regulatory Reform & Economic Development Subcommittee, Snyder

CS/CS/HB 233 Next of Kin of Deceased Minors by Constitutional Rights, Rule of Law & Government Operations Subcommittee, Regulatory Reform & Economic Development Subcommittee, Michael

CS/HB 253 Regulation of Securities by Insurance & Banking Subcommittee, Barnaby

CS/HB 439 Land Use and Development Regulations by Local Administration, Federal Affairs & Special Districts Subcommittee, McClain

HB 523 Individual Wine Containers by LaMarca

CS/HB 541 Motor Vehicle Glass by Insurance & Banking Subcommittee, Griffitts

HB 599 Debt Management Services by Garcia

HB 607 Money Services Businesses by Steele

CS/HB 721 Paid Family Leave Insurance by Insurance & Banking Subcommittee, Chaney

HB 737 Secondhand Goods by Barnaby, Mooney

HB 743 Estoppel Letters by Fabricio

CS/HB 745 Emergency Communications by Energy, Communications & Cybersecurity Subcommittee, McFarland

CS/HB 761 Telephone Solicitation by Civil Justice Subcommittee, Fabricio

HB 793 Collateral Protection Insurance on Real Property by Fernandez-Barquin

CS/CS/HB 861 Residential Loan Alternative Agreements by Judiciary Committee, Regulatory Reform & Economic Development Subcommittee, Robinson, W.

CS/HB 895 Labor Pool Act by Regulatory Reform & Economic Development Subcommittee, Basabe

CS/HB 1025 Government Vehicles by Energy, Communications & Cybersecurity Subcommittee, Caruso

HM 1137 New Nuclear Energy by Overdorf

CS/HB 1221 Broadband Internet Service Providers by State Administration & Technology Appropriations Subcommittee, Tomkow

CS/HB 1413 Health Care Expenses by Healthcare Regulation Subcommittee, Tramont

CS/HB 1437 Pub. Rec./Broadband Opportunity Program/DEO by Energy, Communications & Cybersecurity Subcommittee, Esposito

HB 1459 Registration Fees for Malt Beverage Brands and Labels by Yeager

CS/HB 1521 Facility Requirements Based on Sex by Regulatory Reform & Economic Development Subcommittee, Plakon

HB 7041 Space Florida by Regulatory Reform & Economic Development Subcommittee, Sirois

Consideration of the following proposed committee bill(s):

PCB COM 23-03 -- Natural Emergencies

PCB COM 23-04 -- Insurer Accountability

Consideration of the following proposed committee substitute(s):

PCS for CS/HB 677 -- Electronic Payment Transactions

V. Closing Remarks

VI. Adjournment

HB 57

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 57 Motor Vehicle Liability Policies
SPONSOR(S): Truenow
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 516

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N	Herendeen	Lloyd
2) Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

Owners or operators of motor vehicles must insure against losses from liability for bodily injury, death, and property damage. They may do so by purchasing auto insurance from an insurance carrier authorized to do business in Florida by the Office of Insurance Regulation (OIR), or by obtaining a certificate of self-insurance from the Florida Department of Highway Safety and Motor Vehicles (HSMV) after demonstrating the ability to cover potential losses arising out of the ownership, maintenance, or use of a motor vehicle. HSMV does not recognize insurance issued by a risk retention group as a method of proving financial responsibility, unless the risk retention group holds a certificate of authority issued by OIR.

The bill amends Florida's Financial Responsibility Law to permit risk retention groups, which are authorized by federal law, to provide the required motor vehicle coverage to group members. Unlike state-authorized insurers, risk retention groups only sell insurance to eligible members, do not submit rate and form filings to state regulators, and are not members of state guaranty associations that manage claims if an insurer becomes insolvent.

Specifically, the bill permits risk retention groups that have strong ratings from A.M. Best Company (an "A" or higher rating for financial strength and "VIII" or higher for financial size) to provide commercial auto insurance coverage to their members and shareholders.

The bill has an unknown but likely insignificant negative fiscal impact on state government and no impact on local governments. The bill has positive and negative impacts on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida's Financial Responsibility Law

Chapter 324, F.S., sets forth the financial responsibility laws for owners or operators of motor vehicles, whether they be used for personal or commercial purposes.

In general, the owner or operator of a motor vehicle must insure against losses from liability for bodily injury, death, and property damage by 1) purchasing auto insurance from an insurance carrier authorized by OIR to do business in Florida;[1] or 2) obtaining a certificate of self-insurance from HSMV after demonstrating the ability to cover potential losses arising out of the ownership, maintenance, or use of a motor vehicle.[2]

OIR licenses insurance carriers and reviews policy contracts and premium rates of its licensees.[3] An insurance carrier may not deliver an auto insurance policy in Florida unless the policy includes coverages for both personal injury and property damage.[4]

HSMV administers the Financial Responsibility Law by requiring all licensed insurance companies to provide electronic notification of all policies that are issued or cancelled.[5] Vehicle owners must show proof of personal injury protection and property damage liability coverage to register a vehicle,[6] and must provide proof of bodily injury liability coverage if they are involved in an accident and charged with a moving violation.[7] A vehicle owner who fails to maintain continuous coverage may have his or her driver's license and registration suspended for up to three years.[8]

Required coverages vary based on the use of a motor vehicle.

For individual motorists, the law requires $10,000 in personal injury protection and $10,000 for property damage.[9] However, if a driver of a private passenger vehicle has caused an accident involving bodily injury or death, the required minimum bodily injury liability coverage is $10,000 per person and $20,000 per accident.[10] Additionally, if a driver has been convicted of driving under the influence of alcohol, the motorist must maintain minimum bodily injury liability coverage of $10,000 per person and $20,000 per accident for three years after the license is reinstated.[11]

For leased motor vehicles, the lessor is not liable for the actions of a lessee so long as the lease requires $100,000/$300,000 bodily injury liability and $50,000 property damage liability or not less than $500,000 combined property damage and bodily injury liability.[12]

For-hire passenger vehicles like taxicabs and limousines must have bodily injury liability coverage of $125,000 per person and $250,000 per occurrence; and $50,000 property damage coverage.[13]

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[1] S. 324.021(8), F.S.

[2] Ss. 324.161 and 324.171, F.S. *Also see* Florida Department of Highway Safety and Motor Vehicles, Self-Insurance, https://www.flhsmv.gov/insurance/self-insurance/firm/ (last visited Feb. 10, 2023).

[3] Ss. 624.404, 627.062, 627.410, and 627.4102.

[4] S. 627.7275, F.S.

[5] Ss. 324.0221, 324.252, and Rules 15A-3.007, and 15A-3.012, F.A.C.

[6] Ss. 324.022, 324.023, and Rule 15A-3.006, F.A.C.

[7] S. 324.021, F.S. *Also see*, Florida Highway Safety and Motor Vehicles, *Florida Insurance Requirements*, https://www.flhsmv.gov/insurance/ (last visited Feb. 10, 2023).

[8] S. 324.0221, F.S.

[9] Ss. 324.021(7), § 324.022, and 627.736, F.S.

[10] Ss. 324.051, 324.031, 324.061, F.S.

[11] S. 324.023, F.S.

[12] S. 324.021(9), F.S.

[13] Ss. 322.032, 324.021(8), and 324.151, F.S.

Commercial motor vehicles operating on Florida's highways are subject to state and federal regulations related to size and weight limits, safety standards, and registration requirements. Commercial vehicles that weigh 10,001 pounds or more, and engage in interstate commerce or haul hazardous materials, are subject to federal law, where required coverages range from $750,000 to $5 million.[14] Commercial vehicles that weigh 26,001 pounds or more, operate only within Florida, and do not transport hazardous materials are subject to Florida law, where required coverages range from $50,000 to $300,000.[15]

Voluntary coverages include collision (repairs the motor vehicle), comprehensive (losses from events other than collision, like fire or theft or wind or vandalism), uninsured motorist (losses that exceed no-fault coverage when an at-fault driver has no liability insurance or inadequate liability insurance), medical (for losses that exceed no-fault coverage), rental reimbursement, and accidental death or dismemberment.

When the owner or operator of a motor vehicle purchases liability insurance to satisfy the financial responsibility law, the policy must be issued by an insurance company authorized to do business in Florida.[16]

When an owner or operator self-insures a vehicle or fleet of vehicles, the owner or operator must provide audited financial statements to HSMV showing an unencumbered net worth that satisfies the Financial Responsibility Law.[17]

Risk Retention Groups

Federal law treats risk retention groups – which may sell insurance only to eligible members – differently than traditional insurance companies.

Authorized insurers must be licensed in every state in which they operate and the domicile state serves as the primary regulator. Risk retention groups need to be licensed as a liability insurer in only one state; further, those that were chartered prior to 1985 may operate under the laws of Bermuda or the Cayman Islands.[18]

State regulators may require risk retention groups to comply with state laws relating to claim settlement and false or fraudulent acts, pay premium taxes, register with the designated state agent for service of process, and submit to financial exams if such exam has not been completed by the state in which the risk retention group is chartered.[19]

States may not require a risk retention group to participate in any insolvency guaranty association.[20] However, states may require notice that insurance provided by a risk retention group is not protected by an insolvency guaranty association.[21] Unlike authorized insurers, risk retention groups do not submit rate and form filings with a state regulator. Instead, risk retention groups apportion risk among their members; thus, rates are based on an actuarial analysis of the membership and policies can be tailored to suit the needs of the membership.[22]

Members of a risk retention group must be engaged in similar businesses or activities that have similar exposures due to the type of business, trade, product, service, premises, or operations.[23]

Risk retention groups may only provide liability insurance; the law defines liability insurance as coverage for liability for damages to persons or property arising out of any business, trade, product, professional service,

[14] 49 CFR § 387.9 (2022).
[15] Ss. 207.002(1), 320.01(25), and 627.7415, F.S.
[16] S. 324.021(8), F.S.
[17] S. 324.171, F.S.
[18] 15 U.S.C. § 3901(a)(4) and s. 627.942(9), F.S.
[19] 15 U.S.C. § 3902(a)(1).
[20] 15 U.S.C. § 3902(a)(2).
[21] 15 U.S.C. § 3902(a)(1).
[22] National Association of Insurance Commissioners, *Risk Retention Groups*, Risk Retention Groups (naic.org) (last visited Feb. 10, 2023).
[23] 15 U.S.C. §3901(a)(4)(F) and s. 627.942(9), F.S.

premise, operation, or activity of a state or local government.[24] Liability insurance does not include an employer's liability to its employees; thus, risk retention groups may not issue workers' compensation insurance policies to their members.[25]

Risk retention groups may operate in Florida if they obtain a certificate of authority as a liability insurer, or are licensed in another state and provide a copy of their business plan and annual financial statement to OIR and designate the Chief Financial Officer as agent for service of process.[26] According to OIR, 140 risk retention groups are licensed in a state other than Florida and registered to do business in Florida.[27]

Risk retention groups licensed in Florida pay the same premium taxes as Florida-licensed insurers.[28] Risk retention groups registered to operate in Florida but licensed in another state pay the same premium taxes as surplus lines insurers that are allowed to sell lines of insurance that consumers cannot obtain from Florida-licensed insurers.[29] All risk retention groups operating in Florida must use agents who are licensed and appointed in Florida. [30]

American Contractors Insurance Group

American Contractors Insurance Group Ltd. of Bermuda (ACIG) is a risk retention group that is owned by 41 construction companies and affiliated with American Contractors Insurance Company Risk Retention Group (ACIG RRG) of Texas which writes general liability and auto coverages for its members and is registered to do business in Florida. According to company representatives, ACIG provides auto liability insurance for 17 of its 41 member companies, including 7 member companies that have active operations in Florida.

ACIG is also affiliated with ACIG Insurance Company of Illinois, which writes workers' compensation coverages; ACIG Insurance Agency, Inc. of Texas, which coordinates customer service); and American Contractors Risk Purchasing Group, Inc., of Texas, which acts as a purchasing group for professional, pollution, and cyber liability coverages.[31]

The International Risk Management Institute describes "fronting" as the use of a licensed, admitted insurer to issue an insurance policy on behalf of a self-insured organization or captive insurer without transferring any risk. The risk of loss under the policy remains with the self-insured entity or captive insurer, but the authorized insurer (and, in the event of insolvency, the guaranty association the insurer belongs to) assumes a credit risk because it would be required to honor the policy if the insured fails to do so. This provides proof of coverage that is needed to satisfy financial responsibility laws.

The Florida Insurance Code[32] describes a "fronting company" as "an authorized insurer which by reinsurance or otherwise generally transfers more than 50 percent to one unauthorized insurer which does not meet the requirements" to be an accredited or trusteed reinsurer in Florida.[33]

Further, s. 624.404(4)(a), F.S., states: "No authorized insurer shall act as a fronting company for any unauthorized insurer which is not an approved reinsurer."

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[24] 15 U.S.C. 3901(a)(2)(A) and s. 627.942(9)(g), F.S.
[25] 15 U.S.C. 3901(a)(2)(B) and s. 627.942(4), F.S.
[26] Ss. 627.943 and 627.944, F.S.
[27] Florida Office of Insurance Regulation, *Active Company Search*, https://companysearch.myfloridacfo.gov/ (last visited Feb. 10, 2023).
[28] S. 627.943(4), F.S. Pursuant to s. 624.509, F.S., premium taxes (typically 1.75 percent of the premium) are collected by the licensed insurer and paid to the Department of Revenue on or before March 1 of each year.
[29] S. 627.944 (3), F.S. Pursuant to s. 626.932, F.S., premium taxes (4.94 percent of the premium) are collected by the licensed insurance agent and paid to the Department of Financial Services on a quarterly basis; premiums are also reported to the Florida Surplus Lines Service Office (FSLSO) which oversees the reporting requirements of eligible surplus lines insurers. The FSLSO website is https://www.fslso.com/.
[30] Ss. 627.943(5) and 627.944(12), F.S.
[31] American Contractors Insurance Group, *Organization Chart – Construction Industry Shareholders*, https://www.acig.com/assets/docs/ACIG_Organization_Chart.pdf (last visited Feb. 10, 2023).
[32] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code."
[33] S. 624.404(4)(b), F.S.

Florida law explicitly prohibits:

- An authorized insurer or licensed motor vehicle service agreement company from acting as a fronting company for any unauthorized insurer or unlicensed motor vehicle service agreement company.[34]
- An authorized insurer or licensed home warranty association from acting as a fronting company for any unauthorized insurer or unlicensed home warranty association.[35]
- An authorized insurer or licensed service warranty association from acting as a fronting company for any unauthorized insurer or unlicensed service warranty association.[36]

The Insurance Code does not contemplate the situation presented by ACIG RRG, where an authorized insurer acts as a fronting company for a risk retention group.

Representatives of ACIG stated that ACIG RRG must use a fronting policy to write auto liability insurance for Florida members, so they can provide evidence of auto liability coverage. According to documentation provided by company representatives, ACIG retains the entirety of its $5 million auto liability limit by reinsuring the fronting insurer at 100 percent.

Each of the 7 ACIG members with operations in Florida pays a fronting fee of $25,000 annually. This creates a $175,000 annual expense that would be avoided if ACIG RRG were permitted to directly issue auto liability policies to its Florida members. Collectively, the 7 companies insure about 975 vehicles and pay annual auto liability premiums of $1,954,944.

ACIG has an "A" rating from A.M. Best, in category VIII, which applies to companies with a policyholder surplus of $100 million-$250 million.

Effect of the Bill

The bill permits the owner or operator of a motor vehicle to provide proof of financial responsibility by obtaining an insurance policy from a risk retention group that: 1) has an "A" or higher rating for financial strength, and "VIII" or higher for financial size by the A.M. Best Company, and 2) only provides commercial coverage to its members and shareholders.

The bill would permit ACIG RRG to directly provide commercial auto insurance to its Florida members, annually saving each of the 7 Florida members $25,000 each. Additionally, according to OIR, 18 of the risk retention groups active in Florida meet the rating qualifications under the bill.[37]

B. SECTION DIRECTORY:

Section 1. Amends s. 324.021, F.S.

Section 2. 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:

[34] S. 634.241, F.S.
[35] S. 634.326, F.S.
[36] S. 634.429, F.S.
[37] Florida Office of Insurance Regulation, Agency Analysis of 2023 Senate Bill 516 (HB 57's Senate counterpart), p. 2 (Mar. 12, 2023).

If adopted, HSMV will have to engage in structural testing to confirm successful file transfers with any risk retention group that directly insures its members in Florida. This is needed to ensure that HSMV receives timely insurance information about policies that are issued or cancelled. This administrative cost would be absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive impact on some businesses by allowing members of risk retention groups to achieve savings by obtaining required motor vehicle insurance coverage directly their risk retention group, in certain circumstances. It will have a negative impact on those insurers that have acted as fronting companies for the placement of coverage by risk retention groups.

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 provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to motor vehicle liability policies; amending s. 324.021, F.S.; revising the definition of the term "motor vehicle liability policy" to include certain policies issued by specified risk retention groups; defining the term "risk retention group"; providing an effective date.

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

Section 1. Subsection (8) of section 324.021, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(8) MOTOR VEHICLE LIABILITY POLICY.—Any owner's or operator's policy of liability insurance furnished as proof of financial responsibility pursuant to s. 324.031, insuring such owner or operator against loss from liability for bodily injury, death, and property damage arising out of the ownership, maintenance, or use of a motor vehicle in not less than the limits described in subsection (7) and conforming to the

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

requirements of s. 324.151, issued by any insurance company authorized to do business in this state or by a risk retention group described in subsection (12). The owner, registrant, or operator of a motor vehicle is exempt from providing such proof of financial responsibility if he or she is a member of the United States Armed Forces and is called to or on active duty outside this state or the United States, or if the owner of the vehicle is the dependent spouse of such active duty member and is also residing with the active duty member at the place of posting of such member, and the vehicle is primarily maintained at such place of posting. The exemption provided by this subsection applies only as long as the member of the armed forces is on such active duty outside this state or the United States and the owner complies with the security requirements of the state of posting or any possession or territory of the United States.

(12) RISK RETENTION GROUP.—A risk retention group operating in accordance with s. 627.943 or s. 627.944 which is rated "A" or higher for financial strength and "VIII" or higher for financial size category by A.M. Best Company and which only provides commercial coverage for its members and shareholders.

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

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

COMMERCE COMMITTEE

HB 57 by Rep. Truenow
Relating to Motor Vehicle Liability Policies

AMENDMENT SUMMARY
April 7, 2023

Amendment 1 by Rep. Truenow (Line 28): The amendment authorizes a surplus lines insurer that meets applicable financial strength requirements to provide commercial motor vehicle coverage.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove line 28 and insert:

group described in subsection (12). In addition, any surplus lines insurer as defined in s. 626.914(2) which is rated "A" or higher by A.M. Best Company may provide coverage to meet financial responsibility requirements for commercial motor vehicles. The owner, registrant, or

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

Remove lines 4-6 and insert:

the term "motor vehicle liability policy" and defining the term "risk retention group" for purposes of ch. 324, F.S.;

CS/HB 221

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 221 Sales of Firearms and Ammunition
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Snyder and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 214

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 4 N, As CS	Mortellaro	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee	9 Y, 5 N	Byrd	Pigott
3) Commerce Committee		Mortellaro	Hamon

SUMMARY ANALYSIS

A Merchant Category Code (MCC) is a code used by credit card payment associations that categorizes where a credit card purchase is made without showing the specific items that were purchased. Payment organizations use the MCC codes to classify different merchants and businesses by goods or services so that they can track and restrict transactions, report taxes, interchange promotions, gather information on purchasing behaviors, file reports with the Internal Revenue Service (IRS), determine rewards, identify high-risk business models and prohibited business types, and track customer spending.

Historically, MCCs have allowed retailers who sell firearm and ammunition to be categorized under general retail or sporting goods stores. Recently, the International Organization for Standardization (ISO) updated the MCC and created a new MCC for firearm and ammunition retailers. Some argue that the information gathered from the use of this new code could be construed as a firearm registry maintained by private entities.

The bill:

- Prohibits payment settlement entities, merchant acquiring entities, or third-party settlement organizations from classifying merchants or assigning them with an MCC that identifies them as sellers of firearms or ammunition; and
- Authorizes the Department of Agriculture and Consumer Services (DACS) to conduct investigations of alleged violations and bring an administrative action seeking to impose a Class III administrative fine for violations.

The fiscal impact to state government is indeterminate.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation of Merchant Category Codes When Purchasing Firearms

Merchant Category Codes

The International Organization for Standardization (ISO) is an independent, non-governmental organization that develops international standards. One of the standards that the ISO created are the Merchant Category Codes (MCC). The MCCs are used by Mastercard, Visa, Amex, and other major card payment organizations.[1] The MCCs are a 4-digit number that is assigned to a merchant by an acquiring bank in compliance with the card association. Once the business opens a merchant account with the MCC, the business is classified by that market segment and it allows the business to begin accepting credit cards as a form of payment.[2]

Payment organizations use the MCC codes to classify different merchants and businesses by the goods or services they offer so that they can track and restrict transactions, report taxes, interchange promotions, gather information on purchasing behaviors, file reports with the Internal Revenue Service (IRS), determine rewards, identify high-risk business models and prohibited business types, and track customer spending.[3]

Merchant Category Codes in Relation to Firearms

An MCC shows where the purchase is made, but it does not show the specific items that were purchased. Each credit card network has its own master list of MCCs. There are many codes that are being standardized based on the ISO standard, but some financial organizations, third party settlement organizations, or processors have their own MCC lists.[4]

Historically, retailers who sell firearms and ammunition have been assigned an MCC of general retail stores or sporting goods stores.[5] On September 7, 2022, the ISO approved an application by a New York-based bank to adopt a new MCC for firearm retailers, which includes a gun code for "gun and ammunition shops."[6] MCCs adopted by the ISO are not required to be used, but card associations like Visa, MasterCard, and American Express, have all agreed to use the new MCC.[7] However, Visa and MasterCard have not yet updated their lists to include the new MCC for firearm retailers.[8]

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[1] The ISO, *About Us & Retail financial services – Merchant category codes*, https://www.iso.org/about-us.html#:~:text=ISO%20is%20an%20independent%2C%20non-governmental%20international%20organization%20with,support%20innovation%20and%20provide%20solutions%20to%20global%20challenges (last visited Feb. 28, 2023).

[2] Dwyer, B., *CardFellow, Merchant Category Code: Reporting & Rates (2020)*, Apr. 6, 2020, https://www.cardfellow.com/blog/merchant-category-code-mcc/ (last visited Feb. 28, 2023).

[3] Citi, *Merchant Category Codes*, Treasury and Trade Solutions, available at https://www.citibank.com/tts/solutions/commercial-cards/assets/docs/govt/Merchant-Category-Codes.pdf (last visited Feb. 28, 2023).

[4] Motola, C., *Merchant Maverick, Merchant Category Codes (MCC): All You Need to Know*, May 26, 2021, https://www.merchantmaverick.com/merchant-category-code-mcc/ (last visited Feb. 28, 2023).

[5] Kerber, R., Reuters, *Global Standards Body Approves New Merchant code for Gun Sellers*, Sept. 9, 2022, https://www.reuters.com/world/exclusive-global-standards-body-approves-new-merchant-code-gun-sellers-2022-09-09/ (last visited Feb. 28, 2023).

[6] *See id* at The ISO.

[7] Mion, L., Fox Business, *Visa, MasterCard, Amex, to Categorize Gun Store Sales Separately*, Sept. 11, 2022, https://www.foxbusiness.com/economy/visa-mastercard-amex-categorize-gun-store-sales-separately (last visited Mar. 1, 2023).

[8] Visa MCC Manual; MasterCard, *Quick Reference Booklet – Merchant Edition*, Nov. 15, 2018, https://www.mastercard.us/content/dam/mccom/en-us/documents/rules/quick-reference-booklet-merchant-edition.pdf (last visited Feb. 17, 2023) (In Visa's and MasterCard's MCC lists, noting firearms under codes 5099 and 5999, for durable goods (not elsewhere classified) and miscellaneous and specialty retail shops, respectively).

Advocates in support of the new MCC note that this helps to identify and report suspicious activity, such as unusually large purchases of weapons or ammunition.[9] Opponents of the new MCC, have concerns that the new MCC may be too close to a national registry for gun owners.[10]

On September 20, 2022, twenty-four attorneys general, including the Florida Attorney General, sent a letter to Visa, MasterCard, and American Express, expressing concerns about the possibility to misuse the new MCC by tracking data which could infringe upon consumers privacy. In addition, they stated it could result in "arbitrary disparate treatment" of firearm retailers and consumers because the new MCC would only capture firearm purchases from gun retailers but not from department stores.[11]

Parties Involved with Transactions

Even the smallest credit or debit card transactions involve a host of parties that facilitate the exchange between the merchant and customer.

These parties include the cardholder, the merchant, the merchant bank, the payment processors, the issuing banks and the card associations.[12] In a typical transaction, a cardholder will purchase a good or service from a merchant through the use of a credit or debit card. At this time the merchant will send a payment authorization request to the merchant's payment processor who in turn submits the transaction to the correct card association.[13] The card association will then send this authorization request to the issuing bank where the transaction will either be approved or denied.[14] The issuing bank's response will then be sent back to the card association which sends the information to the merchant bank who sends the information to the merchant.[15]

The parties:

- The cardholder is the buyer in the transaction and has a line of credit or a checking account with an issuing bank.
- The merchant is the seller in the transaction and in choosing to accept debit card and credit card purchases will partner with a payment processor.
- A payment processor sends payment information to the customer's card association.
- A card association acts as an intermediary between the issuing bank (customer's bank) and the merchant bank as they relay both payment information to the issuing bank and the issuing bank's response to the merchant bank.
- The issuing bank receives purchase information from the card association and either approves or denies the transaction. It will inform the card association of its determination. Upon determination from the issuing bank for a transaction the card association will inform the merchant bank.
- The merchant bank is the bank of the merchant and will inform the merchant of the issuing bank's determination.[16]

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[9] CBS New York Team, CBS New York, *New York Leaders Call for Establishment of Merchant Category Code for Gun and Ammunition Stores*, Aug. 30, 2022, https://www.cbsnews.com/newyork/news/new-york-gun-ammunition-store-merchant-category-code/#:~:text=August%2030%2C%202022%20%2F%207%3A44%20PM%20%2F%20CBS,merchant%20category%20code%20for%20gun%20and%20ammunition%20stores (last visited Mar. 1, 2023).

[10] Marek, L. Industry Dive. *Visa Raises Concerns on New Gun Code*, Sept. 14, 2022, https://www.paymentsdive.com/news/visa-concerns-new-gun-code-payments-nra/631845/ (last visited Mar. 1, 2023).

[11] Skrmetti, J. and others, Letter from Attorneys General to Card Associations regarding MCCs, *Tennessee State Government*, International Organization for Standardization (ISO), https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2022/pr22-36-letter.pdf (last visited Mar. 1, 2023).

[12] FIS Global, *How Credit Card Processing Works*, https://www.fisglobal.com/en/insights/merchant-solutions-worldpay/article/how-credit-card-processing-works (last visited Mar. 7, 2023).

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

A credit card transaction is made up of three processes, the authorization process, the settlement process, and the funding process.[17] The authorization process happens near instantaneously and can either end in approval or denial.[18] The authorization process reflects the issuing bank's approval or denial of a transaction which is then relayed through the payment network to the merchant.

Current Situation of Credit Card Laws

Relevant Federal Credit Card Laws

Anti-money Laundering Laws

Anti-money Laundering Laws, aim to detect and prevent money laundering and deter financial criminal activity.[19] One provision in these laws, authorizes the Secretary of the Treasury to require any financial institution or those related to financial institutions, to report any suspicious transactions.[20] Banks, federally and non-federally regulated, are required to establish anti-money laundering programs which must meet specified requirements.[21] This includes ongoing monitoring to identify and report suspicious activity and transactions.[22] The U.S. Department of Homeland Security website contains "Signs of Suspicious Activity" which displays images and a description of categories for signs of suspicious activities, one of which is firearm related.[23]

Internal Revenue Code

Payment settlement entities are required to make an annual return to the Internal Revenue Service (IRS) which contains, the gross amount of the reportable payment transactions[24] for each participating payee.[25] The Secretary has the authority to determine the time, form, and manner in which the return must be made,[26] and is reported through Form 1099-K. The form contains a box to report the MCC assigned to the participating payee. The MCC may be excluded from the form if the filing entity uses an industry classification system other than or in addition to MCCs or is a third-party settlement organization.[27] Broadly speaking, the MCCs classify businesses based on what they predominately furnish, services or goods. Payments for services are reportable whereas payments for goods are not reportable.[28]

Relevant Florida Credit Card Laws

Relevant Florida laws that relate to credit cards[29] are contained in the Financial Institutions Code and the Consumer Protection Act.[30] Florida's Credit Card Bank Act provides that a credit card account between a domestic lender or credit card bank and a borrower must be governed by the laws of Florida or federal law unless otherwise expressly agreed in writing by the parties but such writing may not supersede the interest rate provisions of s. 655.954, F.S.[31] Florida consumer protection laws set out a limited number of protections relating to credit cards, such as provisions relating to issuing credit cards,

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[17] *Id*.
[18] This process plays out in full when a debit or credit card is either accepted or rejected at a payment terminal.
[19] 31 U.S.C. s. 5311(2) and (3).
[20] 31 U.S.C. s. 5318(g)(1).
[21] 31 C.F.R. 1020.210.
[22] 31 C.F.R. 1020.10(a)(2)(v)(B) and (b)(2)(v)(B).
[23] The United States Department of Homeland Security, *Recognize Suspicious Activity*, https://www.dhs.gov/see-something-say-something/recognize-the-signs (last visited Mar. 1, 2023).
[24] 26 U.S.C. s. 6050W(c), defines "reportable payment transaction" as any payment card or third-party network transaction.
[25] 26 U.S.C. s. 6050W(a).
[26] *Id*.
[27] IRS, *Instructions for Form 1099-K (01/2022)*, Jan. 2022, https://www.irs.gov/pub/irs-pdf/i1099k.pdf (last visited Mar. 1, 2023).
[28] *Id*.
[29] S. 658.995(2)(a), F.S.
[30] S. 655.005(1)(i), F.S.
[31] S. 658.995(2)(d), F.S.

imposing a surcharge, or printing certain information on a merchant's receipt.[32] No provisions were identified that explicitly restrict or address the use of MCCs.

Similar Pending Legislation in Other States Related to MCCs

Pending legislation that addresses similar issues:

Kentucky HB 221: Purchases from Licensed Gun Dealers (2023)	Creates a new section to prohibit credit card companies, financial institutions, or other persons from using an MCC or other method that categorizes purchases from licensed gun dealers separately from other retailers.[33]
Mississippi HB 1110: Second Amendment Financial Privacy Act (2023) - PASSED	Prohibits a financial institution or its agent from requiring or "assigning" a specific firearm or ammunition merchant code to any firearms business located in Mississippi.[34]
Texas HB 2041: Notice to Consumers Regarding Firearm or Ammunition Transactions (2023-2024)	Requires notice given to consumers when a financial institution generates or collects prohibited firearm or ammunition purchase information.[35]
West Virginia SB 555: Prohibiting Banks and Payment Networks from Tracking Firearm-related Data and Outlining Penalties (2023)	Prohibits banks and payment networks from tracking firearm-related data and outlines penalties regarding the state and local purchasing card contract if banks and payment networks track firearm-related data.[36]

Current Situation Firearms Records

Background

The Second Amendment states "a well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."[37] As with many amendments in the Constitution, the courts have had to evaluate how far the right extends. The Supreme Court has determined that the individual right to keep and bear arms is not unlimited.[38] Many cases have evaluated the right to bear arms, how far the right extends, and the records that can be kept regulating gun owners.[39]

Federal Records Requirements

In 1938, the Federal Firearms Act[40] created a regulation for those selling certain firearms. Firearm sellers were required to obtain a Federal Firearms License to **maintain records** with the name and address of those who bought a firearm.[41]

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[32] S. 658.995(3), F.S.

[33] KY HB 221.

[34] Mike Maharrey, *Mississippi House Passes Bill to Prohibit Using Credit Card Information to Track Firearms Purchases,* Tenth Amendment Center, Feb. 13, 2023, https://blog.tenthamendmentcenter.com/2023/02/mississippi-house-passes-bill-to-prohibit-using-credit-card-information-to-track-firearms-purchases/#:~:text=Titled%20the%20Second%20Amendment%20Financial%20Privacy%20Act%2C%20the,code%20to%20any%20firearms%20business%20located%20in%20Mississippi (last visited Mar. 1, 2023).

[35] TX HB 2041.

[36] WV SB 555.

[37] U.S. Const. am. 2.

[38] *Heller v. District of Columbia*, 670 F. 3d 1244, 1254-55 (D.C.Cir.2011).

[39] *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 213 L. Ed. 2d 387, 142 S. Ct. 2111 (2022).

[40] 15 U.S.C. s. 901-910.

[41] Robert Longley, *Timeline of Gun Control in the United States*, ThoughtCo, Jan. 8, 2023, https://www.thoughtco.com/us-gun-control-timeline-3963620 (last visited Mar. 1, 2023).

Following the assassinations of President John F. Kennedy, Senator Robert Kennedy, and Dr. Martin Luther King, Jr., Congress passed the Gun Control Act of 1968 (GCA).[42] The GCA required individuals engaged in the business of dealing in firearms to obtain a federal license, prohibited transfers of firearms to certain persons, restricted the interstate transportation, and regulated the importation not suitable for sporting purposes.

Persons engaged in the business of manufacturing, importing, or dealing in firearms - referred to as "federal firearms licensees" (FFLs) - must obtain a license from the Secretary of the Treasury. The license entitles the holder to ship, transport, and receive firearms in interstate or foreign commerce. The FFL **must maintain records** of all acquisitions and dispositions of firearms and comply with applicable state and local laws in transferring firearms. The **recordkeeping requirements** help allow some crime guns to be traced. Combined with other obligations and restrictions imposed on firearms dealers, manufacturers, and importers, these requirements help provide a basis for investigating illegal firearms trafficking.[43]

In 1986, the Firearm Owners' Protection Act (FOPA)[44] passed which amended many provisions in the Gun Control Act of 1968.[45] Congress loosened several controls it had previously established in the GCA, **including records requirements**.[46]

The provisions that **prohibit any rule or regulation** from requiring records to be kept related to firearms also prohibits those records from being recorded or **transferred to a facility owned, managed, or controlled by the United States, any State, or any political subdivision**. FOPA also directly prohibits any registration systems of firearms, firearm owners, or firearms transactions from being established. However, the Secretary can inquire into a firearm in the course of a criminal investigation.[47]

The law requires a licensed importer, manufacturer, or dealer to **handle records** of firearms transactions and national instant criminal background checks in a certain manner.[48] In certain instances the criminal background check system **must destroy all records**.[49] In other instances, the dealer through the attorney general must report certain information, such as the identity of the person, to the local law enforcement authority.[50]

Florida Firearm Regulations

The Florida Constitution guarantees:

> SECTION 8. Right to bear arms.—

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[42] P.L. 90-351, OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, Senate Report (Judiciary Committee) No. 90-1097, Apr. 29, 1968.

[43] The Enforcement Branch of the Alcohol and Tobacco Tax Division of the Internal Revenue Service initially enforced the GCA. On July 1, 1972, the Bureau of Alcohol, Tobacco and Firearms (ATF) was created as an independent Bureau within the Treasury Department.

[44] 18 U.S.C ch. 44 s. 921 et seq.

[45] 18 U.S.C. ch. 44 s. 921 (amended)

[46] *Id*. See Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy Appendix C, History Of Federal Firearms Laws In The United States, https://www.justice.gov/archive/opd/AppendixC.htm#:~:text=Kennedy%2C%20Senator%20Robert%20Kennedy%2C%20and,the%20federal%20regulation%20of%20firearms. (It also opened up certain loopholes allowing gun sales from people that are not dealers. Allowing FFLs to temporarily conduct business at gun shows; narrowing the scope of those who are required to be licensed: "hobby," or who "sell all or part of a personal collection;" reducing the criminal penalties for certain recordkeeping offenses; prohibiting ATF from computerizing firearms purchase records; permitting sales of ammunition without a license; allowing a convicted felon to obtain firearms where the convicting jurisdiction automatically restored the felons' civil rights.)

[47] 18 U.S.C. s. 926(a).

[48] 18 U.S.C. s. 922(t).

[49] 18 U.S.C. s. 922(t)(2).

[50] 18 U.S.C. s. 925B(a).

(a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.
(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. …."[51]

Generally, a person does not need a license to possess or use a firearm in Florida. However, a person is prohibited from openly carrying a firearm on or about his or her person unless the person is a law enforcement officer or engaged in certain activities, such as hunting, camping, or military service.[52],[53]

Florida Records Related Requirements

The Department of Agriculture and Consumer Services (DACS) is in charge of issuing a concealed weapon or firearm license to a person who meets the specified qualifications under s. 790.06, F.S.[54] Personal identifying information for applicants or concealed weapons licensees are **confidential and exempt** from public records disclosure requirements under s. 119.07(1), F.S., and s. 24(a), Art. 1 of the State Constitution.[55]

Any records pertaining to a buyer or transferee who is not prohibited from receipt or transfer of a firearm under federal or Florida law and whose records are created by the Florida Department of Law Enforcement (FDLE) to conduct the criminal history record check are **confidential and exempt.** These records **may not be disclosed by the FDLE** to any person or to another agency. The FDLE must destroy these records after communicating the approval or non-approval numbers to the licensee and no later than 48 hours after responding to the licensee's request.[56] However, the FDLE may maintain records of National Crime Information Center transactions as required under federal law, and may keep:

- A log of dates of requests for criminal history records checks;[57]
- Unique approval and non-approval numbers;
- License identification numbers; and
- Transaction numbers corresponding to such dates for a period of no longer than 2 years or as otherwise required by law.

These provisions may not be construed to allow the State of Florida to maintain records containing the names of purchasers or transferees who receive unique approval numbers or to keep records of firearm transactions.[58] Any current or former officer or employee of the FDLE or law enforcement agency who intentionally or maliciously violates these provisions is guilty of a third-degree felony.[59]

Effect of the Bill

The bill includes legislative findings indicating that MCC codes, without a "substantial and historical business need" or requirement imposed by law, may frustrate the right to keep and bear arms and violate the reasonable privacy rights of lawful purchasers of firearms and ammunition.

The bill prohibits an entity involved in facilitating or processing payment card transactions, including but not limited to, a financial institution, an acquirer, a payment card network, or a payment card issuer from classifying a merchant of firearms or ammunition under the MCC for firearms or ammunition. A merchant of firearms or ammunition may be assigned or may use an MCC for general merchandise

[51] Art. I, s. 8(a), FLA. CONST.
[52] S. 790.053(3), F.S.
[53] S. 790.053(1), F.S.
[54] S. 790.06(2), F.S.
[55] S. 790.0601(1), F.S.
[56] S. 790.065(4)(a), F.S.
[57] S. 790.065(4)(b), F.S.
[58] S. 790.065(4)(c), F.S.
[59] S. 790.065(4)(d), F.S.

retailers or sporting goods retailers. A contractual provision contrary to these provisions is void as violating the public policy of this state.

The bill authorizes DACS to:

- Investigate alleged violations;
- Bring an administrative action seeking to impose a class III $10,000 fine[60] for each violation; and
- Enforce violations.

The effective date of the bill July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 790.335(1)(a), F.S., to include an additional Legislative finding; Adds s. 790.335(2)(b), F.S., related to prohibitions; amends the penalties in 790.335(4); Authorizes DACS to investigate, and bring an administrative action and impose a Class III $10,000 fine.

Section 2: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. The bill authorizes DACS to investigate and bring an administrative action and impose a Class III $10,000 fine.

2. Expenditures:

   Indeterminate. DACS would be granted statutory authority under this bill to investigate alleged violations of the MCC. DACS would also be empowered to bring an administrative action and impose a Class III administrative fine for each violation. The Office of Agricultural Law Enforcement Regulatory Investigation Section would be in charge of investigating the unlawfully classified retailer violations and the Office of General Counsel would initiate and litigate the administrative actions. Currently, DACS is unable to determine the fiscal impact on the department.

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:

[60] S. 570.971(1)(c), F.S.

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill may require DACS to create rules related to regulatory investigations.[61]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute.

The committee substitute:

- Includes additional entities covered under the bill.
- Authorizes a merchant of firearms or ammunition to be assigned or to use a merchant category code for general merchandise retailers or sporting goods retailers.
- Specifies that agreements or contractual provisions contrary to the provisions in the bill are void and in violation of the public policy of this state.
- Authorizes DACS to enforce violations.

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

[61] S. 493.6103, F.S.

A bill to be entitled

An act relating to sales of firearms and ammunition; amending s. 790.335, F.S.; providing legislative findings; prohibiting payment settlement entities, merchant acquiring entities, or third party settlement organizations from assigning merchant category codes or otherwise classifying merchants of firearms or ammunition separately from general merchandise or sporting goods retailers; prohibiting entities involved in facilitating or processing payment card transactions from assigning to or requiring a merchant to use certain merchant category codes; authorizing a merchant of firearms or ammunition to be assigned or to use certain merchant category codes; specifying that any agreement or contractual provision to the contrary is void and in violation of the public policy of this state; authorizing the Department of Agriculture and Consumer Services to investigate certain alleged violations and bring administrative actions; providing an exception to complaint investigations by state attorneys; making technical changes; providing an effective date.

WHEREAS, the International Standards Organization, based in Switzerland, recently approved a new merchant category code for

firearm and ammunition merchants, and

WHEREAS, firearm and ammunition merchants historically have been classified as sporting goods retailers or general merchandise retailers, which has been sufficient for credit card companies' business needs, and

WHEREAS, according to advocates for the new merchant category code, the new code will allow credit card companies to flag "suspicious" transactions, ostensibly for the purpose of predicting and preventing future gun violence, and

WHEREAS, proponents indicate that the new merchant category code is a "first step" but have given no guidance as to how to distinguish suspicious activity from lawful sales, and

WHEREAS, the use of either merchant category code cannot distinguish the sale of a firearm from the sale of a gun safe by a firearms and ammunition merchant, and

WHEREAS, the use of the new merchant category code to detect suspicious activities predicting future unlawful activity will likely discourage financial institutions from serving lawful retailers of firearms and ammunition and chill the lawful exercise of Second Amendment rights, and

WHEREAS, current law requires a firearm retailer to conduct a criminal history records check on a potential purchaser before delivering a firearm to the purchaser, and

WHEREAS, the new merchant category code may result in credit card companies reporting law abiding citizens to a law

enforcement agency based on overbroad definitions of suspicious activity and the creation of a de facto gun registry and watchlists of law abiding citizens, and

WHEREAS, the use of the new merchant category code will likely make the job of law enforcement officers more difficult, as those purchasing a firearm from a firearm retailer for an unlawful purpose will likely purchase firearms with cash, cryptocurrency, or other means that are difficult or impossible to trace, and

WHEREAS, developing appropriate regulations for the sale of firearms and ammunition while protecting the right of self-defense is the role of democratically elected officials, not the role of unelected bankers and foreign organizations, NOW, THEREFORE,

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

Section 1. Paragraph (a) of subsection (1) and subsections (2) and (4) of section 790.335, Florida Statutes, are amended to read:

790.335 Prohibition of registration of firearms; electronic records.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds and declares that:

1. The right of individuals to keep and bear arms is

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

guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.

2. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a law enforcement tool and can become an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to own a firearm and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution. Further, such a list, record, or registry has the potential to fall into the wrong hands and become a shopping list for thieves.

3. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a tool for fighting terrorism, but rather is an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution.

4. The creation or maintenance of records of purchases of firearms or ammunition or the tracking of sales made by a retailer of firearms or ammunition by a nongovernmental entity, including a financial institution, without a substantial and historical business need or a requirement imposed by law, may frustrate the right to keep and bear arms and violate the reasonable privacy rights of lawful purchasers of firearms or ammunition.

5.~~4.~~ Law-abiding firearm owners whose names have been illegally recorded in a list, record, or registry are entitled to redress.

(2) PROHIBITIONS.—

(a) A ~~No~~ state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of the ~~such~~ state or other governmental entity or any other person, public or private, may not ~~shall~~ knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

(b) A payment settlement entity, merchant acquiring entity, or third party settlement organization as those terms are defined in s. 6050W of the Internal Revenue Code may not assign a merchant category code to or otherwise classify a merchant that is a seller of firearms or ammunition separately from general merchandise retailers or sporting goods retailers.

(c) An entity involved in facilitating or processing a payment card transaction, including, but not limited to, a financial institution, an acquirer, a payment card network, or a payment card issuer, may not assign to a merchant, or require a merchant to use, a merchant category code that classifies the merchant as a firearms or ammunition retailer or a similar classification. A merchant of firearms or ammunition may be assigned or may use a merchant category code for general

merchandise retailers or sporting goods retailers. Any agreement or contractual provision to the contrary is void in violation of the public policy of this state.

(4) PENALTIES.—

(a) Any person who, or entity that, violates paragraph (2)(a) ~~a provision of this section~~ commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as required by ~~the provisions of~~ s. 16, Art. I of the State Constitution or the Sixth Amendment to the United States Constitution, ~~no~~ public funds may not ~~shall~~ be used to defend the unlawful conduct of any person charged with a violation of this section, unless the charges against the ~~such~~ person are dismissed or the ~~such~~ person is determined to be not guilty at trial. Notwithstanding this paragraph, public funds may be expended to provide the services of the office of public defender or court-appointed conflict counsel as provided by law.

(c) The governmental entity, or the designee of the ~~such~~ governmental entity, in whose service or employ a list, record, or registry was compiled in violation of paragraph (2)(a) ~~this section~~ may be assessed a fine of up to ~~not more than~~ $5 million~~,~~ if the court determines that the evidence shows that the list, record, or registry was compiled or maintained with the knowledge or complicity of the management of the governmental entity. The Attorney General may bring a civil cause of action to enforce the fines assessed under this

paragraph.

(d) The Department of Agriculture and Consumer Services may investigate alleged violations of paragraph (2)(b) or paragraph (2)(c) and, upon finding a violation, bring an administrative action seeking to impose an administrative fine pursuant to s. 570.971 in the Class III category for each violation of paragraph (2)(b) or paragraph (2)(c) for each instance of an unlawfully classified retailer.

(e)~~(d)~~ The state attorney in the appropriate jurisdiction shall investigate complaints of criminal violations of this section, except for alleged violations of paragraph (2)(b) or paragraph (2)(c), and shall prosecute violators~~,~~ where evidence indicates that a violation may have occurred~~, shall prosecute violators~~.

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

COMMERCE COMMITTEE

HB 221 by Rep. Snyder
Sales of Firearms and Ammunition

AMENDMENT SUMMARY
April 10, 2023

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

- Makes technical changes to align the bill with the Senate companion.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Snyder offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

WHEREAS, the International Standards Organization, based in Switzerland, recently approved a new merchant category code for firearm and ammunition merchants, and

WHEREAS, firearm and ammunition merchants historically have been classified as sporting goods retailers or general merchandise retailers, which has been sufficient for credit card companies' business needs, and

WHEREAS, according to advocates for the new merchant category code, the new code will allow credit card companies to flag "suspicious" transactions, ostensibly for the purpose of predicting and preventing future gun violence, and

WHEREAS, proponents indicate that the new merchant category code is a "first step" but have given no guidance as to how to distinguish suspicious activity from lawful sales, and

WHEREAS, the use of either merchant category code cannot distinguish the sale of a firearm from the sale of a gun safe by a firearms and ammunition merchant, and

WHEREAS, the use of the new merchant category code to detect suspicious activities predicting future unlawful activity will likely discourage financial institutions from serving lawful retailers of firearms and ammunition and chill the lawful exercise of Second Amendment rights, and

WHEREAS, current law requires a firearm retailer to conduct a criminal history records check on a potential purchaser before delivering a firearm to the purchaser, and

WHEREAS, the new merchant category code may result in credit card companies reporting law-abiding citizens to a law enforcement agency based on overbroad definitions of suspicious activity and the creation of a de facto gun registry and watchlists of law-abiding citizens, and

WHEREAS, the use of the new merchant category code will likely make the job of law enforcement officers more difficult, as those purchasing a firearm from a firearm retailer for an unlawful purpose will likely purchase firearms with cash, cryptocurrency, or other means that are difficult or impossible to trace, and

WHEREAS, developing appropriate regulations for the sale of firearms and ammunition while protecting the right of self-defense is the role of democratically elected officials, not the role of unelected bankers and foreign organizations, NOW, THEREFORE,

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

Section 1. Paragraph (a) of subsection (1) and subsections (2) and (4) of section 790.335, Florida Statutes, are amended to read:

790.335 Prohibition of registration of firearms; electronic records.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds and declares that:

1. The right of individuals to keep and bear arms is guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.

2. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a law enforcement tool and can become an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to own a firearm and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution. Further, such a list, record, or registry has the potential to fall into the

wrong hands and become a shopping list for thieves.

3. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a tool for fighting terrorism, but rather is an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution.

4. The creation or maintenance of records of purchases of firearms or ammunition or the tracking of sales made by a retailer of firearms or ammunition by a nongovernmental entity, including a financial institution, without a substantial and historical business need or a requirement imposed by law, may frustrate the right to keep and bear arms and violate the reasonable privacy rights of lawful purchasers of firearms or ammunition.

5. Law-abiding firearm owners whose names have been illegally recorded in a list, record, or registry are entitled to redress.

(2) PROHIBITIONS.—

(a) A ~~No~~ state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of the ~~such~~ state or other governmental entity or any other person, public or private, may not ~~shall~~ knowingly and willfully keep or cause to be kept any list,

record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

(b) A payment settlement entity, merchant acquiring entity, or third party settlement organization as those terms are defined in s. 6050W of the Internal Revenue Code may not assign a merchant category code to or otherwise classify a merchant that is a seller of firearms or ammunition separately from general merchandise retailers or sporting goods retailers.

(c) An entity involved in facilitating or processing a payment card transaction, including, but not limited to, a financial institution, an acquirer, a payment card network, or a payment card issuer, may not assign to or require a merchant to use a merchant category code that classifies the merchant as a firearms or ammunition retailer or places the merchant in a similar classification. A merchant of firearms or ammunition may be assigned or may use a merchant category code for general merchandise retailers or sporting goods retailers. Any agreement or contractual provision to the contrary is void in violation of the public policy of this state.

(4) PENALTIES.—

(a) Any person who, or entity that, violates paragraph (2)(a) ~~a provision of this section~~ commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Except as required by ~~the provisions of~~ s. 16, Art. I of the State Constitution or the Sixth Amendment to the United

States Constitution, ~~no~~ public funds may not ~~shall~~ be used to defend the unlawful conduct of any person charged with a violation of this section, unless the charges against the ~~such~~ person are dismissed or the ~~such~~ person is determined to be not guilty at trial. Notwithstanding this paragraph, public funds may be expended to provide the services of the office of public defender or court-appointed conflict counsel as provided by law.

(c) The governmental entity, or the designee of the ~~such~~ governmental entity, in whose service or employ a list, record, or registry was compiled in violation of paragraph (2)(a) ~~this section~~ may be assessed a fine of up to ~~not more than~~ $5 million~~,~~ if the court determines that the evidence shows that the list, record, or registry was compiled or maintained with the knowledge or complicity of the management of the governmental entity. The Attorney General may bring a civil cause of action to enforce the fines assessed under this paragraph.

(d) The Department of Agriculture and Consumer Services may investigate alleged violations of paragraph (2)(b) or paragraph (2)(c) and, upon finding a violation, bring an administrative action seeking to impose an administrative fine pursuant to s. 570.971 in the Class III category for each violation of paragraph (2)(b) or paragraph (2)(c) for each instance of an unlawfully classified retailer.

(e) The state attorney in the appropriate jurisdiction

shall investigate complaints of criminal violations of this section, except for alleged violations of paragraph (2)(b) or paragraph (2)(c), and shall prosecute violators, where evidence indicates that a violation may have occurred~~, shall prosecute violators~~.

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

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

Remove everything before the enacting clause and insert:
An act relating to sales of firearms and ammunition; amending s. 790.335, F.S.; providing legislative findings; prohibiting payment settlement entities, merchant acquiring entities, or third party settlement organizations from assigning merchant category codes or otherwise classifying merchants of firearms or ammunition separately from general merchandise or sporting goods retailers; prohibiting entities involved in facilitating or processing payment card transactions from assigning to or requiring a merchant to use certain merchant category codes; authorizing a merchant of firearms or ammunition to be assigned or to use certain merchant category codes; specifying that any agreement or contractual provision to the contrary is void and in violation of the public policy

of this state; authorizing the Department of Agriculture and Consumer Services to investigate certain alleged violations and bring administrative actions; providing an exception to complaint investigations by state attorneys; making technical changes; providing an effective date.

CS/CS/HB 233

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 233 Next of Kin of Deceased Minors
SPONSOR(S): Constitutional Rights, Rule of Law & Government Operations Subcommittee, Regulatory Reform & Economic Development Subcommittee, Michael and others
TIED BILLS: HB 789 **IDEN./SIM. BILLS:** CS/SB 490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Mortellaro	Anstead
2) Constitutional Rights, Rule of Law & Government Operations Subcommittee	11 Y, 0 N, As CS	Wagoner	Miller
3) Commerce Committee		Mortellaro	Hamon

SUMMARY ANALYSIS

Currently, Florida law provides a list of rights for victims and witnesses of crimes. There are several enumerated rights for families of certain victims of crime, but no specific mandate that law enforcement agencies provide certain investigative and contact information to the next of kin of deceased minors who were the victim of a homicide.

The bill defines “next of kin” and requires that, during the criminal investigation of the death of a minor, the law enforcement agency that initiates or bears the primary responsibility for the investigation must provide the minor's next of kin with all of the following information:

- The contact information for the primary investigator and each law enforcement agency for the investigation.
- The case number for the investigation, if applicable.
- A list of the minor's personal effects and information on how the minor's next of kin can collect such personal effects, unless providing the information would jeopardize or otherwise interfere with an active investigation.
- Information regarding the status of the investigation, at the discretion of the law enforcement agency.

The bill prohibits the law enforcement agency from providing any of the above information if doing so would jeopardize or otherwise interfere with an active investigation. The law enforcement agency is not required to provide investigative records generated during its investigation to a minor's next of kin for inspection.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Investigation Materials

Under the Florida Constitution, victims of crime and their families are guaranteed certain rights and protections.[1] Florida law provides a list of rights for victims and witnesses in the criminal justice system.[2] The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Florida Commission on Offender Review, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency are required to develop and implement guidelines for the use of their respective agencies to achieve the statutory objectives.

Related to rights of a victim's parent, guardian, or next of kin:

- Law enforcement officers must distribute victim's rights cards or brochures informing on the right of the next of kin of a homicide victim to be informed, to be present, and to be heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent that this right does not interfere with the constitutional rights of the accused.[3]
- In the case of a homicide, sexual offense, attempted murder or sexual offense, stalking, or domestic violence, law enforcement officers or personnel of an organization that provides assistance to the appropriate next of kin of the victim must request that the next of kin of the victim complete a victim notification card, which provides a way of notification if a defendant is released from custody.[4]
- The chief administrator of a county jail, municipal jail, juvenile detention facility, or residential commitment facility must make a reasonable attempt to notify the appropriate next of kin or designated contact of a victim homicide, sexual offense, attempted murder or sexual offense, stalking, or domestic violence before the defendant's or offender's release from custody, if the victim notification card has been provided.[5]
- The appropriate agency must provide notification of certain judicial and post judicial proceedings to the parent or guardian of a minor victim and a relative of a homicide victim.
    - A victim's parent or guardian if the victim is a minor, or a victim's next of kin may not be excluded from any portion of any proceeding, unless the court determines such person's presence to be prejudicial.[6]
- The state attorney must consult the guardian or family of a victim of a felony involving physical or emotional injury, trauma, or homicide, in order to obtain the views of the victim or family about the disposition of any criminal or juvenile case brought as a result of such crime.[7]
- Upon request, the state attorney must allow the victim's parent or guardian if the victim is a minor, or the victim's next of kin in the case of a homicide to review a copy of the presentence investigation report before the sentencing hearing if one was completed.
    - Any confidential information that pertains to medical history, mental health, or substance abuse and any information that pertains to any other victim must be redacted from the copy of the report.

[1] Art. I, s. 16, Fla. Const.
[2] S. 960.001, F.S.
[3] S. 960.001(1)(a)5., F.S.
[4] S. 960.001(1)(b), F.S.
[5] S. 960.001(1)(f), F.S.
[6] S. 960.001(1)(e), F.S.
[7] S. 960.001(1)(g)1., F.S.

    - Any person who reviews the report pursuant to this paragraph must maintain the confidentiality of the report and may not disclose its contents to any person except statements made to the state attorney or the court.[8]
- The Department of Corrections must, upon request, notify the victim's parent or guardian if the victim is a minor, or the victim's next of kin if the victim is a homicide victim if an inmate has been approved for community work release.[9]

Curtis' Law

In 1997, 16-year-old Curtis Williamson was murdered in California.[10] Afterwards, his mother, Patricia Ward, had difficulty obtaining information related to the investigation of his death.[11] Since then, his mother moved to Florida and began pushing for greater investigation information access for parents of deceased minors.[12] An organization, Curtis's & Co for Children Gone to Soon, Inc., was formed to advocate for law reform nationwide to mandate that certain investigative and contact information be made available to surviving family members in certain circumstances.[13] The proposed law is called Curtis' Law.[14]

In 2022, California passed SB 1268, a version of Curtis' Law, which requires the law enforcement agency that bears the primary responsibility for the investigation to provide a deceased minor victim's parent or guardian[15] with the:[16]

- Contact information of the primary law enforcement agency and the primary contact at such agency;
- Case number;
- List of personal effects found with the minor and contact information to recover such effects, unless doing so would interfere with an investigation; and
- Status of the investigation, at the discretion of the law enforcement agency.

Law enforcement is not required to provide any information that would jeopardize or otherwise allow an individual to interfere with the ongoing investigation or any records generated pursuant to their investigation for inspection by a victim's family. Law enforcement agencies providing information may require any family member receiving the information to confirm their identity through a certified declaration.[17]

Neither the Florida Constitution nor the statutory guidelines for fair treatment of victims of crime define "family" or "next of kin."

Next of Kin

Generally, "next of kin" means the nearest blood relation according to the law of consanguinity.[18] However, Florida statutes provide more specific definitions in different contexts. For example, in proceedings pertaining to the protection or custody of children, "next of kin" is defined an adult relative of a child who is the child's brother, sister, aunt, uncle, or first cousin.[19] In the same statute, "family" is

[8] S. 960.001(1)(g)2., F.S.
[9] S. 960.001(1)(g)3., F.S.
[10] Cole Heath, Action News Jax, *Proposed Curtis Law would give families of murdered children information about their child's case*, https://www.actionnewsjax.com/news/local/proposed-curtis-law-would-give-families-of-murdered-children-information-about-their-childs-case/502708049/ (last visited March 24, 2023).
[11] Justice 4 Curtis, *Our Story*, https://justice4curtis.org/our-story/ (last visited March 24, 2023).
[12] Action Jax News, *supra* note 39.
[13] Justice 4 Curtis, *supra* note 40.
[14] Justice 4 Curtis, Curtis Law, https://justice4curtis.org/the-proposed-law/ (last visited March 24, 2023).
[15] Or immediate family if a parent or guardian cannot be located. "Immediate family" means the victim's spouse, parent, guardian, grandparent, aunt, uncle, brother, sister, and children or grandchildren who are related by blood, marriage, or adoption.
[16] Cal. Penal Code § 679.09
[17] *Id*.
[18] Black's Law Dictionary 1044 (6th Edition 1990).
[19] S. 39.01(51), F.S.

defined as a collective body of persons consisting of a child and parent, legal custodian, or adult relative who live together or where there is a legal responsibility to care for the child,[20] "guardian" is described as a relative, nonrelative, next of kin, or fictive kin who has physical custody of a child,[21] and "parent" is the woman who gives birth to a child or the legal father or adoptive father.[22]

Effect of the Bill

The bill, cited as Curtis' Law, amends s. 960.001, F.S., to require that, during the investigation of the death of a minor, the law enforcement agency that initiates or bears the primary responsibility for the investigation must provide the minor's next of kin with all of the following information:

- The contact information for the primary contact, if known, for the particular investigation, and if more than one law enforcement agency is involved in the investigation, as well as the contact information for each law enforcement agencies involved in the investigation.
- The case number for the investigation, if applicable.
- A list of the minor's personal effects that were found on or with the minor and information on how the minor's next of kin can collect such personal effects. A law enforcement agency may withhold the information if providing the information would jeopardize or otherwise interfere with an active investigation.
- Information regarding the status of the investigation, at the discretion of the law enforcement agency.

The law enforcement agency may not provide any of the above information if doing so would jeopardize or otherwise interfere with an active investigation. Further, the law enforcement agency is not required to provide investigative records generated during its investigation to a minor's next of kin for inspection.

The bill adds cross-referenced definitions to describe "next of kin" to include "parent," "guardian," "family," and "next of kin" as defined in section 39.01, F.S.

B. SECTION DIRECTORY:

Section 1: Provides the act may be cited as "Curtis' Law."
Section 2: Amends s. 960.001, F.S., providing a definition and requiring certain law enforcement agencies to provide certain investigation information.
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:

[20] S. 39.01(27), F.S.
[21] S. 39.01(30), F.S. "Fictive Kin" is a person unrelated by birth, marriage, or adoption who has an emotionally significant relationship with to a child. S. 39.01(28), F.S.
[22] S. 39.01(56), F.S.

Indeterminant. The bill may require more local agencies to comply with information requests by the next of kin of deceased minors.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Law enforcement agencies will need to create guidelines for transmitting certain investigative information to a deceased child's next of kin.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023, the Regulatory Reform and Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarified when an employee does not need to give their employer advanced notice of using their leave.
- Removed recourse for a person who is denied leave.
- Expanded the list of investigative information required to be given to parents or guardians of deceased children to include contact information for any secondary law enforcement agencies.
- Made clarifying and conforming changes.

On March 28, 2023 the Constitutional Rights, Rule of Law & Government Operations Subcommittee adopted a PCS and reported the bill favorably as a committee substitute. The PCS removed the requirement for leave for employees who had a family member that became a homicide victim. The PCS clarified the definition of "next of kin." Further, the PCS provided that if there is an investigation into the death of a minor, the law enforcement agency responsible for the investigation is responsible for providing information to the minor's next of kin.

This analysis is drawn to the bill as amended by the Constitutional Rights, Rule of Law & Government Operations Subcommittee.

A bill to be entitled

An act relating to the next of kin of deceased minors; providing a short title; amending s. 960.001, F.S.; defining the term "next of kin"; requiring law enforcement agencies to provide certain information during the investigation of the death of a minor; providing an exception; providing construction; providing an effective date.

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

Section 1. This act may be cited as "Curtis' Law."

Section 2. Paragraph (v) is added to subsection (1) of section 960.001, Florida Statutes, to read:

960.001 Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.—

(1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Florida Commission on Offender Review, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and s. 16(b), Art. I of the State

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

Constitution and are designed to implement s. 16(b), Art. I of the State Constitution and to achieve the following objectives:

(v) Information concerning an investigation into the death of a minor.—

1. For purposes of this paragraph, "next of kin" includes "family," "guardian," "next of kin," and "parent" as those terms are defined in s. 39.01.

2. During the investigation of the death of a minor, the law enforcement agency that initiates or bears the primary responsibility for the investigation must provide the minor's next of kin with all of the following information:

a. The contact information for the primary contact, if known, for the particular investigation, and if more than one law enforcement agency is involved in the investigation, the contact information for at least one of the secondary law enforcement agencies involved in the investigation.

b. The case number for the investigation, if applicable.

c. A list of the minor's personal effects that were found on or with the minor and information on how the minor's next of kin can collect such personal effects. A law enforcement agency may withhold the information in this sub-subparagraph if providing the information would jeopardize or otherwise interfere with an active investigation.

d. Information regarding the status of the investigation, at the discretion of the law enforcement agency.

3. This paragraph does not require a law enforcement agency to provide any of the information under this paragraph if doing so would jeopardize or otherwise interfere with an active investigation.

4. This paragraph does not require a law enforcement agency to provide investigative records generated during its investigation to a minor's next of kin for inspection.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 253 Regulation of Securities
SPONSOR(S): Insurance & Banking Subcommittee, Barnaby and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 180

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Sellas	Lloyd
2) Commerce Committee		Sellas	Hamon

SUMMARY ANALYSIS

In Florida, the Securities and Investor Protection Act (the Act) regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms. The Act currently prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted. Additionally, all securities in Florida must be registered with the OFR unless they meet a statutory exemption or are federally covered (i.e., under the exclusive jurisdiction of the United States Securities Exchange Commission (SEC)).

The bill:

- Eliminates the requirement for an issuer to register with OFR when selling securities.
- Reduces the issuer filing fee for certain security offerings.
- Creates a continuing education requirement based on the North American Securities Administration Association (NASAA) model rule applicable to associated persons of investment advisers and federal covered advisers. Currently, 12 states have adopted continuing education rules based on the NASAA model rule.
- Repeals the authority of OFR to require the filing of escrow agreements and to hold escrow funds.
- Makes technical, clarifying, and modernizing updates throughout the Act, especially in regard to registration requirements and exemptions.
- Introduces or amends various definitions, including adding regulation of limited liability companies, when acting as an issuer, throughout the Act.

The bill has no impact on local government. It has an insignificant negative impact on state government revenues and no impact on state government expenditures. The bill has an indeterminate, likely minimal, negative fiscal impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Securities Regulation

The federal Securities Exchange Act of 1934 (1934 Act) requires registration of securities market participants like broker-dealers and exchanges.[1] Generally, any person acting as "broker" or "dealer" as defined in the 1934 Act must be registered with the United States Securities and Exchange Commission (SEC) and join a self-regulatory organization (SRO), like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange. The 1934 Act broadly defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," which the SEC has interpreted to include involvement in any of the key aspects of a securities transaction, including solicitation, negotiation, and execution.[2] A "dealer" is "any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.[3]

Certain entities in the securities industry are often referred to as "broker-dealers" because such entities are considered "brokers" when executing trades on behalf of customers, but are "dealers" when executing trades for their own account. In addition to being registered with the SEC, broker-dealers must comply with state registration requirements.

State Securities Regulation

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public from fraudulent sales practices and activities.[4] In Florida, the Securities and Investor Protection Act, ch. 517, F.S. (Act), regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation's (OFR) Division of Securities (Division) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the Act and Rule Chapter 69W, Florida Administrative Code. [5]

As of December 31, 2022, the Division had total registrants in the following areas:

- Dealers: 2,421
- Investment advisers: 8,096
- Branch offices: 11,435
- Associated Persons: 361,200[6]

The Act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with OFR or specifically exempted.[7] Additionally, all securities in Florida must be registered with OFR unless they meet one of the exemptions in ss. 517.051 or 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).[8] Failure to meet the precise

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[1] 15 U.S.C. §§ 78c(a)(4) and 78o; U.S. Securities and Exchange Commission, *Guide to Broker-Dealer Registration*, http://www.sec.gov/divisions/marketreg/bdguide.htm#II (last visited Mar. 19, 2023).
[2] *Id.*
[3] 15 U.S.C. § 78c(a)(5).
[4] U.S. SECURITIES & EXCHANGE COMMISSION, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited Mar. 19, 2023).
[5] Pursuant to s. 20.121(3), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.
[6] Office of Financial Regulation, Agency Analysis of 2023 House Bill 253, p. 2 (Mar. 1, 2023).
[7] s. 517.12, F.S.
[8] S. 517.07, F.S. If a security is registered with the SEC, s. 517.082, F.S., requires the broker or issuer to notify OFR that the security is registered with the SEC.

requirements of these exemptions can subject the issuer to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony in Florida.[9] Civil remedies under the Act include rescission and damages.[10] In addition, issuers must comply with disclosure requirements in state and federal laws that provide potential investors with full and fair disclosures regarding the securities.

The Act requires the following individuals or businesses to be registered with OFR under s. 517.12, F.S., before selling or offering to sell any securities in or from offices in this state, or selling securities to persons in this state from offices outside this state:[11]

- Dealers, which include:[12]
  - Any person, other than an associated person registered under ch. 517, F.S., who engages as a broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
  - Any issuer who through persons directly compensated or controlled by the issuer engages in the business of offering or selling securities which are issued (or proposed to be issued) by the issuer.
- Investment advisers, which include any person who receives compensation and engages in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct their business as a dealer and who receives no special compensation for such services.[13] Investment advisors do not include a "federal covered adviser."[14]
- Associated persons, which include:[15]
  - With respect to a dealer or investment adviser, any of the following:
    - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
    - Any individual directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
    - Any individual, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in s. 517.021, F.S.
  - With respect to a federal covered adviser, any person who is an investment adviser representative and who has a place of business in this state.

Self-Regulatory Organizations

Formed as a result of a 2007 merger between the National Association of Securities Dealers and certain operational arms of the New York Stock Exchange,[16] FINRA is the largest private self-regulatory organization for all securities firms doing business in the United States.[17] In addition to operating the largest securities arbitration forum in the United States, FINRA operates the Central Registration Depository and the Investment Adviser Registration Depository, both which are central databases for registration, reporting, and disclosure information for the securities industry.[18]

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[9] S. 517.302(1), F.S.
[10] S. 517.211(3-5), F.S.
[11] S. 517.12(1), F.S.
[12] S. 517.021(6)(a), F.S. The term "dealer", as defined under Florida law, encompasses the definitions of "broker" and "dealer" under federal law.
[13] S. 517.021(14)(a), F.S.
[14] S. 517.021(9), (14)(b)9., F.S. A federal covered adviser must be registered under federal law and must provide a notice-filing to OFR. Ss. 517.021 and 517.1201, F.S.
[15] S. 517.021(2), F.S.
[16] FINRA, *NASD and NYSE Member Regulation Combine to Form the Financial Industry Regulatory Authority,* https://www.finra.org/media-center/news-releases/2007/nasd-and-nyse-member-regulation-combine-form-financial-industry (last visited Mar. 19, 2023).
[17] FINRA, https://www.finra.org/#/ (last visited Mar. 19, 2023).
[18] NASAA, *CRD & IARD*, https://www.nasaa.org/industry-resources/crd-iard/ (last visited Mar. 19, 2023).

NASAA's Model Rule on Investment Adviser Representative Continuing Education

The North American Securities Administrators Association (NASAA) is a voluntary, international, association whose membership consists of 67 state, provincial, and territorial securities administrators.[19] Formed in 1919, NASAA is the "oldest international organization devoted to investor protection."[20] NASAA advocates on behalf of state securities agencies in North America that are responsible for capital formation and investor protection.[21] NASAA also coordinates training and education seminars for securities agency staff[22] and creates model rules for implementation amongst its members.[23]

On November 30, 2020, NASAA adopted a model rule for the implementation of continuing education (CE) programs for investment adviser representatives (IARs).[24] Among other things, the model rule:

- Requires IARs of both state-registered and federal covered investment advisers seeking registration or renewal of IAR registration to complete 12 CE credits each year;
- Provides that IARs must complete six credits of regulatory and ethics content and six credits of compliance and practice content;
- Allows IARs to select courses that appeal to their interests and suit their business models, so long as such courses meet the credit requirements and are approved content for the CE program;
- Permits IARs to satisfy either some or all of the model rule's CE requirements through completion of the IAR's home state's CE requirements and completion of CE courses required to be completed by IARs who maintain certain professional designations and those required to be completed for registration as an agent of a dealer, provided certain criteria are met;
- Provides that course providers and course content must be approved by NASAA; and
- Requires an IAR who does not complete the CE requirement by the annual deadline to renew as "CE inactive;"

Under the model rule, IARs are responsible for ensuring that completed CE credits are reported to FINRA, NASAA's vendor for program tracking. NASAA has implemented a course reporting fee of $3 per credit hour. Individual course costs will vary depending on the course and provider selected.

Currently, 12 NASAA member jurisdictions have adopted CE requirements similar to those proposed in the rule, namely, Arkansas, Colorado, Kentucky, Maryland, Michigan, Mississippi, Oklahoma, Oregon, South Carolina, Vermont, Washington, D.C., and Wisconsin. [25]

Effect of the Bill

Definitions

The bill creates the following definitions:

- "Accredited investor" has the same definition as that in SEC Rule 501, 17 C.F.R. s. 230.501, which includes:
  - Any bank, savings and loan associations, other institutions defined in section 3(a) of the federal Securities Act of 1933 (1933 Act), brokers or dealers, investment advisers, insurance companies, or investment companies;

[19] NASAA, *Welcome to NASAA*, https://www.nasaa.org/about-us/ (last visited Mar. 19, 2023).
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *See* NASAA, *NASAA Model Rule on Investment Adviser Representative Continuing Education (Model Rule 2002-411(h) or 1956-204(B)(6)-CE)*, https://www.nasaa.org/wp-content/uploads/2020/10/NASAA-IAR-CE-Model-Rule.pdf (last visited, Mar. 19, 2023).
[24] *Id.*
[25] NASAA, https://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-representative-continuing-education/iar-ce-map/ (last visited, Mar. 19, 2023).

- Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;
- Any organization described in section 501(c)(3) of the Internal Revenue Code that is not formed for the specific purpose of acquiring securities offered with total assets in excess of $5,000,000;
- Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer; or
- Any natural person whose individual net worth, or joint net worth with that person's spouse or spousal equivalent, exceeds $1,000,000 (subject to specific calculation restrictions).

The bill amends the following definitions:

- "Associated person" is now defined by a party's relation to a dealer or to an investment adviser.
  - With respect to a dealer, an associated person is a natural person who is employed, appointed, or authorized by a dealer and who represents the dealer in effecting the purchase or sale of a security.
    - The term does not include a dealer or a partner, officer, or director of a dealer unless such person is specified in the group above. The term also does not include a dealer's employee whose function is only clerical or ministerial.
  - With respect to an investment adviser, an associated person is an individual, including, but not limited to, a partner, officer, director, or branch manager who is employed by or associated with, or is subject to the supervision or control of an investment adviser registered under this chapter, and such person:
    - Makes recommendations or otherwise gives investment advice regarding securities;
    - Manages client accounts or portfolios;
    - Determines which recommendations or advice regarding securities should be given;
    - Receives compensation to solicit, offer, or negotiate for the sale of investment advisory services; or
    - Supervises employees who perform a function outlined above.
  - With respect to an investment adviser, associated person does not include an investment adviser or an employee whose function is only clerical or ministerial.
- "Dealer" is defined as any person, other than an associated person of a dealer, that engages, for all or part of the person's time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person. The term does not include the following:
  - A licensed practicing attorney who renders or performs any services in connection with the regular practice of the attorney's profession.
  - A bank authorized to do business in the state, except a nonbank subsidiary of a bank.
  - A trust company having trust powers that it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers.
  - A wholesaler selling exclusively to dealers.
  - A person buying and selling for the person's own account exclusively through a registered dealer or stock exchange.
  - An issuer.
  - A natural person representing an issuer in the purchase, sale, or distribution of the issuer's own securities if such person meets certain criteria.
- "Guaranty" is amended to clarify that a "writing" means "an agreement in writing."
- "Intermediary" is amended to clarify that an intermediary facilitates an offer or sale of a security of an issuer with a principal place of business in Florida through the intermediary's website.
- "Investment adviser" is amended to have a parallel structure to the new definition of "dealer."

The bill also amends various definitions to include the use of gender-neutral terms, to provide inclusion of any amendments to referenced federal securities law, and to specifically include references to limited liability companies.

Viatical Settlements

The bill amends s. 517.072, F.S. to include provisions relating to viatical settlements for organizational purposes that use to reside in s. 517.081, F.S. The provisions were not substantially changed.

Registration Procedure

The bill amends s. 517.081, F.S. to allow for all issuers meeting certain criteria, instead of just corporations, to use simplified offering circular to register securities. The bill reduces the issuer filing fee of $1,000 to $200 for offerings that are below the amount provided in s. 3(b) of the 1933 Act. The bill also provides that the office shall deem an application to register a security abandoned if the issuer has failed to complete a timely application, as specified by commission rule.

Registration by Notification; Federal Registration Statements

The bill provides that the office will consider an application for registration by notification abandoned if the SEC has not declared effective the applicant's federal registration statement within 180 days after the applicant's filing.

Revocation or Denial of Registration of Securities

The bill amends this section to include "investigations" in addition to "examinations" in various provisions as these provisions are applicable to both examinations and investigations conducted by the office.

The bill replaces the "demonstrated any evidence of unworthiness" standard for revocation or denial of a securities registration with the "engaged in any action that would be grounds for revocation, denial, or suspension under s. 517.161(1), F.S." standard.

The bill removes the standard of "is in any other way dishonest." The bill also removes the standard of revoking or denying a registration based on an issuer failing to timely complete any application for registration filed with the office. This provision is, instead, incorporated within ss. 517.081 and 517.082, F.S.

The bill requires that the office must provide notice of the entry of an order suspending the rights to sell securities to the issuer personally or by mail. This amendment eliminates the ability of the office to provide such notice by telephone confirmed in writing or by telegraph.

Registration of Dealers, Associated Persons, Intermediaries, and Investment Advisers

The bill eliminates the requirement that issuers register with the office to sell securities. The bill also clarifies which exempt transactions the registration requirement applies to as well as the meaning of "securities business."

The bill eliminates the requirement that the office finds the applicant to be of "good repute and character." Instead, the office is tasked with finding that the applicant complied with the "applicable registration provisions." The bill provides the office shall register the application "unless the applicant is otherwise disqualified for registration pursuant to law."

Continuing Education Requirements for Associated Persons of Investment Advisers and Federal Covered Advisers

The bill creates s. 517.1214, F.S. which provides a continuing education requirement for the associated persons of an investment adviser or a federally covered adviser. Starting in the year ending December 31, 2024, the associated person of an investment adviser or a federal covered investment adviser shall complete continuing educational content offered by a person that NASAA or NASAA's designee has authorized to provide the required continuing education content. The continuing education requirement follows an annual reporting period that starts on January 1 and ends on December 31. An associated person's initial reporting period commences the first day of the first full reporting period after the individual is required to be registered with the state.

The continuing education requirement consists of a total of 12 hours of continuing education content split into two broad categories:

- Six credits of approved continuing education content that addresses ethical and regulatory obligations, with at least 3 hours of the content covering the topic of ethics; and
- Six credits of approved continuing educational content that addresses an associated person's skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

An associated person who is also a registered associated person of a FINRA member dealer and is in compliance with FINRA's continuing education requirements will be considered to be in compliance with the continuing education requirements of this section provided that the FINRA continuing education content is approved by NASAA.

Credits of continuing education completed by an associated person who currently holds a credential that qualifies for an examination waiver by passing any test prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934 will be found to comply with the continuing education requirement upon meeting certain conditions. This condition entails that the associated person completes the credits of continuing education as a condition for maintaining the credential during the relevant reporting period; the credits of continuing education completed were mandatory to maintain the credential; and the continuing education content provided by the credentialing organization during the relevant reporting period is approved by NASAA.

The bill provides that an associated person is responsible for ensuring that the provider of continuing education content reports the associated person's completion of the requirements. Additionally, completed continuing education content that exceeds the requirements of this section cannot be carried over into a following year.

An associated person that fails to comply with this section by the end of a reporting period must register as "CE Inactive" and must complete the continuing education content requirements for the year they failed to comply with the requirements and the current reporting year in order to register as an associated person again. If the associated person renews as "CE Inactive" at the close of the calendar year and fails to complete and report all required CE credits for all reporting periods required by the close of the next calendar year, the associated person becomes unregistered.

An associated person required to be registered in Florida who is registered as an associated person in the individual's home state is considered to be in compliance with this section if the associated person's home state requires at least 12 hours of CE credit annually and such person is in compliance with the home state's CE requirements.

An associated person who was previously registered under s. 517.12, F.S. and became unregistered must complete the continuing education requirements for all reporting periods that occurred between the time that the associated person became unregistered and when the person became registered again under s. 517.12, F.S. unless the associated person takes and passes the required examinations or the examination requirements are waived in connection with the subsequent application for registration.

Rules of Conduct and Prohibited Business Practices for Dealers, Dealers' Associated Persons and Intermediaries

The bill amends this section to include intermediaries.

Revocation, Denial, or Suspension of Registration of Dealer, Investment Adviser, Intermediary, or Associated Person

The bill amends this section to add failure to pay, or attempting to avoid paying, certain final judgments, arbitration awards, fines, civil penalties, orders of restitution and disgorgement, or similar monetary payment obligations as grounds for denying, suspending, or revoking a registration.

Escrow Agreement

The bill repeals s. 517.181, F.S. which allowed the office to require an escrow agreement for securities that had been issued for certain intangible assets. The escrow agreement would require that the security be delivered in escrow to the office or other depository satisfactory to the office. The security would be released from escrow upon showing that the issuer is currently operating a sound business.

Criminal Punishment Code; Offense Severity Ranking Chart

The bill removes issuers from the listed parties that would face felony charges for violating s. 517.12(1), F.S. as issuers are no longer required to register with the office.

Miscellaneous

The bill eliminates the bad business repute and the unworthiness standard from various sections of the chapter. The bill also eliminates the use of the term "small loan companies" in various sections of the chapter.

The bill amends various sections to:

- Replace the term "insolvent" with "cannot pay its debts as they become due in the usual course of business;"
- Replace the term "advisors" with "advisers" and gendered language with gender-neutral language;
- Provide clarity by specifically including limited liabilities companies in the regulations throughout ch. 517, F.S.; and
- Update cross-references.

B. SECTION DIRECTORY:

Section 1: Amends s. 517.021, F.S., relating to definitions.

Section 2: Amends s. 517.072, F.S., relating to viatical settlement investment.

Section 3: Amends s. 517.081, F.S., relating to registration procedure.

Section 4: Amends s. 517.082, F.S., relating to registration by notification; federal registration statements.

Section 5: Amends s. 517.111, F.S., relating to revocation or denial of registration of securities.

Section 6: Amends s. 517.12, F.S., relating to registration of dealers, associated persons, intermediaries, and investment advisers.

Section 7: Creates s. 517.1214, F.S., relating to continuing education requirements for associated persons of investment advisers and federal covered advisers.

Section 8: Amends s. 517.1217, F.S., relating to rules of conduct and prohibited business practices for dealers and their associated persons and for intermediaries.

Section 9: Amends s. 517.161, F.S., relating to revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person.

Section 10: Repeals s. 517.181, F.S., relating to escrow agreement.

Section 11: Amends s. 517.201, F.S., relating to investigations; examinations; subpoenas; hearings; witnesses.

Section 12: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 13: Amends s. 517.1215, F.S., relating to requirements, rules of conduct, and prohibited business practices for investment advisers and their associated persons.

Section 14: Amends s. 517.061, F.S., relating to exempt transactions.

Section 15: Amends s. 517.0611, F.S., relating to intrastate crowdfunding.

Section 16: Amends s. 517.075, F.S., relating to Cuba, prospectus disclosure of doing business with, required.

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Section 17: Amends s. 517.131, F.S., relating to Securities Guaranty Fund.

Section 18: Amends s. 517.211, F.S., relating to remedies available in cases of unlawful sale.

Section 19: Amends s. 517.315, F.S., relating to fees.

Section 20: Amends s. 626.9911, F.S., relating to definitions.

Section 21: Amends s. 744.351, F.S., relating to bond of guardian.

Section 22: Amends s. 517.1205, F.S., relating to registration of associated persons specific as to securities dealer, investment adviser, or federal covered adviser identified at time of registration approval.

Section 23: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill would have a negative, although insignificant, fiscal impact on state government as the bill reduces the issuer fee for certain transactions.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate fiscal impact on the private sector. Specifically, the bill requires associated persons of investment advisers and federal covered advisers to complete continuing education requirements on an annual basis. Costs incurred by associated persons who are required to comply with the requirement will vary. NASAA has implemented a course reporting fee of $3 per credit hour. Therefore, an associated person will be required to pay a minimum of $36 per year in addition to any training costs to meet the CE requirements. Training costs are indeterminable and will vary depending on the selected continuing education course and provider, whether the associated person is in compliance with FINRA CE requirements, and whether the associated person holds and maintains certain professional designations.[26]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 21, 2023, the Insurance & Banking Subcommittee considered a proposed committee substitute for the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The proposed committee substitute made the following changes to the bill:

- Changed bill title from “Securities Transactions” to “Regulation of Securities.”
- Removed new terms introduced in the original bill including “Angel investor group”, “Business accelerator”, “Business incubator”, “Target offering amount”, “Tier I dealer”, and “Tier II dealer.”
- Eliminated proposed changes to exempt transactions and intrastate crowdfunding.

[26] Florida Office of Financial Regulation, Agency Analysis of 2023 House Bill 253, p. 7 (Mar. 1, 2023).

- Deleted proposed preoffering communication safe harbors.
- Reverted proposed use of “Tier I” and “Tier II dealer” to the current “dealer” language.
- Eliminated proposed rules of conduct for a Tier II dealer.
- Replaced various uses of the term “natural person” with “individual.”
- Modified the home state reciprocity requirement of the associated person continuing education provision to reflect the standards of the state of Florida.
- Removed proposed changes to the definition of “control” to the statutory definition.

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

A bill to be entitled

An act relating to regulation of securities; reordering and amending s. 517.021, F.S.; requiring the Financial Services Commission to define the term "accredited investor"; revising definitions; amending s. 517.072, F.S.; authorizing the commission to adopt certain rules relating to viatical settlement investments; amending s. 517.081, F.S.; revising requirements for the registration of securities; revising application fees for certain securities registrations; requiring the Office of Financial Regulation to deem an application abandoned under certain circumstances; conforming provisions to changes made by the act; amending s. 517.082, F.S.; making technical changes; requiring the office to deem an application for registration by notification abandoned under certain circumstances; amending s. 517.111, F.S.; revising grounds on which the office may revoke, suspend, or deny the registration of securities; specifying the office's powers in investigations of issuers; revising the methods by which the office may enter an order suspending an issuer's right to sell securities; amending s. 517.12, F.S.; revising applicability of registration requirements; revising requirements for applying for

registration as a dealer, an associated person of a dealer, or an investment adviser; conforming provisions to changes made by the act; making technical changes; creating s. 517.1214, F.S.; defining terms; specifying continuing education requirements for associated persons of investment advisers and federal covered advisers; providing that certain education credits satisfy such requirements if certain conditions are met; prohibiting associated persons from carrying forward credits to subsequent reporting periods; specifying a restriction on associated persons who fail to meet such requirements; specifying requirements for certain previously registered associated persons; amending s. 517.1217, F.S.; authorizing the commission to establish rules of conduct and prohibited business practices for intermediaries; amending s. 517.161, F.S.; revising grounds on which the office may deny, revoke, restrict, or suspend registrations of dealers, investment advisers, intermediaries, and associated persons; providing causes for denial of applications or revocation of registrations of certain entities and persons under certain circumstances; repealing s. 517.181, F.S., relating to escrow agreements; amending s. 517.201, F.S.; conforming a provision to changes

made by the act; amending s. 921.0022, F.S.; revising applicability of a criminal penalty for certain registration violations; amending s. 517.1215, F.S.; making technical changes; amending ss. 517.061, 517.0611, 517.075, 517.131, 517.211, 517.315, 626.9911, and 744.351, F.S.; conforming cross-references and making technical changes; amending s. 517.1205, F.S.; revising legislative intent; providing an effective date.

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

Section 1. Section 517.021, Florida Statutes, is reordered and amended to read:

517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(1) "Accredited investor" shall be defined by rule of the commission in accordance with the Securities and Exchange Commission Rule 501, 17 C.F.R. s. 230.501.

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an applicant or registrant.

(3)~~(2)~~ "Associated person" means:

(a)1. With respect to a dealer, a natural person who is employed, appointed, or authorized by a dealer and who represents the dealer in effecting or attempting to effect purchases or sales of securities.

2. The term does not include the following:

a. A dealer.

b. A partner, officer, or director of a dealer or a person having a similar status or performing similar functions as a dealer, unless such person is specified in subparagraph 1.

c. A dealer's employee whose function is only clerical or ministerial.

d. A person whose transactions in this state are limited to those transactions described in s. 15(i)(3) of the Securities Exchange Act of 1934, as amended.

(b)1. With respect to an investment adviser, a natural person, including, but not limited to, a partner, officer, director, or branch manager, or a person occupying a similar status or performing similar functions, who:

a. Is employed by or associated with, or is subject to the supervision and control of, an investment adviser registered or required to be registered under this chapter; and

b. Does any of the following:

(I) Makes any recommendation or otherwise gives investment advice regarding securities.

(II) Manages accounts or portfolios of clients.

(III) Determines which recommendation or advice regarding securities should be given.

(IV) Receives compensation to solicit, offer, or negotiate for the sale of investment advisory services.

(V) Supervises employees who perform a function under this sub-subparagraph.

2. The term does not include the following:

a. An investment adviser.

b. An employee whose function is only clerical or ministerial ~~or investment adviser, any of the following:~~

~~1. Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;~~

~~2. Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or~~

~~3. Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in this section~~.

~~The partners of a partnership and the executive officers of a corporation or other association registered as a dealer, and any person whose transactions in this state are limited to those transactions described in s. 15(h)(2) of the Securities Exchange~~

~~Act of 1934, are not "associated persons" within the meaning of this definition.~~

(c)~~(b)~~ With respect to a federal covered adviser, a natural ~~any~~ person who is an investment adviser representative and who has a place of business in this state, as such terms are defined in Rule 203A-3 of the Securities and Exchange Commission adopted under the Investment Advisers Act of 1940, as amended.

(4)~~(3)~~ "Boiler room" means an enterprise in which two or more persons engage in telephone communications with members of the public using two or more telephones at one location, or at more than one location in a common scheme or enterprise.

(5)~~(4)~~ "Branch office" means any location in this state of a dealer or investment adviser at which one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security or any location that is held out as such. The commission may adopt by rule exceptions to this definition for dealers in order to maintain consistency with the definition of a branch office used by self-regulatory organizations authorized by the Securities and Exchange Commission, including, but not limited to, the Financial Industry Regulatory Authority. The commission may adopt by rule exceptions to this definition for investment advisers.

(6)~~(7)~~ "Commission" means the Financial Services

Commission.

(7) ~~(5)~~ "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(8) ~~(6)(a)~~ "Dealer" includes, unless otherwise specified, a person, other than an associated person of a dealer, that engages, for all or part of the person's time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person ~~any of the following:~~

~~1. Any person, other than an associated person registered under this chapter, who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person~~.

~~2. Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.~~

~~(b)~~ The term ~~"dealer"~~ does not include the following:

(a) A licensed practicing attorney who renders or performs

any such services in connection with the regular practice of the attorney's profession.

(b) A bank authorized to do business in this state, except nonbank subsidiaries of a bank.

(c) A trust company having trust powers that it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers.

(d) A wholesaler selling exclusively to dealers.

(e) A person buying and selling for the person's own account exclusively through a registered dealer or stock exchange.

(f) An issuer.

(g) A natural person representing an issuer in the purchase, sale, or distribution of the issuer's own securities if such person:

1. Is an officer, a director, a limited liability company manager or managing member, or a bona fide employee of the issuer;

2. Has not participated in the distribution or sale of securities for any issuer for which such person was, within the preceding 12 months, an officer, a director, a limited liability company manager or managing member, or a bona fide employee;

3. Primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf

of, the issuer other than in connection with transactions in securities; and

4. Does not receive a commission, compensation, or other consideration for the completed sale of the issuer's securities apart from the compensation received for regular duties to the issuer.

~~1. Any licensed practicing attorney who renders or performs any of such services in connection with the regular practice of her or his profession;~~

~~2. Any bank authorized to do business in this state, except nonbank subsidiaries of a bank;~~

~~3. Any trust company having trust powers which it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers;~~

~~4. Any wholesaler selling exclusively to dealers;~~

~~5. Any person buying and selling for her or his own account exclusively through a registered dealer or stock exchange; or~~

~~6. Pursuant to s. 517.061(11), any person associated with an issuer of securities if such person is a bona fide employee of the issuer who has not participated in the distribution or sale of any securities within the preceding 12 months and who primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the~~

~~issuer other than in connection with transactions in securities.~~

(9) "Federal covered adviser" means a person that ~~who~~ is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940, as amended. The term ~~"federal covered adviser"~~ does not include any person that ~~who~~ is excluded from the definition of investment adviser under subparagraphs (14)(b)1.-8.

(10) "Federal covered security" means a ~~any~~ security that is a covered security under s. 18(b) of the Securities Act of 1933, as amended, or rules and regulations adopted thereunder.

(11) "Guarantor" means a person that ~~who~~ agrees in writing, or that ~~who~~ holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. The obligation of a guarantor hereunder shall be a continuing, absolute, and unconditional guaranty of payment, without regard to the validity, regularity, or enforceability of the underlying indebtedness.

(12) "Guaranty" means an agreement in ~~a~~ writing in which one party either agrees, or holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and

interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. An agreement that is not specifically denominated as a guaranty shall nevertheless constitute a guaranty if the holder of the underlying indebtedness or the holder's ~~her or his~~ representative or trustee has the right to sue to enforce the guarantor's obligations under the guaranty. Words of guaranty or equivalent words that ~~which~~ otherwise do not specify guaranty of payment create a presumption that payment, rather than collection, is guaranteed by the guarantor. Any guaranty in writing is enforceable notwithstanding any statute of frauds.

(13) "Intermediary" means a natural person residing in this ~~the~~ state or a corporation, trust, partnership, limited liability company, association, or other legal entity registered with the Secretary of State to do business in this ~~the~~ state, which facilitates through its website the offer or sale of securities of an issuer with a principal place of business in this state ~~under s. 517.0611~~.

(14)(a) "Investment adviser" means a ~~includes any~~ person, other than an associated person of an investment adviser or a federal covered adviser, that ~~who~~ receives compensation, directly or indirectly, and engages for all or part of the person's ~~her or his~~ time, directly or indirectly, or through

publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities~~, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services~~.

(b) The term ~~"investment adviser"~~ does not include the following:

1. A dealer or associated person of a dealer whose performance of services in paragraph (a) is solely incidental to the conduct of the dealer's or associated person's business as a dealer and who does not receive special compensation for those services.

2. A ~~Any~~ licensed practicing attorney or certified public accountant whose performance of such services is solely incidental to the practice of the attorney's or accountant's ~~her or his~~ profession.~~;~~

~~2. Any licensed certified public accountant whose performance of such services is solely incidental to the practice of her or his profession;~~

3. A ~~Any~~ bank authorized to do business in this state.~~;~~

4. A ~~Any~~ bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state.~~;~~

5. A ~~Any~~ trust company having trust powers, as defined in

s. 658.12, which it is authorized to exercise in this ~~the~~ state, which trust company renders or performs investment advisory services in a fiduciary capacity incidental to the exercise of its trust powers.~~;~~

6. A ~~Any~~ person that ~~who~~ renders investment advice exclusively to insurance or investment companies.~~;~~

7. A ~~Any~~ person that ~~who~~ does not hold itself ~~herself or himself~~ out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state.~~;~~

8. A ~~Any~~ person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940, as amended. Those clients listed in subparagraph 6. may not be included when determining the number of clients of an investment adviser for purposes of s. 222(d) of the Investment Advisers Act of 1940, as amended.~~;~~ ~~or~~

9. A federal covered adviser.

(15) "Issuer" means a ~~any~~ person that ~~who~~ proposes to issue, has issued, or shall hereafter issue any security. A ~~Any~~ person that ~~who~~ acts as a promoter for and on behalf of a corporation, trust, ~~or unincorporated association or~~ partnership, limited liability company, association, or other legal entity of any kind to be formed shall be deemed an issuer.

(16) "Offer to sell," "offer for sale," or "offer" means

an ~~any~~ attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, or an investment or interest in an investment, for value.

(17) ~~(8)~~ "Office" means the Office of Financial Regulation of the commission.

(18) ~~(17)~~ "Predecessor" means a person whose ~~the~~ major portion of ~~whose~~ assets has ~~have~~ been acquired directly or indirectly by an issuer.

(19) ~~(18)~~ "Principal" means an executive officer of a corporation, partner of a partnership, sole proprietor of a sole proprietorship, trustee of a trust, or any other person with similar supervisory functions with respect to any organization, whether incorporated or unincorporated.

(20) ~~(19)~~ "Promoter" includes the following:

(a) A ~~Any~~ person that ~~who~~, acting alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer.

(b) A ~~Any~~ person that ~~who~~, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person that ~~who~~ receives such securities or proceeds either

solely as underwriting commissions or solely in connection with property shall not be deemed a promoter if such person does not otherwise take part in founding and organizing the enterprise.

(21) ~~(20)~~ "Qualified institutional buyer" means a ~~any~~ qualified institutional buyer, as defined in ~~United States~~ Securities and Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), under the Securities Act of 1933, as amended, or any foreign buyer that satisfies the minimum financial requirements set forth in such rule.

(22) ~~(21)~~ "Sale" or "sell" means a ~~any~~ contract of sale or disposition of an ~~any~~ investment, security, or interest in a security, for value. With respect to a security or interest in a security, the term ~~defined in this subsection~~ does not include preliminary negotiations or agreements between an issuer or any person on whose behalf an offering is to be made and any underwriter or among underwriters who are or are to be in privity of contract with an issuer. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security or another issuer, is

considered to include an offer of the other security.

(23) ~~(22)~~ "Security" includes any of the following:

(a) A note.

(b) A stock.

(c) A treasury stock.

(d) A bond.

(e) A debenture.

(f) An evidence of indebtedness.

(g) A certificate of deposit.

(h) A certificate of deposit for a security.

(i) A certificate of interest or participation.

(j) A whiskey warehouse receipt or other commodity warehouse receipt.

(k) A certificate of interest in a profit-sharing agreement or the right to participate therein.

(l) A certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease or the right to participate therein.

(m) A collateral trust certificate.

(n) A reorganization certificate.

(o) A preorganization subscription.

(p) A ~~Any~~ transferable share.

(q) An investment contract.

(r) A beneficial interest in title to property, profits, or earnings.

(s) An interest in or under a profit-sharing or participation agreement or scheme.

(t) An ~~Any~~ option contract that ~~which~~ entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time.

(u) Any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, or certificate.

(v) A ~~Any~~ receipt for a security, or for subscription to a security, or a ~~any~~ right to subscribe to or purchase any security.

(w) A viatical settlement investment.

(24) ~~(23)~~ "Underwriter" means a person that ~~who~~ has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except that a person is ~~shall be~~ presumed not to be an underwriter with respect to any security which it ~~she or he~~ has owned beneficially for at least 1 year; and, further, a dealer is ~~shall~~ not ~~be~~ considered an underwriter with respect to any securities which do not represent part of an unsold allotment to or subscription by the dealer as a participant in the

distribution of such securities by the issuer or an affiliate of the issuer; and, further, in the case of securities acquired on the conversion of another security without payment of additional consideration, the length of time such securities have been beneficially owned by a person includes the period during which the convertible security was beneficially owned and the period during which the security acquired on conversion has been beneficially owned.

(25) ~~(24)~~ "Viatical settlement investment" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of a legal or equitable interest in a viaticated policy as defined in chapter 626.

Section 2. Paragraph (d) of subsection (3) of section 517.072, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

517.072 Viatical settlement investments.—

(3) The registration provisions of ss. 517.07 and 517.12 do not apply to any of the following transactions in viatical settlement investments; however, such transactions in viatical settlement investments are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(d) The transfer or assignment of a viaticated policy to a bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trust, ~~or~~

qualified institutional buyer ~~as defined in United States Securities and Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a)~~, or ~~to~~ an accredited investor ~~as defined by Rule 501 of Regulation D of the Securities Act Rules~~, provided such transfer or assignment is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(4) The commission may establish by rule requirements and standards for disclosures to purchasers of viatical settlement investments and recordkeeping requirements for sellers of viatical settlement investments.

Section 3. Paragraphs (a), (g), and (n) of subsection (3) and subsections (6) and (8) of section 517.081, Florida Statutes, are amended to read:

517.081 Registration procedure.—

(3) The office may require the applicant to submit to the office the following information concerning the issuer and such other relevant information as the office may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The names and addresses of:

1. All the directors, trustees, and officers, if the issuer is ~~be~~ a corporation, association, or trust.

2. All the managers or managing members, if the issuer is a limited liability company.

3. ~~; of~~ All the partners, if the issuer is ~~be~~ a partnership.

4. ~~; or of~~ The issuer, if the issuer is a sole proprietorship or natural person ~~be an individual~~.

(g)1. A specimen copy of the securities certificate, if applicable, ~~security~~ and a copy of any circular, prospectus, advertisement, or other description of such securities.

2. The commission shall adopt a form for a simplified offering circular ~~to be used solely by corporations~~ to register, under this section, securities ~~of the corporation~~ that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:

a. An issuer seeking to register securities for resale by persons other than the issuer.

b. An issuer that ~~who~~ is subject to any of the disqualifications described in 17 C.F.R. s. 230.262, adopted pursuant to the Securities Act of 1933, as amended, or that ~~who~~ has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this subparagraph, an issuer includes an issuer's director, officer, manager or managing member, or equity owner ~~shareholder~~ who owns at least 10 percent of the

ownership interests ~~shares~~ of the issuer, promoter, or selling agent of the securities to be offered or any officer, director, or partner of such selling agent.

c. An issuer that ~~who~~ is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified company or companies.

d. An issuer of offerings in which the specific business or properties cannot be described.

e. Any issuer the office determines is ineligible because ~~if~~ the form does ~~would~~ not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

f. Any issuer that ~~corporation which~~ has failed to provide the office the reports required for a previous offering registered pursuant to this subparagraph.

As a condition precedent to qualifying for use of the simplified offering circular, an issuer ~~a corporation~~ shall agree to provide the office with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year, prepared in accordance with United States generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year,

the financial statements must be audited. Annual financial reports must be filed with the office within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.

(n) If the issuer is a corporation, there shall be filed with the application a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file in the office. If the issuer is a limited liability company, there shall be filed with the application a copy of the articles of organization with all the amendments and a copy of the company's operating agreement, if not already on file with the office. If the issuer is a trustee, there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the office.

(6) An issuer filing an application under this section shall, at the time of filing, pay the office a nonreturnable fee of $1,000 per application for each offering that exceeds the amount provided in s. 3(b) of the Securities Act of 1933, as amended, or $200 per application for each offering that does not

exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

(8) The office shall deem an application to register securities filed with the office abandoned if the issuer or any person acting on behalf of the issuer has failed to timely complete an application specified by commission rule ~~The commission may by rule establish requirements and standards for:~~

~~(a) Disclosures to purchasers of viatical settlement investments~~.

~~(b) Recordkeeping requirements for sellers of viatical settlement investments.~~

Section 4. Section 517.082, Florida Statutes, is amended to read:

517.082 ~~Notification~~ Registration by notification; federal registration statements.—

(1) ~~Except as provided in subsection (3),~~ Securities offered or sold pursuant to a registration statement filed under the Securities Act of 1933, as amended, are ~~shall be~~ entitled to registration by notification in the manner provided in subsection (2), provided that before ~~prior to~~ the offer or sale the registration statement has become effective.

(2) An application for registration by notification shall be filed with the office, shall contain the following information, and shall be accompanied by all of the following:

(a) An application to sell executed by the issuer, any

person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person, setting forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered and sold.~~;~~

(b) Copies of such documents filed with the Securities and Exchange Commission as the Financial Services Commission may by rule require.~~;~~

(c) An irrevocable written consent to service as required by s. 517.101.~~; and~~

(d) A nonreturnable fee of $1,000 per application.

A registration under this section becomes effective when the federal registration statement becomes effective or as of the date the application is filed with the office, whichever is later, provided that, in addition to the items listed in paragraphs (a)-(d), the office has received written notification of effective registration under the Securities Act of 1933, as amended, or the Investment Company Act of 1940, as amended, within 10 business days after ~~from~~ the date federal registration is granted. Failure to provide all the information required by this subsection to the office within 60 days after ~~of~~ the date the registration statement becomes effective with the Securities and Exchange Commission shall be a violation of this chapter.

(3) Except for units of limited partnership interests or

such other securities as the commission describes by rule as exempt from this subsection due to high investment quality, the provisions of this section may not be used to register securities if the offering price at the time of effectiveness with the Securities and Exchange Commission is $5 or less per share, unless such securities are listed or designated, or approved for listing or designation upon notice of issuance, on a stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, or on the National Association of Securities Dealers Automated Quotation (NASDAQ) System, or unless such securities are of the same issuer and of senior or substantially equal rank to securities so listed or designated.

(4) In lieu of filing with the office the application, fees, and documents for registration required by subsection (2), the commission may establish, by rule, procedures for depositing fees and filing documents by electronic means, provided such procedures provide the office with the information and data required by this section.

(5) If the Securities and Exchange Commission has not declared effective the applicant's federal registration statement within 180 days after the applicant's filing with the office of an application for registration by notification, the office must deem the application abandoned.

Section 5. Section 517.111, Florida Statutes, is amended to read:

517.111 Revocation or denial of registration of securities.—

(1) The office may revoke or suspend the registration of any security, or may deny any application to register securities, if, upon examination or investigation into the affairs of the issuer of such security, the office determines ~~it shall appear~~ that:

(a) The issuer cannot pay its debts as they become due in the usual course of business ~~is insolvent~~;

(b) The issuer or any officer, director, manager or managing member, or control person of the issuer has violated any provision of this chapter or any rule made hereunder or any order of the office of which such issuer has notice;

(c) The issuer or any officer, director, manager or managing member, or control person of the issuer has been or is engaged or is about to engage in fraudulent transactions;

(d) The issuer or any officer, director, manager or managing member, or control person of the issuer has been found guilty of a fraudulent act in connection with any sale of securities, has engaged, is engaged, or is about to engage, in making a fictitious sale or purchase of any security, or in any practice or sale of any security which is fraudulent or a violation of any law;

(e) The issuer or any officer, director, manager or managing member, or control person of the issuer has had a final

judgment entered against such issuer or person in a civil action on the grounds of fraud, embezzlement, misrepresentation, or deceit;

(f) The issuer or any officer, director, manager or managing member, or control person of the issuer has engaged in any action that would be grounds for revocation, denial, or suspension under s. 517.161(1) ~~demonstrated any evidence of unworthiness~~;

(g) The issuer or any officer, director, manager or managing member, or control person of the issuer ~~is in any other way dishonest or~~ has made any fraudulent representations or failed to disclose any material information in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities;

(h) The security registered or sought to be registered is the subject of an injunction entered by a court of competent jurisdiction or is the subject of an administrative stop-order or similar order prohibiting the offer or sale of the security; or

(i) For any security for which registration has been applied pursuant to s. 517.081, the terms of the offer or sale of such securities would not be fair, just, or equitable~~; or~~

~~(j) The issuer or any person acting on behalf of the issuer has failed to timely complete any application for registration filed with the office pursuant to the provisions of~~

~~s. 517.081 or s. 517.082 or any rule adopted under such sections~~.

(2) In making such examination or investigation, the office shall have access to and may compel the production of all the books and papers of such issuer and may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs and may also require a balance sheet exhibiting the assets and liabilities of any such issuer or its income statement, or both, to be certified to by a public accountant either of this state or of any other state where the issuer's business is located. Whenever the office deems it necessary, it may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the office may require.

(3)~~(2)~~ If any issuer refuses ~~shall refuse~~ to permit an examination or investigation to be made by the office, it shall be proper ground for revocation of registration.

(4)~~(3)~~ If the office deems it necessary, it may enter an order suspending the right to sell securities pending any examination or investigation, provided that the order shall state the office's grounds for taking such action.

(5)~~(4)~~ Notice of the entry of such order shall be given personally or by mail~~, personally, by telephone confirmed in writing, or by telegraph~~ to the issuer. Before such order is made final, the issuer ~~applying for registration~~ shall, on

application, be entitled to a hearing.

(6)~~(5)~~ The office may deny any request to terminate any registration or to withdraw any application for registration if the office believes that an act which would be grounds for denial, suspension, or revocation under this chapter has been committed.

Section 6. Subsections (3) through (22) of section 517.12, Florida Statutes, are renumbered as subsections (2) through (21), respectively, and subsection (1), present subsections (2) and (3), paragraph (b) of present subsection (6), present subsections (7) and (11), paragraph (b) of present subsection (15), and present subsections (20) and (21) of that section are amended to read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(1) No dealer or~~,~~ associated person~~, or issuer of securities~~ shall sell or offer for sale any securities in or from offices in this state~~,~~ or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person is ~~has been~~ registered with the office as a dealer or as an associated person of a dealer pursuant to ~~the provisions of~~ this section. The office shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to this chapter.

~~(2) The registration requirements of this section do not apply to the issuers of securities exempted by s. 517.051(1)-(8) and (10).~~

(2)~~(3)~~ ~~Except as otherwise provided in s. 517.061(11)(a)4., (13), (16), (17), or (19),~~ The registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(10) and (12), ~~s. 517.061(1)-(12),~~ (14), and (15).

(5)~~(6)~~ A dealer, associated person, or investment adviser, in order to obtain registration, must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or office may require concerning such matters as:

(b) The applicant's form and place of organization; and, if the applicant is:

1. A corporation, a copy of its articles of incorporation and amendments to the articles of incorporation;

2. A limited liability company, a copy of its articles of organization with amendments to its articles; or

3.~~, if~~ A partnership, a copy of the partnership agreement.

(6)~~(7)~~ The application must also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14) ~~(15)~~ shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to

subsection (14) ~~(15)~~, submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office may require information about any such applicant or person concerning such matters as:

(a) The applicant's or person's ~~His or her~~ full name, and any other names by which the applicant or person ~~he or she~~ may have been known, and the applicant's or person's ~~his or her~~ age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of a dealer's or investment adviser's regulated ~~the securities~~ business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) The applicant's or person's ~~His or her~~ conviction of, or plea of nolo contendere to, a criminal offense or the applicant's or person's ~~his or her~~ commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to the applicant's or person's ~~his or her~~

character, reputation, and financial responsibility.

(10)(a) ~~(11)(a)~~ If the office finds that the applicant ~~is of good repute and character and~~ has complied with the applicable registration provisions of this chapter and the rules made pursuant hereto, it shall register the applicant unless the applicant is otherwise disqualified for registration pursuant to law. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed its ~~his or her~~ registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in paragraph (9)(a) ~~(10)(a)~~ for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the commission, together with payment of the fee required in paragraph (9)(a) ~~(10)(a)~~ for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office

during the month of January shall be deemed effective retroactive to January 1 of that year.

(b) The office shall waive the $50 assessment fee for an associated person required by paragraph (9)(a) ~~(10)(a)~~ for a registrant renewing his or her registration who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the registration pursuant to paragraph (a). To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's registration expiration date pursuant to paragraph (a).

A registrant seeking such fee waiver must submit proof, in a form prescribed by commission rule, that the registrant meets one of the qualifications in this paragraph.

(14) ~~(15)~~

(b) In lieu of filing with the office the applications specified in subsection (5) ~~(6)~~, the fees required by subsection (9) ~~(10)~~, the renewals required by subsection (10) ~~(11)~~, and the termination notices required by subsection (11) ~~(12)~~, the commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

(19) ~~(20)~~ An intermediary may not engage in business in this state unless the intermediary is registered as a dealer or as an intermediary with the office pursuant to this section to facilitate the offer or sale of securities in accordance with s. 517.0611. An intermediary, in order to obtain registration, must file with the office a written application on a form prescribed by commission rule and pay a registration fee of $200. The fees under this subsection shall be deposited into the Regulatory Trust Fund of the office. The commission may establish by rule procedures for depositing fees and filing documents by electronic means if such procedures provide the office with the information and data required by this section. Each intermediary must also file an irrevocable written consent to service of civil process, as provided in s. 517.101.

(a) The application must contain such information as the

commission or office may require concerning:

1. The name of the applicant and address of its principal office and each office in this state.

2. The applicant's form and place of organization; and, if the applicant is:

a. A corporation, a copy of its articles of incorporation and amendments to the articles of incorporation;

b. A limited liability company, a copy of its articles of organization and amendments to the articles and a copy of the company's operating agreement; or

c.~~, if~~ A partnership, a copy of the partnership agreement.

3. The website address where securities of the issuer will be offered.

4. Contact information.

(b) The application must also contain such information as the commission may require by rule about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; or any persons directly or indirectly controlling the applicant. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on a form adopted by commission rule shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-

scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets registration requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners, which are required to be reported on a form adopted by commission rule, submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission, by rule, or the office may require information about any applicant or person, including:

1. The applicant's or person's ~~His or her~~ full name and any other names by which the applicant or person ~~he or she~~ may have been known and the applicant's or person's ~~his or her~~ age, social security number, photograph, qualifications, and educational and business history.

2. Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of an intermediary's regulated ~~the securities~~ business and any

injunction or administrative order by a state or federal agency regulating banking, insurance, finance, ~~or small loan companies,~~ real estate, mortgage brokers, or other related or similar industries, which relate to such person.

3. The applicant's or person's ~~His or her~~ conviction of, or plea of nolo contendere to, a criminal offense or the applicant's or person's ~~his or her~~ commission of any acts that would be grounds for refusal of an application under s. 517.161.

(c) The application must be amended within 30 days if any information contained in the form becomes inaccurate for any reason.

(d) An intermediary or persons affiliated with the intermediary are not subject to any disqualification described in s. 517.1611 or ~~United States~~ Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933, as amended. Each director, officer, manager or managing member, control person of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the ownership interests ~~shares~~ of the intermediary is subject to this requirement.

(e) If the office finds that the applicant ~~is of good repute and character and~~ has complied with the applicable registration provisions of this chapter and the rules adopted thereunder, it shall register the applicant. The registration of

each intermediary expires on December 31 of the year the registration became effective unless the registrant renews his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require by rule, together with payment of a $200 fee and the payment of any amount due to the office pursuant to any order of the office or pursuant to any agreement with the office. An intermediary who has not renewed a registration by the time that the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as required by the commission, together with payment of the $200 fee and a late fee of $200. Any reinstatement of registration granted by the office during the month of January is deemed effective retroactive to January 1 of that year.

(20) ~~(21)~~ The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, for the sale of a security as defined in s. 517.021(23)(g) ~~s. 517.021(22)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

Section 7. Section 517.1214, Florida Statutes, is created to read:

517.1214 Continuing education requirements for associated persons of investment advisers and federal covered advisers.—

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

(a) "Approved continuing education content" means the materials, written, oral, or otherwise, which have been approved by NASAA or its designee and which make up the educational program provided to an associated person under this section.

(b) "Credit" means a unit designated by NASAA or its designee as at least 50 minutes of educational instruction.

(c) "Home state" means the state in which an associated person of an investment adviser or a federal covered adviser has his or her principal office and place of business.

(d) "NASAA" means the North American Securities Administrators Association, Inc.

(e) "Reporting period" means one 12-month period beginning January 1 and ending December 31. An associated person's initial reporting period with this state commences the first day of the first full reporting period after the individual is registered or required to be registered with this state.

(2) By December 31, 2024, and each December 31 thereafter, each associated person of an investment adviser or a federal covered adviser shall complete the following continuing education content requirements offered by a person that NASAA or

its designee has authorized to provide the continuing education content required by this section:

(a) Six credits of approved continuing education content that addresses an associated person's ethical and regulatory obligations, with at least 3 hours covering the topic of ethics; and

(b) Six credits of approved continuing education content that addresses an associated person's skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(3) An associated person of an investment adviser or federal covered adviser who is also registered as an associated person of a Financial Industry Regulatory Authority (FINRA) member dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with this section's products and practice requirement for each applicable reporting period, provided that the FINRA continuing education content is approved continuing education content.

(4) Credits of continuing education completed by an associated person who was awarded and currently holds a credential that qualifies for examination waiver by passing any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934, as amended, comply with paragraphs (2)(a) and (b), provided all of the following conditions are met:

(a) The associated person completes the credits of

continuing education as a condition of maintaining the credential for the relevant reporting period.

(b) The credits of continuing education completed during the relevant reporting period by the associated person are mandatory to maintain the credential.

(c) The continuing education content provided by the credentialing organization during the relevant reporting period is approved continuing education content.

(5) Each associated person is responsible for ensuring that the authorized provider reports the associated person's completion of the applicable continuing education requirements.

(6) An associated person who completes credits of continuing education in excess of the credits required for the reporting period may not carry forward excess credits to a subsequent reporting period.

(7) An associated person who fails to comply with this section by the end of a reporting period shall renew as "CE inactive" at the close of the calendar year in this state until the associated person completes and reports all required continuing education credits for all reporting periods as required by this section. If an associated person renews as "CE inactive" at the close of the calendar year and fails to complete and report all required continuing education credits for all reporting periods as required by this section by the close of the next calendar year, the associated person becomes

unregistered for purposes of this chapter.

(8) An associated person registered or required to be registered in this state who is registered as an associated person of an investment adviser or federal covered adviser in the individual's home state is considered to be in compliance with this section if:

(a) The associated person's home state has a continuing education requirement of at least 12 hours annually; and

(b) The associated person is in compliance with the home state's associated person of an investment adviser or federal covered adviser continuing education requirements.

(9) An associated person who was previously registered under s. 517.12 and became unregistered must complete continuing education for all reporting periods that occurred between the time that the associated person became unregistered and when the person became registered again under s. 517.12, unless the associated person takes and passes the required examinations or the examination requirements are waived in connection with the subsequent application for registration.

Section 8. Section 517.1217, Florida Statutes, is amended to read:

517.1217 Rules of conduct and prohibited business practices for dealers and their associated persons and for intermediaries.—The commission by rule may establish rules of conduct and prohibited business practices for dealers and their

associated persons and for intermediaries. In adopting the rules, the commission shall consider general industry standards as expressed in the rules and regulations of the various federal and self-regulatory agencies and regulatory associations, including, but not limited to, the ~~United States~~ Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the North American Securities Administrators Association, Inc.

Section 9. Subsections (1), (4), and (5) of section 517.161, Florida Statutes, are amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, intermediary, or associated person.—

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked, restricted, or suspended by the office if the office determines that such applicant or registrant; any member, principal, or director of the applicant or registrant or any person having a similar status or performing similar functions; or any person directly or indirectly controlling the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made under this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with

rendering investment advice or in connection with any sale of securities, has been or is engaged or is about to engage in making fictitious or pretended sales or purchases of any such securities or in any practice involving the rendering of investment advice or the sale of securities which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in the rendering of investment advice or the sale of a security to such person;

(e) Has failed to account to persons interested for all money and property received;

(f) Has not delivered, after a reasonable time, to persons entitled thereto securities held or agreed to be delivered by the dealer~~, broker,~~ or investment adviser, as and when paid for, and due to be delivered;

(g) Is rendering investment advice or selling or offering for sale securities through any associated person not registered in compliance with ~~the provisions of~~ this chapter;

(h) ~~Has demonstrated unworthiness to transact the business of dealer, investment adviser, intermediary, or associated person;~~

~~(i)~~ Has exercised management or policy control over or owned 10 percent or more of the securities of any dealer, intermediary, or investment adviser that has been declared

bankrupt, or had a trustee appointed under the Securities Investor Protection Act; or is, in the case of a dealer, intermediary, or investment adviser, unable to pay its debts as they become due in the usual course of business ~~insolvent~~;

(i) ~~(j)~~ Has been convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication was withheld, a crime against the laws of this state or any other state or of the United States or of any other country or government which relates to registration as a dealer, investment adviser, issuer of securities, intermediary, or associated person; which relates to the application for such registration; or which involves moral turpitude or fraudulent or dishonest dealing;

(j) ~~(k)~~ Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit;

~~(l) Is of bad business repute;~~

(k) ~~(m)~~ Has been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, or by any state or federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a violation of any federal or state securities or commodities law or any rule or regulation

promulgated thereunder, or any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association, or has been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance ~~or small loan companies~~, real estate, mortgage brokers or lenders, money transmitters, or other related or similar industries. For purposes of this subsection, the office may not deny registration to any applicant who has been continuously registered with the office for 5 years after the date of entry of such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order provided such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order has been timely reported to the office pursuant to the commission's rules; ~~or~~

(l) ~~(n)~~ Made payment to the office for a registration with a check or electronic transmission of funds that is dishonored by the applicant's or registrant's financial institution;

(m) Failed to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client- or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to in writing between the client or customer and the investment adviser, dealer, or associated person and the investment adviser, dealer,

or associated person complies with the terms of the alternative payment arrangement;

(n) Attempted to avoid payment of any final judgment or arbitration award resulting from an investment-related, client- or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to in writing between the client or customer and the investment adviser, dealer, or associated person and the investment adviser, dealer, or associated person complies with the terms of the alternative payment arrangements; or

(o) Failed to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser, dealer, or associated person by the Securities and Exchange Commission, the securities regulator or other financial services regulator of any state or province, or any securities industry self-regulatory organization.

(4) It shall be sufficient cause for denial of an application or revocation of registration, in the case of a partnership, corporation, limited liability company, or unincorporated association, if any member of the partnership, any manager or managing member of the limited liability company, or any officer, director, or ultimate equitable owner of the corporation or association has committed any act or omission which would be cause for denying, revoking, restricting, or

suspending the registration of an individual dealer, investment adviser, intermediary, or associated person. As used in this subsection, the term "ultimate equitable owner" means a natural person who directly or indirectly owns or controls an ownership interest in the corporation, partnership, association, or other legal entity however organized, regardless of whether such natural person owns or controls such ownership interest through one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.

(5) The office may deny any request to terminate or withdraw any application or registration if the office believes that an act that ~~which~~ would be a ground for denial, suspension, restriction, or revocation under this chapter has been committed.

Section 10. Section 517.181, Florida Statutes, is repealed.

Section 11. Paragraph (a) of subsection (4) of section 517.201, Florida Statutes, is amended to read:

517.201 Investigations; examinations; subpoenas; hearings; witnesses.—

(4)(a) In the event of substantial noncompliance with a subpoena or subpoena duces tecum issued or caused to be issued by the office pursuant to this section, the office may petition the circuit court of the county in which the person subpoenaed

resides or has its principal place of business for an order requiring the subpoenaed person to appear and testify and to produce such books, records, and documents as are specified in such subpoena duces tecum. The court may grant injunctive relief restraining the issuance, sale or offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement, or distribution ~~in or from offices in this state~~ of securities or investments in or from this state by the noncompliant ~~a~~ person or its agent, employee, broker, partner, officer, director, manager, managing member, equity holder, or any person directly or indirectly controlling the noncompliant person ~~stockholder thereof~~, and may grant such other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents, as the court deems appropriate, until such person has fully complied with such subpoena or subpoena duces tecum and the office has completed its investigation or examination. The office is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar. Costs incurred by the office to obtain an order granting, in whole or in part, such petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person, and failure to comply with

such order shall be a contempt of court.

Section 12. Paragraph (d) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell,

		contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer or~~,~~ associated person of a dealer~~, or issuer~~ of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.

784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at

		custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
794.051(1)	3rd	Indecent, lewd, or lascivious touching of certain minors.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
806.135	2nd	Destroying or demolishing a memorial or historic property.

810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree; specified items.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.

817.505(4)(a)	3rd	Patient brokering.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
836.14(2)	3rd	Person who commits theft of a sexually explicit image with

		intent to promote it.
836.14(3)	3rd	Person who willfully possesses a sexually explicit image with certain knowledge, intent, and purpose.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in

		custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
870.01(3)	2nd	Aggravated rioting.
870.01(5)	2nd	Aggravated inciting a riot.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d),

			(2)(a), (2)(b), or (2)(c)5. drugs).
1311			
	914.14(2)	3rd	Witnesses accepting bribes.
1312			
	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
1313			
	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
1314			
	916.1085 (2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.
1315			
	918.12	3rd	Tampering with jurors.
1316			
	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
1317			
	944.47(1)(a)6.	3rd	Introduction of contraband (cellular telephone or other portable communication device)

			into correctional institution.
951.22(1)(h), (j) & (k)		3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.

Section 13. Section 517.1215, Florida Statutes, is amended to read:

517.1215 Requirements, rules of conduct, and prohibited business practices for investment advisers ~~advisors~~ and their associated persons.—

(1) The commission shall specify by rule requirements for investment advisers ~~advisors~~ deemed to have custody of client funds which concern the following:

(a) Notification of custody of, maintenance of, and safeguards for client funds.

(b) Communications with clients and independent representatives.

(c) Requirements for investment advisers who have custody of pooled investments.

(d) Exceptions to the custody requirements.

In adopting the rules, the commission shall consider the rules and regulations of the federal regulatory authority and the North American Securities Administrators Association, Inc.

(2) The commission shall by rule establish rules of conduct and prohibited business practices for investment advisers and their associated persons. In adopting the rules, the commission shall consider general industry standards as expressed in the rules and regulations of the various federal and self-regulatory agencies and regulatory associations, including, but not limited to, the ~~United States~~ Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the North American Securities Administrators Association, Inc.

Section 14. Subsections (18) and (22) of section 517.061, Florida Statutes, are amended to read:

517.061 Exempt transactions.—Except as otherwise provided in s. 517.0611 for a transaction listed in subsection (21), the exemption for each transaction listed below is self-executing and does not require any filing with the office before claiming the exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(18) The offer or sale of any security effected by or through a person in compliance with s. 517.12(16) ~~s. 517.12(17)~~.

(22) The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(21) ~~s. 517.12(22)~~.

Section 15. Paragraph (b) of subsection (4) and subsection (14) of section 517.0611, Florida Statutes, are amended to read:

517.0611 Intrastate crowdfunding.—

(4) An issuer must:

(b) Conduct transactions for the offering through a dealer registered with the office or an intermediary registered under s. 517.12(19) ~~s. 517.12(20)~~.

(14) An intermediary not registered as a dealer under s. 517.12(5) ~~s. 517.12(6)~~ may not:

(a) Offer investment advice or recommendations. A refusal by an intermediary to post an offering that it deems not credible or that represents a potential for fraud may not be construed as an offer of investment advice or recommendation.

(b) Solicit purchases, sales, or offers to buy securities offered or displayed on its website.

(c) Compensate employees, agents, or other persons for the solicitation of, or based on the sale of, securities offered or displayed on its website.

(d) Hold, manage, possess, or otherwise handle investor

funds or securities.

(e) Compensate promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any potential investor.

(f) Engage in any other activities set forth by commission rule.

Section 16. Subsection (1) of section 517.075, Florida Statutes, is amended to read:

517.075 Cuba, prospectus disclosure of doing business with, required.—

(1) Any issuer of securities that will be sold in this state pursuant to a prospectus must disclose in the prospectus if the issuer or any affiliate thereof~~, as defined in s. 517.021(1),~~ does business with the government of Cuba or with any person or affiliate located in Cuba. The prospectus disclosure required by this subsection does not apply with respect to prospectuses prepared before April 10, 1992.

Section 17. Paragraph (a) of subsection (1) of section 517.131, Florida Statutes, is amended to read:

517.131 Securities Guaranty Fund.—

(1)(a) The Chief Financial Officer shall establish a Securities Guaranty Fund. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ for dealers and investment advisers or s. 517.1201 for federal covered advisers

and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ for associated persons shall be part of the regular license fee and shall be transferred to or deposited in the Securities Guaranty Fund.

Section 18. Subsection (1) of section 517.211, Florida Statutes, is amended to read:

517.211 Remedies available in cases of unlawful sale.—

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (3), (4), (8), (10), (12), (15), or (17) ~~(4), (5), (9), (11), (13), (16), or (18)~~ may be rescinded at the election of the purchaser, except a sale made in violation of the provisions of s. 517.1202(3) relating to a renewal of a branch office notification shall not be subject to this section, and a sale made in violation of the provisions of s. 517.12(12) ~~s. 517.12(13)~~ relating to filing a change of address amendment shall not be subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days of receipt, to accept an

offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

Section 19. Section 517.315, Florida Statutes, is amended to read:

517.315 Fees.—All fees of any nature collected by the office pursuant to this chapter shall be disbursed as follows:

(1) The office shall transfer the amount of fees required to be deposited into the Securities Guaranty Fund pursuant to s. 517.131.~~;~~

(2) After the transfer required in subsection (1), the office shall transfer the $50 assessment fee collected from each associated person under s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ and 30.44 percent of the $100 assessment fee paid by dealers and investment advisers ~~advisors~~ for each office in the state under s. 517.12(9) and (10) ~~s. 517.12(10) and (11)~~ to the Regulatory Trust Fund.~~; and~~

(3) All remaining fees shall be deposited into the General Revenue Fund.

Section 20. Subsection (5) of section 626.9911, Florida Statutes, is amended to read:

626.9911 Definitions.—As used in this act, the term:

(5) "Life expectancy provider" means a person who determines, or holds himself or herself out as determining, life expectancies or mortality ratings used to determine life expectancies:

(a) On behalf of a viatical settlement provider, viatical settlement broker, life agent, or person engaged in the business of viatical settlements;

(b) In connection with a viatical settlement investment as defined in s. 517.021~~, pursuant to s. 517.021(24)~~; or

(c) On residents of this state in connection with a viatical settlement contract or viatical settlement investment.

Section 21. Subsection (6) of section 744.351, Florida Statutes, is amended to read:

744.351 Bond of guardian.—

(6) When it is expedient in the judgment of any court having jurisdiction of any guardianship property, because the size of the bond required of the guardian is burdensome, or for other cause, the court may order, in lieu of a bond or in addition to a lesser bond, that the guardian place all or part of the property of the ward in a designated financial

institution under the same conditions and limitations as are contained in s. 69.031. A designated financial institution shall also include a dealer~~,~~ as defined in s. 517.021 ~~s. 517.021(6),~~ if the dealer is a member of the Security Investment Protection Corporation and is doing business in the state.

Section 22. Section 517.1205, Florida Statutes, is amended to read:

517.1205 Registration of associated persons specific as to securities dealer, investment adviser, or federal covered adviser identified at time of registration approval.—Inasmuch as this chapter is intended to protect investors in securities offerings and other investment transactions regulated by that chapter, its provisions are to be construed to require full and fair disclosure of all, but only, those matters material to the investor's evaluation of the offering or other transaction. It should, furthermore, be construed to impose the standards provided by law on all those seeking to participate in the state's securities industry through registration as a securities dealer, investment adviser, or associated person. To this end, it is declared to be the intent of the Legislature that the registration of associated persons required by law is specific to the securities dealer, investment adviser, or federal covered adviser identified at the time such registration is approved. Notwithstanding any interpretation of law to the contrary, the historical practice of the Department of Banking and Finance,

reflected in its rules, that requires a new application for registration from a previously registered associated person when that person seeks to be associated with a new securities dealer or investment adviser is hereby ratified and approved as consistent with legislative intent. It is, finally, declared to be the intent of the Legislature that while approval of an application for registration of a securities dealer, investment adviser, or associated person requires a finding of compliance with the applicable registration provisions of this chapter and applicable rules ~~the applicant's good repute and character~~, such finding is precluded by a determination that the applicant may be denied registration on grounds provided by law.

Section 23. This act shall take effect October 1, 2023.

COMMERCE COMMITTEE

CS/HB 253 by Rep. Barnaby
Regulation of Securities

AMENDMENT SUMMARY
April 10, 2023

Amendment 1 by Rep. Barnaby (line 70): The amendment:

Conforms to the Senate bill, by:

- Providing that an "issuer" of a security who is a "general partner," trustee," "manager," and "managing member" is not eligible to submit a simplified offering circular, in addition to other issuers who are not eligible to make such a submission under current law.
- Clarifying that an associated person who is "CE inactive" at the end of the calendar year, regarding continuing education requirements, is not eligible for registration.

The amendment also creates an additional registration exemption applicable to investment advisers who work with private funds. This implements the relevant parts of a National Council of Insurance Legislator's model rule.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 70-1051 and insert:

Commission Rule 501, 17 C.F.R. s. 230.501, as amended.

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an applicant or registrant.

(3)~~(2)~~ "Associated person" means:

(a)1. With respect to a dealer, a natural person who is employed, appointed, or authorized by a dealer and who represents the dealer in effecting or attempting to effect purchases or sales of securities.

2. The term does not include the following:

a. A dealer.

b. A partner, an officer, or a director of a dealer or a person having a similar status or performing similar functions as a dealer, unless such person is specified in subparagraph 1.

c. A dealer's employee whose function is only clerical or ministerial.

d. A person whose transactions in this state are limited to those transactions described in s. 15(i)(3) of the Securities Exchange Act of 1934, as amended.

(b)1. With respect to an investment adviser, a natural person, including, but not limited to, a partner, an officer, a director, or a branch manager, or a person occupying a similar status or performing similar functions, who:

a. Is employed by or associated with, or is subject to the supervision and control of, an investment adviser registered or required to be registered under this chapter; and

b. Does any of the following:

(I) Makes any recommendation or otherwise gives investment advice regarding securities.

(II) Manages accounts or portfolios of clients.

(III) Determines which recommendations or advice regarding securities should be given.

(IV) Receives compensation to solicit, offer, or negotiate for the sale of investment advisory services.

(V) Supervises employees who perform a function under this sub-subparagraph.

2. The term does not include the following:

a. An investment adviser.

b. An employee whose function is only clerical or ministerial ~~or investment adviser, any of the following:~~

~~1. Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;~~

~~2. Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or~~

~~3. Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in this section~~.

~~The partners of a partnership and the executive officers of a corporation or other association registered as a dealer, and any person whose transactions in this state are limited to those transactions described in s. 15(h)(2) of the Securities Exchange Act of 1934, are not "associated persons" within the meaning of this definition.~~

(c) ~~(b)~~ With respect to a federal covered adviser, a natural ~~any~~ person who is an investment adviser representative

and who has a place of business in this state, as such terms are defined in Rule 203A-3 of the Securities and Exchange Commission adopted under the Investment Advisers Act of 1940, as amended.

(4) ~~(3)~~ "Boiler room" means an enterprise in which two or more persons engage in telephone communications with members of the public using two or more telephones at one location, or at more than one location in a common scheme or enterprise.

(5) ~~(4)~~ "Branch office" means any location in this state of a dealer or investment adviser at which one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security or any location that is held out as such. The commission may adopt by rule exceptions to this definition for dealers in order to maintain consistency with the definition of a branch office used by self-regulatory organizations authorized by the Securities and Exchange Commission, including, but not limited to, the Financial Industry Regulatory Authority. The commission may adopt by rule exceptions to this definition for investment advisers.

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

(7) ~~(5)~~ "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or

cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(8) ~~(6)(a)~~ "Dealer" includes, unless otherwise specified, a person, other than an associated person of a dealer, that engages, for all or part of the person's time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person ~~any of the following:~~

~~1. Any person, other than an associated person registered under this chapter, who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person~~.

~~2. Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.~~

~~(b)~~ The term ~~"dealer"~~ does not include the following:

(a) A licensed practicing attorney who renders or performs any such services in connection with the regular practice of the attorney's profession.

(b) A bank authorized to do business in this state, except nonbank subsidiaries of a bank.

(c) A trust company having trust powers that it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers.

(d) A wholesaler selling exclusively to dealers.

(e) A person buying and selling for the person's own account exclusively through a registered dealer or stock exchange.

(f) An issuer.

(g) A natural person representing an issuer in the purchase, sale, or distribution of the issuer's own securities if such person:

1. Is an officer, a director, a limited liability company manager or managing member, or a bona fide employee of the issuer;

2. Has not participated in the distribution or sale of securities for any issuer for which such person was, within the preceding 12 months, an officer, a director, a limited liability company manager or managing member, or a bona fide employee;

3. Primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities; and

4. Does not receive a commission, compensation, or other consideration for the completed sale of the issuer's securities

apart from the compensation received for regular duties to the issuer.

~~1. Any licensed practicing attorney who renders or performs any of such services in connection with the regular practice of her or his profession;~~

~~2. Any bank authorized to do business in this state, except nonbank subsidiaries of a bank;~~

~~3. Any trust company having trust powers which it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers;~~

~~4. Any wholesaler selling exclusively to dealers;~~

~~5. Any person buying and selling for her or his own account exclusively through a registered dealer or stock exchange; or~~

~~6. Pursuant to s. 517.061(11), any person associated with an issuer of securities if such person is a bona fide employee of the issuer who has not participated in the distribution or sale of any securities within the preceding 12 months and who primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities.~~

(9) "Federal covered adviser" means a person that ~~who~~ is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940, as amended. The term ~~"federal~~

~~covered adviser"~~ does not include any person that ~~who~~ is excluded from the definition of investment adviser under subparagraphs (14)(b)1.-8.

(10) "Federal covered security" means a ~~any~~ security that is a covered security under s. 18(b) of the Securities Act of 1933, as amended, or rules and regulations adopted thereunder.

(11) "Guarantor" means a person that ~~who~~ agrees in writing, or that ~~who~~ holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. The obligation of a guarantor hereunder shall be a continuing, absolute, and unconditional guaranty of payment, without regard to the validity, regularity, or enforceability of the underlying indebtedness.

(12) "Guaranty" means an agreement in ~~a~~ writing in which one party either agrees, or holds itself out to the public as agreeing, to pay the indebtedness of another when due, including, without limitation, payments of principal and interest on a bond, debenture, note, or other evidence of indebtedness, without resort by the holder to any other obligor, whether or not such writing expressly states that the person signing is signing as a guarantor. An agreement that is not

specifically denominated as a guaranty shall nevertheless constitute a guaranty if the holder of the underlying indebtedness or the holder's ~~her or his~~ representative or trustee has the right to sue to enforce the guarantor's obligations under the guaranty. Words of guaranty or equivalent words that ~~which~~ otherwise do not specify guaranty of payment create a presumption that payment, rather than collection, is guaranteed by the guarantor. Any guaranty in writing is enforceable notwithstanding any statute of frauds.

(13) "Intermediary" means a natural person residing in this ~~the~~ state or a corporation, trust, partnership, limited liability company, association, or other legal entity registered with the Secretary of State to do business in this ~~the~~ state, which facilitates through its website the offer or sale of securities of an issuer with a principal place of business in this state ~~under s. 517.0611~~.

(14)(a) "Investment adviser" means a ~~includes any~~ person, other than an associated person of an investment adviser or a federal covered adviser, that ~~who~~ receives compensation, directly or indirectly, and engages for all or part of the person's ~~her or his~~ time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities~~, except a dealer whose performance of these services is solely~~

~~incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services~~.

(b) The term ~~"investment adviser"~~ does not include the following:

1. A dealer or an associated person of a dealer whose performance of services in paragraph (a) is solely incidental to the conduct of the dealer's or associated person's business as a dealer and who does not receive special compensation for those services.

2. A ~~Any~~ licensed practicing attorney or certified public accountant whose performance of such services is solely incidental to the practice of the attorney's or accountant's ~~her or his~~ profession.~~;~~

~~2. Any licensed certified public accountant whose performance of such services is solely incidental to the practice of her or his profession;~~

3. A ~~Any~~ bank authorized to do business in this state.~~;~~

4. A ~~Any~~ bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state.~~;~~

5. A ~~Any~~ trust company having trust powers, as defined in s. 658.12, which it is authorized to exercise in this ~~the~~ state, which trust company renders or performs investment advisory services in a fiduciary capacity incidental to the exercise of its trust powers.~~;~~

6. A ~~Any~~ person that ~~who~~ renders investment advice exclusively to insurance or investment companies.~~;~~

7. A ~~Any~~ person that ~~who~~ does not hold itself ~~herself or himself~~ out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state.~~;~~

8. A ~~Any~~ person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940, as amended. Those clients listed in subparagraph 6. may not be included when determining the number of clients of an investment adviser for purposes of s. 222(d) of the Investment Advisers Act of 1940, as amended.~~;~~ ~~or~~

9. A federal covered adviser.

(15) "Issuer" means a ~~any~~ person that ~~who~~ proposes to issue, has issued, or shall hereafter issue any security. A ~~Any~~ person that ~~who~~ acts as a promoter for and on behalf of a corporation, trust, ~~or unincorporated association or~~ partnership, limited liability company, association, or other legal entity of any kind to be formed shall be deemed an issuer.

(16) "Offer to sell," "offer for sale," or "offer" means an ~~any~~ attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, or an investment or interest in an investment, for value.

(17)~~(8)~~ "Office" means the Office of Financial Regulation of the commission.

(18)~~(17)~~ "Predecessor" means a person whose ~~the~~ major portion of ~~whose~~ assets has ~~have~~ been acquired directly or indirectly by an issuer.

(19)~~(18)~~ "Principal" means an executive officer of a corporation, partner of a partnership, sole proprietor of a sole proprietorship, trustee of a trust, or any other person with similar supervisory functions with respect to any organization, whether incorporated or unincorporated.

(20)~~(19)~~ "Promoter" includes the following:

(a) A ~~Any~~ person that ~~who~~, acting alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer.

(b) A ~~Any~~ person that ~~who~~, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person that ~~who~~ receives such securities or proceeds either solely as underwriting commissions or solely in connection with property shall not be deemed a promoter if such person does not otherwise take part in founding and organizing the enterprise.

(21)~~(20)~~ "Qualified institutional buyer" means a ~~any~~ qualified institutional buyer, as defined in ~~United States~~ Securities and Exchange Commission Rule 144A, 17 C.F.R. s. 230.144A(a), under the Securities Act of 1933, as amended, or any foreign buyer that satisfies the minimum financial requirements set forth in such rule.

(22)~~(21)~~ "Sale" or "sell" means a ~~any~~ contract of sale or disposition of an ~~any~~ investment, security, or interest in a security, for value. With respect to a security or interest in a security, the term ~~defined in this subsection~~ does not include preliminary negotiations or agreements between an issuer or any person on whose behalf an offering is to be made and any underwriter or among underwriters who are or are to be in privity of contract with an issuer. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security or another issuer, is considered to include an offer of the other security.

(23)~~(22)~~ "Security" includes any of the following:

(a) A note.

(b) A stock.

(c) A treasury stock.

(d) A bond.

(e) A debenture.

(f) An evidence of indebtedness.

(g) A certificate of deposit.

(h) A certificate of deposit for a security.

(i) A certificate of interest or participation.

(j) A whiskey warehouse receipt or other commodity warehouse receipt.

(k) A certificate of interest in a profit-sharing agreement or the right to participate therein.

(l) A certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease or the right to participate therein.

(m) A collateral trust certificate.

(n) A reorganization certificate.

(o) A preorganization subscription.

(p) A ~~Any~~ transferable share.

(q) An investment contract.

(r) A beneficial interest in title to property, profits, or earnings.

(s) An interest in or under a profit-sharing or participation agreement or scheme.

(t) An ~~Any~~ option contract that ~~which~~ entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time.

(u) Any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, or certificate.

(v) A ~~Any~~ receipt for a security, or for subscription to a security, or a ~~any~~ right to subscribe to or purchase any security.

(w) A viatical settlement investment.

(24) ~~(23)~~ "Underwriter" means a person that ~~who~~ has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except that a person is ~~shall be~~ presumed not to be an underwriter with respect to any security which it ~~she or he~~ has owned beneficially for at least 1 year; and, further, a dealer is ~~shall~~ not ~~be~~ considered an underwriter with respect to any securities which do not represent part of an unsold allotment to or subscription by the dealer as a participant in the distribution of such securities by the issuer or an affiliate of the issuer; and, further, in the case of securities acquired on

the conversion of another security without payment of additional consideration, the length of time such securities have been beneficially owned by a person includes the period during which the convertible security was beneficially owned and the period during which the security acquired on conversion has been beneficially owned.

(25) ~~(24)~~ "Viatical settlement investment" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of a legal or equitable interest in a viaticated policy as defined in chapter 626.

Section 2. Paragraph (d) of subsection (3) of section 517.072, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

517.072 Viatical settlement investments.—

(3) The registration provisions of ss. 517.07 and 517.12 do not apply to any of the following transactions in viatical settlement investments; however, such transactions in viatical settlement investments are subject to the provisions of ss. 517.301, 517.311, and 517.312:

(d) The transfer or assignment of a viaticated policy to a bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trust, ~~or~~ qualified institutional buyer ~~as defined in United States Securities and Exchange Commission Rule 144A, 17 C.F.R. s.~~

~~230.144A(a)~~, or ~~to~~ an accredited investor ~~as defined by Rule 501 of Regulation D of the Securities Act Rules~~, provided such transfer or assignment is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(4) The commission may establish by rule requirements and standards for disclosures to purchasers of viatical settlement investments and recordkeeping requirements for sellers of viatical settlement investments.

Section 3. Paragraphs (a), (g), and (n) of subsection (3) and subsections (6) and (8) of section 517.081, Florida Statutes, are amended to read:

517.081 Registration procedure.—

(3) The office may require the applicant to submit to the office the following information concerning the issuer and such other relevant information as the office may in its judgment deem necessary to enable it to ascertain whether such securities shall be registered pursuant to the provisions of this section:

(a) The names and addresses of:

1. All the directors, trustees, and officers, if the issuer is ~~be~~ a corporation, association, or trust.

2. All the managers or managing members, if the issuer is a limited liability company.

3. ~~; of~~ All the partners, if the issuer is ~~be~~ a partnership.

4. ~~; or of~~ The issuer, if the issuer is a sole proprietorship or natural person ~~be an individual~~.

(g)1. A specimen copy of the securities certificate, if applicable, ~~security~~ and a copy of any circular, prospectus, advertisement, or other description of such securities.

2. The commission shall adopt a form for a simplified offering circular ~~to be used solely by corporations~~ to register, under this section, securities ~~of the corporation~~ that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended. The following issuers shall not be eligible to submit a simplified offering circular adopted pursuant to this subparagraph:

a. An issuer seeking to register securities for resale by persons other than the issuer.

b. An issuer that ~~who~~ is subject to any of the disqualifications described in 17 C.F.R. s. 230.262, adopted pursuant to the Securities Act of 1933, as amended, or that ~~who~~ has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this subparagraph, an issuer includes an issuer's director, officer, general partner, manager or managing member, trustee, or equity owner ~~shareholder~~ who owns at least 10 percent of the ownership interests ~~shares~~ of the issuer, promoter, or selling agent of the securities to be

offered or any officer, director, ~~or~~ partner, or manager or managing member of such selling agent.

c. An issuer that ~~who~~ is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified company or companies.

d. An issuer of offerings in which the specific business or properties cannot be described.

e. Any issuer the office determines is ineligible because ~~if~~ the form does ~~would~~ not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

f. Any issuer that ~~corporation which~~ has failed to provide the office the reports required for a previous offering registered pursuant to this subparagraph.

As a condition precedent to qualifying for use of the simplified offering circular, an issuer ~~a corporation~~ shall agree to provide the office with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year, prepared in accordance with United States generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial

reports must be filed with the office within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.

(n) If the issuer is a corporation, there shall be filed with the application a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file in the office. If the issuer is a limited liability company, there shall be filed with the application a copy of the articles of organization with all the amendments and a copy of the company's operating agreement as may be amended, if not already on file with the office. If the issuer is a trustee, there shall be filed with the application a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, there shall be filed with the application a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file in the office.

(6) An issuer filing an application under this section shall, at the time of filing, pay the office a nonreturnable fee of $1,000 per application for each offering that exceeds the amount provided in s. 3(b) of the Securities Act of 1933, as amended, or $200 per application for each offering that does not

exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

(8) The office shall deem an application to register securities filed with the office abandoned if the issuer or any person acting on behalf of the issuer has failed to complete timely an application as specified by commission rule ~~The commission may by rule establish requirements and standards for:~~

~~(a) Disclosures to purchasers of viatical settlement investments~~.

~~(b) Recordkeeping requirements for sellers of viatical settlement investments.~~

Section 4. Section 517.082, Florida Statutes, is amended to read:

517.082 ~~Notification~~ Registration by notification; federal registration statements.—

(1) ~~Except as provided in subsection (3),~~ Securities offered or sold pursuant to a registration statement filed under the Securities Act of 1933, as amended, are ~~shall be~~ entitled to registration by notification in the manner provided in subsection (2), provided that before ~~prior to~~ the offer or sale the registration statement has become effective.

(2) An application for registration by notification shall be filed with the office, shall contain the following information, and shall be accompanied by all of the following:

(a) An application to sell executed by the issuer, any person on whose behalf the offering is made, a dealer registered under this chapter, or any duly authorized agent of any such person, setting forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered and sold.~~;~~

(b) Copies of such documents filed with the Securities and Exchange Commission as the Financial Services Commission may by rule require.~~;~~

(c) An irrevocable written consent to service as required by s. 517.101.~~; and~~

(d) A nonreturnable fee of $1,000 per application.

A registration under this section becomes effective when the federal registration statement becomes effective or as of the date the application is filed with the office, whichever is later, provided that, in addition to the items listed in paragraphs (a)-(d), the office has received written notification of effective registration under the Securities Act of 1933, as amended, or the Investment Company Act of 1940, as amended, within 10 business days after ~~from~~ the date federal registration is granted. Failure to provide all the information required by this subsection to the office within 60 days after ~~of~~ the date the registration statement becomes effective with the Securities and Exchange Commission shall be a violation of this chapter.

(3) Except for units of limited partnership interests or such other securities as the commission describes by rule as exempt from this subsection due to high investment quality, the provisions of this section may not be used to register securities if the offering price at the time of effectiveness with the Securities and Exchange Commission is $5 or less per share, unless such securities are listed or designated, or approved for listing or designation upon notice of issuance, on a stock exchange registered pursuant to the Securities Exchange Act of 1934, as amended, or on the National Association of Securities Dealers Automated Quotation (NASDAQ) System, or unless such securities are of the same issuer and of senior or substantially equal rank to securities so listed or designated.

(4) In lieu of filing with the office the application, fees, and documents for registration required by subsection (2), the commission may establish, by rule, procedures for depositing fees and filing documents by electronic means, provided such procedures provide the office with the information and data required by this section.

(5) If the Securities and Exchange Commission has not declared effective the applicant's federal registration statement within 180 days after the applicant's filing with the office of an application for registration by notification, the office must deem the application abandoned.

Section 5. Section 517.111, Florida Statutes, is amended to read:

517.111 Revocation or denial of registration of securities.—

(1) The office may revoke or suspend the registration of any security, or may deny any application to register securities, if, upon examination or investigation into the affairs of the issuer of such security, the office determines ~~it shall appear~~ that:

(a) The issuer cannot pay its debts as they become due in the usual course of business ~~is insolvent~~;

(b) The issuer or any officer, director, manager or managing member, or control person of the issuer has violated any provision of this chapter or any rule made hereunder or any order of the office of which such issuer has notice;

(c) The issuer or any officer, director, manager or managing member, or control person of the issuer has been or is engaged or is about to engage in fraudulent transactions;

(d) The issuer or any officer, director, manager or managing member, or control person of the issuer has been found guilty of a fraudulent act in connection with any sale of securities, has engaged, is engaged, or is about to engage, in making a fictitious sale or purchase of any security, or in any practice or sale of any security which is fraudulent or a violation of any law;

(e) The issuer or any officer, director, manager or managing member, or control person of the issuer has had a final judgment entered against such issuer or person in a civil action on the grounds of fraud, embezzlement, misrepresentation, or deceit;

(f) The issuer or any officer, director, manager or managing member, or control person of the issuer has engaged in any action that would be grounds for revocation, denial, or suspension under s. 517.161(1) ~~demonstrated any evidence of unworthiness~~;

(g) The issuer or any officer, director, manager or managing member, or control person of the issuer ~~is in any other way dishonest or~~ has made any fraudulent representations or failed to disclose any material information in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities;

(h) The security registered or sought to be registered is the subject of an injunction entered by a court of competent jurisdiction or is the subject of an administrative stop-order or similar order prohibiting the offer or sale of the security; or

(i) For any security for which registration has been applied pursuant to s. 517.081, the terms of the offer or sale of such securities would not be fair, just, or equitable~~; or~~

~~(j) The issuer or any person acting on behalf of the issuer has failed to timely complete any application for registration filed with the office pursuant to the provisions of s. 517.081 or s. 517.082 or any rule adopted under such sections~~.

(2) In making such examination or investigation, the office shall have access to and may compel the production of all the books and papers of such issuer and may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and affairs and may also require a balance sheet exhibiting the assets and liabilities of any such issuer or its income statement, or both, to be certified to by a public accountant either of this state or of any other state where the issuer's business is located. Whenever the office deems it necessary, it may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the office may require.

(3)~~(2)~~ If any issuer refuses ~~shall refuse~~ to permit an examination or investigation to be made by the office, it shall be proper ground for revocation of registration.

(4)~~(3)~~ If the office deems it necessary, it may enter an order suspending the right to sell securities pending any examination or investigation, provided that the order shall state the office's grounds for taking such action.

(5)~~(4)~~ Notice of the entry of such order shall be given personally or by mail~~, personally, by telephone confirmed in writing, or by telegraph~~ to the issuer. Before such order is made final, the issuer ~~applying for registration~~ shall, on application, be entitled to a hearing.

(6)~~(5)~~ The office may deny any request to terminate any registration or to withdraw any application for registration if the office believes that an act which would be grounds for denial, suspension, or revocation under this chapter has been committed.

Section 6. Subsections (3) through (22) of section 517.12, Florida Statutes, are renumbered as subsections (2) through (21), respectively, new subsection (22) is added, and subsection (1), present subsections (2) and (3), paragraph (b) of present subsection (6), present subsections (7) and (11), paragraph (b) of present subsection (15), and present subsections (20) and (21) of that section are amended, to read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(1) No dealer or~~,~~ associated person~~, or issuer of securities~~ shall sell or offer for sale any securities in or from offices in this state~~,~~ or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person is ~~has been~~ registered with the office as a dealer or as an associated person of a dealer

pursuant to ~~the provisions of~~ this section. The office shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to this chapter.

~~(2) The registration requirements of this section do not apply to the issuers of securities exempted by s. 517.051(1)-(8) and (10).~~

(2)~~(3)~~ ~~Except as otherwise provided in s. 517.061(11)(a)4., (13), (16), (17), or (19),~~ The registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(10) and (12), ~~s. 517.061(1)-(12),~~ (14), and (15).

(5)~~(6)~~ A dealer, associated person, or investment adviser, in order to obtain registration, must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or office may require concerning such matters as:

(b) The applicant's form and place of organization; and, if the applicant is:

1. A corporation, a copy of its articles of incorporation and amendments to the articles of incorporation;

2. A limited liability company, a copy of its articles of organization with amendments to its articles; or

3.~~, if~~ A partnership, a copy of the partnership agreement.

(6)~~(7)~~ The application must also contain such information as the commission or office may require about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; any person directly or indirectly controlling the applicant; or any employee of a dealer or of an investment adviser rendering investment advisory services. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14) ~~(15)~~ shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine

whether the applicant meets licensure requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners that are required to be reported on Form BD or Form ADV pursuant to subsection (14) ~~(15)~~, submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission or office may require information about any such applicant or person concerning such matters as:

(a) The applicant's or person's ~~His or her~~ full name, and any other names by which the applicant or person ~~he or she~~ may have been known, and the applicant's or person's ~~his or her~~ age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of a dealer's or investment adviser's regulated ~~the securities~~ business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) The applicant's or person's ~~His or her~~ conviction of, or plea of nolo contendere to, a criminal offense or the

applicant's or person's ~~his or her~~ commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to the applicant's or person's ~~his or her~~ character, reputation, and financial responsibility.

(10)(a) ~~(11)(a)~~ If the office finds that the applicant ~~is of good repute and character and~~ has complied with the applicable registration provisions of this chapter and the rules made pursuant hereto, it shall register the applicant unless the applicant is otherwise disqualified for registration pursuant to law. The registration of each dealer, investment adviser, and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed its ~~his or her~~ registration on or before that date. Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in paragraph (9)(a) ~~(10)(a)~~ for dealers, investment advisers, or associated persons and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the

commission, together with payment of the fee required in paragraph (9)(a) ~~(10)(a)~~ for dealers, investment advisers, or associated persons and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(b) The office shall waive the $50 assessment fee for an associated person required by paragraph (9)(a) ~~(10)(a)~~ for a registrant renewing his or her registration who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the expiration date of the registration pursuant to paragraph (a). To qualify for the fee waiver, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the expiration date of the registration must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or

3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the surviving spouse's registration expiration date pursuant to paragraph (a).

A registrant seeking such fee waiver must submit proof, in a form prescribed by commission rule, that the registrant meets one of the qualifications in this paragraph.

(14) ~~(15)~~

(b) In lieu of filing with the office the applications specified in subsection (5) ~~(6)~~, the fees required by subsection (9) ~~(10)~~, the renewals required by subsection (10) ~~(11)~~, and the termination notices required by subsection (11) ~~(12)~~, the commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

(19) ~~(20)~~ An intermediary may not engage in business in this state unless the intermediary is registered as a dealer or as an intermediary with the office pursuant to this section to facilitate the offer or sale of securities in accordance with s. 517.0611. An intermediary, in order to obtain registration, must file with the office a written application on a form prescribed by commission rule and pay a registration fee of $200. The fees under this subsection shall be deposited into the Regulatory Trust Fund of the office. The commission may establish by rule procedures for depositing fees and filing documents by electronic means if such procedures provide the office with the

information and data required by this section. Each intermediary must also file an irrevocable written consent to service of civil process, as provided in s. 517.101.

(a) The application must contain such information as the commission or office may require concerning:

1. The name of the applicant and address of its principal office and each office in this state.

2. The applicant's form and place of organization; and, if the applicant is:

a. A corporation, a copy of its articles of incorporation and amendments to the articles of incorporation;

b. A limited liability company, a copy of its articles of organization and amendments to the articles and a copy of the company's operating agreement as may be amended; or

c.~~, if~~ A partnership, a copy of the partnership agreement.

3. The website address where securities of the issuer will be offered.

4. Contact information.

(b) The application must also contain such information as the commission may require by rule about the applicant; any member, principal, or director of the applicant or any person having a similar status or performing similar functions; or any persons directly or indirectly controlling the applicant. Each applicant and any direct owners, principals, or indirect owners that are required to be reported on a form adopted by commission

rule shall submit fingerprints for live-scan processing in accordance with rules adopted by the commission. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting. The costs of fingerprint processing shall be borne by the person subject to the background check. The Department of Law Enforcement shall conduct a state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets registration requirements. The commission may waive, by rule, the requirement that applicants, including any direct owners, principals, or indirect owners, which are required to be reported on a form adopted by commission rule, submit fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation. The commission, by rule, or the office may require information about any applicant or person, including:

1. The applicant's or person's ~~His or her~~ full name and any other names by which the applicant or person ~~he or she~~ may have been known and the applicant's or person's ~~his or her~~ age, social security number, photograph, qualifications, and educational and business history.

2. Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of an intermediary's regulated ~~the securities~~ business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, ~~or small loan companies,~~ real estate, mortgage brokers, or other related or similar industries, which relate to such person.

3. The applicant's or person's ~~His or her~~ conviction of, or plea of nolo contendere to, a criminal offense or the applicant's or person's ~~his or her~~ commission of any acts that would be grounds for refusal of an application under s. 517.161.

(c) The application must be amended within 30 days if any information contained in the form becomes inaccurate for any reason.

(d) An intermediary or persons affiliated with the intermediary are not subject to any disqualification described in s. 517.1611 or ~~United States~~ Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933, as amended. Each director, officer, manager or managing member, control person of the issuer, any person occupying a similar status or performing a similar function, and each person holding more than 20 percent of the ownership interests ~~shares~~ of the intermediary is subject to this requirement.

(e) If the office finds that the applicant ~~is of good repute and character and~~ has complied with the applicable registration provisions of this chapter and the rules adopted thereunder, it shall register the applicant. The registration of each intermediary expires on December 31 of the year the registration became effective unless the registrant renews his or her registration on or before that date. Registration may be renewed by furnishing such information as the commission may require by rule, together with payment of a $200 fee and the payment of any amount due to the office pursuant to any order of the office or pursuant to any agreement with the office. An intermediary who has not renewed a registration by the time that the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as required by the commission, together with payment of the $200 fee and a late fee of $200. Any reinstatement of registration granted by the office during the month of January is deemed effective retroactive to January 1 of that year.

(20)~~(21)~~ The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, for the sale of a security as defined in s. 517.021(23)(g) ~~s. 517.021(22)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a

federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection shall constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

(22) Registration exemption for investment advisers to private funds.

(a) For purposes of this subsection, the following definitions shall apply:

1. "Advisory affiliate" means an "advisory affiliate" as defined in the Glossary of Terms to Form ADV (Uniform Application for Investment Adviser Registration) (17 C.F.R. s. 279.1).

2. "Exempt reporting adviser" means an "exempt reporting adviser" as defined in the Glossary of Terms to Form ADV (Uniform Application for Investment Adviser Registration) (17 C.F.R. s. 279.1).

3. "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.

4. "Qualifying private fund" means:

a. A private fund that meets the definition of a "qualifying private fund" in SEC Rule 203(m)-1, 17 C.F.R. 275.203(m)-1;

b. A private fund that meets the definition of a "venture capital fund" in SEC Rule 203(l)-1, 17 C.F.R. s. 275.203(l)-1; or

c. A "venture capital operating company" as defined in Rule 2510.3-101(d) adopted by the U.S. Department of Labor under the Employee Retirement Income Security Act of 1974, as amended (29 C.F.R. s. 2510.3- 101(d)).

5. "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, as amended (15 U.S.C. 80a-3(c)(1)).

(b) Subject to the additional requirements of paragraph (c) below, a private fund adviser shall be exempt from the registration requirements of s. 517.12, if the private fund adviser satisfies the following conditions:

1. neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d)(1) of SEC Regulation D, 17 C.F.R. s. 230.506(d)(1); and

2. the private fund adviser files with the office each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. s. 275.204-4.

(c) In order to qualify for the exemption described in paragraph (b) of this subsection, a private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the

conditions specified in paragraph (b), comply with the following requirements:

1. The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by accredited investors; and

2. At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

a. All services, if any, to be provided to individual beneficial owners;

b. All duties, if any, the investment adviser owes to the beneficial owners; and

c. Any other material information affecting the rights or responsibilities of the beneficial owners.

(d) If a private fund adviser is registered with the Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in s. 517.1201.

(e) A person is exempt from the registration requirements of s. 517.12 if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to this subsection and does not otherwise act as

an associated person of an investment adviser or federal covered adviser.

(f) The report filings described in subparagraph (b)2. above shall be made electronically through the Investment Adviser Registration Depository. A report shall be deemed filed with the office when the report has been filed and accepted by the Depository on the office's behalf.

Section 7. Section 517.1214, Florida Statutes, is created to read:

517.1214 Continuing education requirements for associated persons of investment advisers and federal covered advisers.—

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

(a) "Approved continuing education content" means the materials, written, oral, or otherwise, which have been approved by NASAA or its designee and which make up the educational program provided to an associated person under this section.

(b) "Credit" means a unit designated by NASAA or its designee as at least 50 minutes of educational instruction.

(c) "Home state" means the state in which an associated person of an investment adviser or a federal covered adviser has his or her principal office and place of business.

(d) "NASAA" means the North American Securities Administrators Association, Inc.

(e) "Reporting period" means one 12-month period beginning January 1 and ending December 31. An associated person's initial

reporting period with this state commences the first day of the first full reporting period after the individual is registered or required to be registered with this state.

(2) By December 31, 2024, and each December 31 thereafter, each associated person of an investment adviser or a federal covered adviser shall complete the following continuing education content requirements offered by a person that NASAA or its designee has authorized to provide the continuing education content required by this section:

(a) Six credits of approved continuing education content that addresses an associated person's ethical and regulatory obligations, with at least 3 hours covering the topic of ethics; and

(b) Six credits of approved continuing education content that addresses an associated person's skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(3) An associated person of an investment adviser or federal covered adviser who is also registered as an associated person of a Financial Industry Regulatory Authority (FINRA) member dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with this section's products and practice requirement for each applicable reporting period, provided that the FINRA continuing education content is approved continuing education content.

(4) Credits of continuing education completed by an associated person who was awarded and currently holds a credential that qualifies for examination waiver by passing any tests as prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934, as amended, comply with paragraphs (2)(a) and (b), provided all of the following conditions are met:

(a) The associated person completes the credits of continuing education as a condition of maintaining the credential for the relevant reporting period.

(b) The credits of continuing education completed during the relevant reporting period by the associated person are mandatory to maintain the credential.

(c) The continuing education content provided by the credentialing organization during the relevant reporting period is approved continuing education content.

(5) Each associated person is responsible for ensuring that the authorized provider reports the associated person's completion of the applicable continuing education requirements.

(6) An associated person who completes credits of continuing education in excess of the credits required for the reporting period may not carry forward excess credits to a subsequent reporting period.

(7) An associated person who fails to comply with this section by the end of a reporting period shall renew as "CE inactive" at the close of the calendar year in this state until

the associated person completes and reports all required continuing education credits for all reporting periods as required by this section. An associated person who is "CE inactive" at the close of the next calendar year is not eligible for associated person registration or renewal of associated person registration.

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

Remove line 24 and insert:

F.S.; providing a registration exemption for investment advisers to private funds; revising applicability of registration

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 439 Land Use and Development Regulations
SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 1604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	13 Y, 3 N, As CS	Mwakyanjala	Darden
2) Commerce Committee		Larkin	Hamon
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Land Use and Environmental Dispute Resolution Act (FLUEDRA) provides an informal mechanism for a property owner to challenge a government action that may infringe on his or her property without having to file a lawsuit. Under FLUEDRA, a property owner who believes that a government notice or order unfairly or unreasonably burdens his or her property may file a request for relief with the government that issued the notice or order, which will then be turned over to a special magistrate with the authority to facilitate a resolution.

Related to FLUEDRA, the bill:

- Allows a negotiated settlement between a property owner and a local government to include resolutions similar to those a special magistrate is authorized to recommend;
- Provides that the special magistrate's recommendations or negotiated settlements inconsistent with the local comprehensive plan are deemed consistent if the recommendations or settlements are found to protect the public interest;

Each county and municipality is required to plan for future development and growth by adopting, implementing, and amending, as necessary, a comprehensive plan. Each comprehensive plan contains elements that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements. The comprehensive plan is implemented via land development regulations.

Related to comprehensive planning, the bill:

- Revises definitions and data sources used in consideration of the comprehensive plan and plan amendments;
- Increases the length of required planning period to 10 years, from 5 years, and to 20 years, from 10 years;
- Removes a list of indicators, a local government must consider relating to urban sprawl, instead requiring local governments to discourage urban sprawl by more effectively planning for future growth;
- Revises the comprehensive plan evaluation and appraisal process to ensure timely updates;
- Requires land development regulations adopted by a local government to establish minimum lot sizes consistent with the maximum density authorized by the comprehensive plan and to provide standards for infill residential development; and
- Prohibits a local government from requiring building design elements for certain residential structures in planned unit developments, master planned communities, or communities with a design review board or architectural review board created on or after January 1, 2020.

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:

Present Situation

Florida Land Use and Environmental Dispute Resolution Act

In 1995, the Legislature adopted the Florida Land Use and Environmental Dispute Resolution Act ("FLUEDRA"), codified as s. 70.51, F.S., to facilitate the resolution of disputes between property owners and government entities.[1] FLUEDRA provides an informal mechanism for a property owner to challenge a government action that may infringe on his or her property without having to file a lawsuit.

FLUEDRA does not create a private cause of action or require that a property owner do anything before exercising his or her right to file a lawsuit.[2] Under FLUEDRA, a property owner who believes that a government notice or order unfairly or unreasonably burdens his or her property may, within 30 days of receiving the notice or order, file a request for relief with the government that issued the notice or order.[3] The government must forward the request to a special magistrate, who must hold a hearing within 45 days of receiving the request for relief.[4] The special magistrate's primary role is to facilitate a resolution of the conflict between the property owner and government without involving the courts.[5] In this role, the special magistrate acts as a "facilitator or mediator."[6]

If the parties cannot reach an agreement, the special magistrate must determine whether the government action is unreasonable or unfairly burdens the property owner's real property, based on a list of statutory guidelines.[7] Within 14 days of the hearing's conclusion, the special magistrate must submit a written recommendation to the parties.[8] If the special magistrate's recommendation is that the government action does not unreasonably or unfairly burden the property, the property owner may still file suit or pursue other remedies.[9] If the recommendation is that the government action unreasonably or unfairly burdens the property, the special magistrate may, with the property owner's consent, recommend alternatives that allow for reduced government restraints on the property, including, but is not limited to:

- An adjustment of land development or permit standards or other provisions controlling the development or use of land;
- Increases or modifications in the density, intensity, or use of areas of development;
- The transfer of development rights;
- Land swaps or exchanges;
- Mitigation, including payments in lieu of onsite mitigation;
- Location on the least sensitive portion of the property;
- Conditioning the amount of development or use permitted;
- A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development;
- Issuance of the development order, a variance, special exception, or other extraordinary relief, including withdrawal of the enforcement action; and
- Purchase of the real property, or an interest therein, by an appropriate governmental entity.[10]

[1] *See* s. 70.51, F.S.
[2] S. 70.51(24), F.S.
[3] S. 70.51(3) and (4), F.S.
[4] S. 70.51(15)(a), F.S. A "special magistrate" is a person selected by the parties to resolve the case. The special magistrate must be a Florida resident with experience and expertise in mediation and at least one of the following disciplines and a working familiarity with the others: land use and environmental permitting; land planning; land economics; local and state government organizations and powers; and the law governing the same. S. 70.51(2)(c) and (4), F.S.
[5] *See* s. 70.51(17)(a), F.S.
[6] *Id.*
[7] S. 70.51(17)(b) and (18), F.S.
[8] S. 70.51(19), F.S.
[9] S. 70.51(19)(a), F.S.
[10] S. 70.51(19)(b), F.S.

The government entity must respond within 45 days of receiving the special magistrate's recommendation and indicate whether it accepts, accepts in part, or rejects the recommendation.[11] If the government accepts the recommendation in whole or in part, but the property owner rejects the acceptance or modification, the government must put into writing within 30 days the specific permissible uses of the property.[12]

The special magistrate's recommendation finding that the government acted unreasonably or unfairly may serve as a basis to demonstrate entitlement to relief in a subsequent lawsuit or in other legal proceedings.[13] The FLUEDRA process may not continue longer than 165 days, unless the parties agree otherwise.[14]

Comprehensive Plans

Each county and municipality is required to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan.[15] Comprehensive plans are implemented through land development regulations and elements.[16] Each comprehensive plan contains elements that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements.

At least once every 7 years, each local government must evaluate its comprehensive plan to determine if plan amendments are necessary to reflect changes in state requirements since the last update of the comprehensive plan and must notify the state land planning agency as to its determination.[17] If the local government determines amendments to its comprehensive plan are necessary, the local government must prepare and send to the state land planning agency within one year such plan amendment or amendments for review.[18] Local governments are encouraged to evaluate and update their comprehensive plans to reflect changes in local conditions.[19] If a local government fails to submit an evaluation of its comprehensive plan at least once in 7 years to the state land planning agency or update its plan as necessary in order to reflect changes in state requirements, the local government may not amend its comprehensive plan until such time that an evaluation is submitted.[20]

Comprehensive plans must include at least two planning periods, one covering the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period.[21] Additional planning periods are permissible and accepted as part of the planning process.

All elements of a plan or plan amendment must be based on relevant, appropriate data[22] and an analysis by the local government.[23] The data supporting a plan or amendment must be taken from professionally accepted sources.[24] The plan must be based on permanent and seasonal population estimates and projections published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology.[25] The analysis by the local government may include, but is not limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment.[26]

[11] S. 70.51(21), F.S.
[12] S. 70.51(22), F.S.
[13] S. 70.51(25), F.S.
[14] S. 70.51(23), F.S.
[15] Ss. 163.3167(2), 163.3177(2), F.S.
[16] S. 163.3167(1)(c), F.S.
[17] S. 163.3191(1), F.S. The state land planning agency is the Department of Economic Opportunity. S. 163.3164(44), F.S.
[18] S. 163.3191(2), F.S. The review process is pursuant to s. 163.3184(4), F.S., the state coordinated review process for comprehensive plans and plan amendments.
[19] S. 163.3191(3), F.S.
[20] S. 163.3191(4), F.S.
[21] S. 163.3177(5)(a), F.S.
[22] "To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." S. 163.3177(1)(f), F.S.
[23] S. 163.3177(1)(f), F.S.
[24] S. 163.3177(1)(f)2., F.S.
[25] S. 163.3177(1)(f)3., F.S.
[26] S. 163.3177(1)(f), F.S.

Land Development Regulations

Comprehensive plans are implemented via land development regulations. Each county and municipality must adopt and enforce land development regulations, such as zoning or other housing-related ordinances, that are consistent with and implement their adopted comprehensive plan.[27] Local governments are encouraged to use innovative land development regulations[28] and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.[29]

All local government land development regulations must be consistent with the local comprehensive plan.[30] Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.[31] However, plans cannot require any special district to undertake a public facility project that would impair the district's bond covenants or agreements.[32]

Local governments are generally prohibited from adopting land development regulations relating to building design elements for single-family or two-family dwellings.[33] This prohibition does not apply to:

- Dwellings listed in, or located in a historic district listed in, the National Register of Historic Places;
- Dwellings listed as a historic property or located in a historic district as determined by a local preservation ordinance;
- Regulations adopted in order to implement the National Flood Insurance Program;
- Regulations adopted in accordance and compliance with procedures established for the adoption of local amendments to the Florida Building Code;
- Dwellings located in a community redevelopment area;
- Regulations that are required to ensure protection of coastal wildlife in compliance with the Dennis L. Jones Beach and Shore Preservation Act or the Florida Water Resources Act of 1972;
- Dwellings located in a planned unit development or a master planned community created by a local governing body; or
- Dwellings located within the jurisdiction of a local government that has a design review board or architectural review board.[34]

Capital Improvements Element

Comprehensive plans must contain a capital improvement element (CIE) designed to consider the need for and the location of public facilities in order to encourage the efficient use of such facilities. The CIE must set forth: [35]

- A component that outlines principles for construction, extension, or increase in capacity of public facilities, as well as a component that outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan. These components must cover at least a 5-year period.
- Estimated public facility costs, including a delineation of when facilities will be needed, the general location of facilities, and projected revenue sources to fund the facilities.
- Standards to ensure the availability of public facilities and the adequacy of those facilities to meet established acceptable levels of service.
- A schedule of capital improvements which includes any publicly funded projects of federal, state, or local government, and which may include privately funded projects for which the local government has no fiscal responsibility. Projects necessary to ensure that any adopted level-of-service

[27] S. 163.3202, F.S.
[28] S. 163.3202(3), F.S.
[29] Ss. 125.01055 and 166.04151, F.S.
[30] S. 163.3194(1)(b), F.S.
[31] *See* ss. 163.3161(6) and 163.3194(1)(a), F.S.
[32] S. 189.081(1), F.S.
[33] S. 163.3202(5)(a), F.S. Building design elements include external building color; the type or style of exterior cladding material; the style or material of roof structures or porches; the exterior nonstructural architectural ornamentation; the location or architectural styling of windows or doors; the location or orientation of the garage; the number and type of rooms; and the interior layout of rooms, but does include the height, bulk, orientation, location of a dwelling on a zoning lot, or the use of buffering or screening to minimize potential adverse physical or visual impacts or to protect the privacy of neighbors. S. 163.3202(5)(b)1., F.S.
[34] S. 163.3202(5)(a)1.-7., F.S.
[35] S. 163.3177(3)(a), F.S.

standards are achieved and maintained for the 5-year period must be identified as either funded or unfunded and given a level of priority for funding.
- The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program adopted pursuant to s. 339.175(8), F.S., to the extent that such improvements are relied upon to ensure concurrency and financial feasibility. The schedule must be coordinated with the applicable metropolitan planning organization's long-range transportation plan adopted pursuant to s. 339.175(7).

Future Land Use Element

Comprehensive plans must contain an element regarding future land use that designates proposed future general distribution, location, and extent of the uses of land for a number of uses and categories of public and private uses of land.[36] Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities.[37] The proposed distribution, location, and extent of the various categories of land use must be shown on a land use map or map series. Future land use plans and plan amendments are based on surveys, studies, and data regarding the area[38] and the future land use element must include a future land use map or map series.[39]

The future land use element of a comprehensive plan or any amendment to the future land use element must discourage the proliferation of urban sprawl.[40] Current law provides a list of primary indicators to determine whether a plan or plan amendment encourages the proliferation of urban sprawl and states that a future land use element or plan amendment will be determined to discourage the proliferation of urban sprawl if it incorporates a development pattern or urban form that achieves four or more statutory factors.[41]

Effect of Proposed Changes

The bill revises the FLUEDRA process to allow a negotiated settlement between the private property owner and the governmental entity to include the types of relief a special magistrate may recommend make when the special magistrate determines that the government action unreasonably or unfairly burdens the property. The bill revises the circumstances a special magistrate may consider when determining whether a development order or enforcement action unreasonably or unfairly burdens a use of property to include the public interest served by the local comprehensive plan provisions that are inconsistent with the proposed relief granted by the special magistrate's recommendation.

The bill provides that in circumstances in which the relief granted by the special magistrate's recommendation or a negotiated settlement contravenes the local comprehensive plan in effect or is inconsistent with the local government's comprehensive plan, the special magistrate or the local governing board may deem the recommendation or approved negotiated settlement consistent with the comprehensive plan if the local government finds that the negotiated settlement and approved development protect the public interest served by the comprehensive plan.

Related to comprehensive planning, the bill:
- revises the definition of urban service area to include both areas that receive (or could receive, with investment by the local government or the private sector) certain public facilities and services, and any land contained in a county or municipality that has been designated as a dense urban land area by the Department of Economic Opportunity.

[36] S. 163.3177(6)(a), F.S. Applicable uses and categories of public and private uses of land include, but are not limited to, residential, commercial, industrial, agricultural, recreational, conservation, educational, and public facilities. S. 163.3177(6)(a)10., F.S.
[37] S. 163.3177(6)(a)1., F.S.
[38] S. 163.3177(6)(a)2., F.S.
[39] S. 163.3177(6)(a)10., F.S.
[40] S. 163.3177(6)(a)9., F.S. "Urban sprawl" is defined as "a development pattern characterized by low density, automobile-dependent development with either a single use or multiple uses that are not functionally related, requiring the extension of public facilities and services in an inefficient manner, and failing to provide a clear separation between urban and rural uses" S. 163.3164(52), F.S.
[41] S. 163.3177(6)(a)9.-10., F.S.

- requires comprehensive plan elements and amendments to be based on relevant data and removes the consideration of community goals and vision as a separate component of a local government's analysis.
- removes a provision that allows a local government to collect and use original data in their analysis.
- directs comprehensive plans to be based on the greater of the estimates and projections published by the Office of Economic and Demographic Research and the local government.
- prohibits optional elements of a comprehensive plan from restricting the density or intensity established in the future land use element portion of a comprehensive plan. The bill also amends the definitions of density and intensity to clarify their use.
- revises the two required planning periods that must be included in a comprehensive plan to a 10-year period and a 20-year period. Local governments may still adopt additional planning periods for specific components, elements, land use amendments, and projects.
- removes a list of primary indicators used to determine if a plan or plan amendment encourages or discourages the proliferation of urban sprawl, instead requiring local governments to discourage urban sprawl by planning for future growth.
- requires the chair of the governing body of the county or mayor of the municipality to sign an affidavit attesting that all elements of the comprehensive plan complies with statutory requirements.
- provides that if a local government fails to submit such evaluation and affidavit to the state land planning agency as statutorily required, the local government may not initiate or adopt any publicly initiated plan amendment to its comprehensive plan until the local government complies with the submission requirements. This prohibition does not apply to privately initiated plan amendments.
- provides that if a local government fails to update its comprehensive plan, the state land planning agency shall provide population projections that must be utilized in updating the plan.
- provides that a local government may provide alternative population projections based on professionally accepted methodologies, but only if those projections exceed the population projections provided by the state land planning agency.
- requires local governments to evaluate and update their comprehensive plans to reflect changes in local conditions, with updates to required elements processed in the same plan amendment cycle. Optional elements of the comprehensive plan may not be updated until required elements have been updated, unless those updates are required by law.
- requires that local land development regulations must contain minimum lot sizes within single-family, two-family and fee-simple, single-family townhome zoning districts to accommodate the maximum density authorized in the comprehensive plan, net of the area required for other mandatory items, and infill development standards for single-family homes, two-family homes and fee-simple townhome dwelling units.
- provides that levels of service established in a comprehensive plan solely for planning purposes may not be a basis for the denial of a development order or permit.
- removes the ability of local governments to require certain building design elements to single-family or two-family dwellings located in a planned unit development or master planned community and limits the application of those elements in communities with a design review board or architectural review board to those who had such a board before January 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 70.51, F.S, relating to land use and environmental dispute resolution.

Section 2: Amends s. 163.3164, F.S., relating to Community Planning Act definitions.

Section 3: Amends s. 163.3177, F.S., relating to required and optional elements of comprehensive plans.

Section 4: Amends s. 163.3191, F.S., relating to evaluation and appraisal of the comprehensive plan.

Section 5: Amends s. 163.3202, F.S., relating to land development regulations.

Section 6: Amends s. 163.3246, F.S., conforming terminology.

Section 7: Amends s. 189.08, F.S., conforming cross-references.

Section 8: Amends s. 479.01, F.S., conforming cross-references.

Section 9: 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 establishment of minimum lot sizes within single-family, two-family and fee-simple, single-family townhome zoning districts to accommodate the maximum density authorized in the comprehensive plan and the establishment of infill development standards may increase the amount of residential development.

The prohibition on the application of building design standards to certain types of residential development may decrease the cost of constructing those developments.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 10, 2023, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the bill in a number of ways:

- Removes a provision that would have made the decision of a special magistrate binding;
- Allows for negotiated settlements under FLUEDRA to include the types of relief a special magistrate may recommend;
- Provides that the special magistrate's recommendations or negotiated settlements inconsistent with the local comprehensive plan to be deemed consistent if the recommendations or settlements are found to protect the public interest served by the comprehensive plan;
- Removes a provision that would have required local governments to include affidavits related to their comprehensive plan as part of the annual financial auditing process;
- Revises the relationship between required and optional elements of the comprehensive plan;
- Entails that required elements of the comprehensive plan must processed in the same plan cycle and prohibits updates to optional elements until required elements are updated;
- Requires that the comprehensive plan must be updated in a timely manner before publicly-initiated amendments are approved;
- Requires comprehensive plans to establish minimum lot sizes for certain residential zoning districts and to establish infill development standards; and
- Removes a provision related to withholding county transportation funds.

The analysis is drafted to the committee substitute adopted by the Local Administration, Federal Affairs & Special Districts Subcommittee.

A bill to be entitled

An act relating to land use and development regulations; amending s. 70.51, F.S.; providing the types of relief that may be included in a negotiated settlement; requiring a special magistrate to consider the public interest served by comprehensive plan provisions that are inconsistent with proposed relief; revising the requirements of a governmental entity after the receipt of a special magistrate's recommendation; revising the effect of a special magistrate's recommendation; providing procedures for deeming relief granted by a special magistrate's recommendation or a negotiated settlement consistent with comprehensive plan; amending s. 163.3164, F.S.; revising definitions; amending s. 163.3177, F.S.; revising the types of data that comprehensive plans and plan amendments must be based on; revising means by which an application of a methodology used in data collection or whether a particular methodology is professionally accepted may be evaluated; revising the elements that must be included in a comprehensive plan; revising the planning periods that must be included in a comprehensive plan; amending s. 163.3191, F.S.; revising the frequency at which a local government must evaluate its comprehensive plan

for specified purposes; requiring, rather than authorizing, a local government to comprehensively evaluate and update its comprehensive plans to reflect changes in local conditions; requiring a local government to submit an affidavit for specified purposes; prohibiting a local government from publicly initiating or adopting plan amendments to its comprehensive plan when it fails to meet certain requirements; requiring the state land planning agency to provide certain information when a local government fails to update its comprehensive plan; amending s. 163.3202, F.S.; revising content requirements for local land development regulations; revising exceptions to applicability of land development regulations relating to single-family or two-family dwelling building design elements; deleting a definition; amending s. 163.3246, F.S.; revising terminology; amending ss. 189.08 and 479.01, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (h) of subsection (18) of section 70.51, Florida Statutes, is redesignated as paragraph (i),

paragraph (a) of subsection (17), paragraph (a) of subsection (21), and subsection (25) are amended, and a new paragraph (h) is added to subsection (18) of that section, to read:

70.51 Land use and environmental dispute resolution.—

(17) In all respects, the hearing must be informal and open to the public and does not require the use of an attorney. The hearing must operate at the direction and under the supervision of the special magistrate. The object of the hearing is to focus attention on the impact of the governmental action giving rise to the request for relief and to explore alternatives to the development order or enforcement action and other regulatory efforts by the governmental entities in order to recommend relief, when appropriate, to the owner.

(a) The first responsibility of the special magistrate is to facilitate a resolution of the conflict between the owner and governmental entities to the end that some modification of the owner's proposed use of the property or adjustment in the development order or enforcement action or regulatory efforts by one or more of the governmental parties may be reached. Accordingly, the special magistrate shall act as a facilitator or mediator between the parties in an effort to effect a mutually acceptable solution. The parties shall be represented at the mediation by persons with authority to bind their respective parties to a solution, or by persons with authority to recommend a solution directly to the persons with authority

to bind their respective parties to a solution. A negotiated settlement may include, but is not limited to, one or more of the following types of relief or other extraordinary relief deemed appropriate by the parties:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land for the property subject to the dispute or other property owned or controlled by the parties to the settlement.

2. Increases or modifications in the density, intensity, or use of areas of development.

3. The transfer of development rights.

4. Land swaps or exchanges.

5. Mitigation relief, including payments in lieu of onsite mitigation.

6. Location on the least sensitive portion of the property.

7. Conditioning the amount of development or use permitted.

8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.

9. Issuance of the development order, a variance, a special exception, or other extraordinary relief, including withdrawal of the enforcement action.

10. Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of

compensation.

(18) The circumstances to be examined in determining whether the development order or enforcement action, or the development order or enforcement action in conjunction with regulatory efforts of other governmental parties, is unreasonable or unfairly burdens use of the property may include, but are not limited to:

(h) The public interest served by the local comprehensive plan provisions that are inconsistent with the proposed relief granted by the special magistrate's recommendation.

(21) Within 45 days after receipt of the special magistrate's recommendation, the governmental entity responsible for the development order or enforcement action and other governmental entities participating in the proceeding must consult among themselves and each governmental entity must:

(a) Accept the recommendation of the special magistrate as submitted and proceed to implement it by development agreement, when appropriate, or by other method, in the ordinary course and consistent with the rules and procedures of that governmental entity. However, the decision of the governmental entity to accept the recommendation of the special magistrate with respect to granting a rezoning, modification, variance, or special exception to the application of statutes, rules, regulations, comprehensive plans, or ordinances as they would otherwise apply to the subject property does not require an owner to duplicate

previous processes in which the owner has participated in order to effectuate the granting of the modification, variance, or special exception. Any recommendation of the special magistrate with respect to granting a rezoning of property is not considered contract zoning;

(25) Regardless of the action the governmental entity takes on the special magistrate's recommendation, a recommendation that the development order or enforcement action, or the development order or enforcement action in combination with other governmental regulatory actions, is unreasonable or unfairly burdens use of the owner's real property may serve as an indication of sufficient hardship to support a rezoning, modification, variance ~~variances~~, or special exception ~~exceptions~~ to the application of statutes, rules, regulations, or ordinances to the subject property. If the relief granted within the special magistrate's recommendation or a negotiated settlement entered into under this section has the effect of contravening local comprehensive plans or is inconsistent with the local government's adopted comprehensive plan, the recommendation or approved negotiated settlement shall be deemed consistent with the comprehensive plan under s. 163.3194 if the special magistrate or the governing body of the local government finds that the settlement agreement and approved development protects the public interest served by the comprehensive plan provisions with which it is inconsistent.

Section 2. Subsections (12), (22), (51), and (52) of section 163.3164, Florida Statutes, are amended to read:

163.3164 Community Planning Act; definitions.—As used in this act:

(12) "Density" means an objective measurement of the number of ~~people or~~ residential units allowed per unit of land, such as dwelling units ~~residents or employees~~ per acre.

(22) "Intensity" means an objective measurement of the extent to which land may be developed or used expressed in square feet per unit of land, such as a maximum floor ratio per acre~~, including the consumption or use of the space above, on, or below ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services~~.

(51) "Urban service area" means:

(a) Areas ~~identified in the comprehensive plan~~ where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place or may be expanded through investment by the ~~are identified in the capital improvements element. The term includes any areas identified in the comprehensive plan as urban service areas, regardless of~~ local government or the private sector ~~limitation~~.

(b) All lands located in a county or municipality that have been designated as a dense urban land area under s. 380.0651(3)(a).

(52) "Urban sprawl" means an unplanned and uncontrolled ~~a~~ development pattern ~~characterized by low density, automobile-dependent development with either a single use or multiple uses that are not functionally related, requiring the extension of public facilities and services in an inefficient manner, and failing to provide a clear separation between urban and rural uses~~.

Section 3. Paragraph (f) of subsection (1), subsection (2), paragraph (a) of subsection (5), and paragraph (a) of subsection (6) of section 163.3177, Florida Statutes, are amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(1) The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or

continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

(f) All required ~~mandatory~~ and optional elements of the comprehensive plan and plan amendments shall be based upon relevant ~~and appropriate~~ data and an analysis by the local government that may include, but not be limited to, surveys, studies, ~~community goals and vision,~~ and other data available at the time of adoption of the comprehensive plan or plan amendment. To be based on data means to react to it ~~in an appropriate way and~~ to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue.

1. Surveys, studies, and data utilized in the preparation of the comprehensive plan may not be deemed a part of the comprehensive plan unless adopted as a part of it. Copies of such studies, surveys, data, and supporting documents for

proposed plans and plan amendments shall be made available for public inspection, and copies of such plans shall be made available to the public upon payment of reasonable charges for reproduction. Support data or summaries shall be ~~are not~~ subject to the compliance review process~~, but the comprehensive plan must be clearly based on appropriate data~~. Support data or summaries may be used to aid in the determination of compliance and consistency.

2. Data must be taken from professionally accepted sources. The application of a methodology utilized in data collection or whether a particular methodology is professionally accepted may be evaluated. ~~However, the evaluation may not include whether one accepted methodology is better than another. Original data collection by local governments is not required. However, local governments may use original data so long as methodologies are professionally accepted.~~

3. The comprehensive plan shall be based upon permanent and seasonal population estimates and projections, which shall either be those published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology, whichever is greater. The plan must be based on at least the minimum amount of land required to accommodate the medium projections as published by the Office of Economic and Demographic Research for at least a 10-year planning period unless otherwise limited

under s. 380.05, including related rules of the Administration Commission. Absent physical limitations on population growth, population projections for each municipality, and the unincorporated area within a county must, at a minimum, be reflective of each area's proportional share of the total county population and the total county population growth.

(2) Coordination of the required and optional ~~several~~ elements of the local comprehensive plan shall be a major objective of the planning process. The required and optional ~~several~~ elements of the comprehensive plan shall be consistent. Optional elements of the comprehensive plan may not contain policies that restrict the density or intensity established in the future land use element. Where data is relevant to required and optional ~~several~~ elements, consistent data shall be used, including population estimates and projections ~~unless alternative data can be justified for a plan amendment through new supporting data and analysis~~. Each map depicting future conditions must reflect the principles, guidelines, and standards within all elements, and each such map must be contained within the comprehensive plan.

(5)(a) Each local government comprehensive plan must include at least two planning periods, one covering at least the first 10-year ~~5-year~~ period occurring after the plan's adoption and one covering at least a 20-year ~~10-year~~ period. Additional planning periods for specific components, elements, land use

amendments, or projects shall be permissible and accepted as part of the planning process.

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(a) A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public facilities, and other categories of the public and private uses of land. The approximate acreage and the general range of density or intensity of use shall be provided for the gross land area included in each existing land use category. The element shall establish the long-term end toward which land use programs and activities are ultimately directed.

1. Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives.

2. The future land use plan and plan amendments shall be based upon surveys, studies, and data regarding the area, as applicable, including:

a. The amount of land required to accommodate anticipated growth.

b. The projected permanent and seasonal population of the area.

c. The character of undeveloped land.

d. The availability of water supplies, public facilities, and services.

e. The need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community.

f. The compatibility of uses on lands adjacent to or closely proximate to military installations.

g. The compatibility of uses on lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02.

h. The discouragement of urban sprawl.

i. The need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy.

j. The need to modify land uses and development patterns within antiquated subdivisions.

3. The future land use plan element shall include criteria to be used to:

a. Achieve the compatibility of lands adjacent or closely proximate to military installations, considering factors identified in s. 163.3175(5).

b. Achieve the compatibility of lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02.

c. Encourage preservation of recreational and commercial working waterfronts for water-dependent uses in coastal communities.

d. Encourage the location of schools proximate to urban service ~~residential~~ areas to the extent possible and encourage the location of schools in all areas if necessary to provide adequate school capacity to serve residential development.

e. Coordinate future land uses with the topography and soil conditions, and the availability of facilities and services.

f. Ensure the protection of natural and historic resources.

g. Provide for the compatibility of adjacent land uses.

h. Provide guidelines for the implementation of mixed-use development including the types of uses allowed, the percentage distribution among the mix of uses, or other standards, and the density and intensity of each use.

4. The amount of land designated for future planned uses shall provide a balance of uses that foster vibrant, viable communities and economic development opportunities and address outdated development patterns, such as antiquated subdivisions. The amount of land designated for future land uses should allow the operation of real estate markets to provide adequate choices

for permanent and seasonal residents and business and may not be limited solely by the projected population. The element shall accommodate at least the minimum amount of land required to accommodate the medium projections as published by the Office of Economic and Demographic Research for at least a 10-year planning period unless otherwise limited under s. 380.05, including related rules of the Administration Commission.

5. The future land use plan of a county may designate areas for possible future municipal incorporation.

6. The land use maps or map series shall generally identify and depict historic district boundaries and shall designate historically significant properties meriting protection.

7. The future land use element must clearly identify the land use categories in which public schools are an allowable use. When delineating the land use categories in which public schools are an allowable use, a local government shall include in the categories sufficient land proximate to residential development to meet the projected needs for schools in coordination with public school boards and may establish differing criteria for schools of different type or size. Each local government shall include lands contiguous to existing school sites, to the maximum extent possible, within the land use categories in which public schools are an allowable use.

8. Future land use map amendments shall be based upon the

following analyses:

a. An analysis of the availability of facilities and services.

b. An analysis of the suitability of the plan amendment for its proposed use considering the character of the undeveloped land, soils, topography, natural resources, and historic resources on site.

c. An analysis of the minimum amount of land needed to achieve the goals and requirements of this section.

9. The future land use element ~~and any amendment to the future land use element~~ shall discourage the proliferation of urban sprawl by planning for future development as provided in this section.

~~a. The primary indicators that a plan or plan amendment does not discourage the proliferation of urban sprawl are listed below. The evaluation of the presence of these indicators shall consist of an analysis of the plan or plan amendment within the context of features and characteristics unique to each locality in order to determine whether the plan or plan amendment:~~

~~(I) Promotes, allows, or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses.~~

~~(II) Promotes, allows, or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while not using undeveloped~~

~~lands that are available and suitable for development.~~

~~(III) Promotes, allows, or designates urban development in radial, strip, isolated, or ribbon patterns generally emanating from existing urban developments.~~

~~(IV) Fails to adequately protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems.~~

~~(V) Fails to adequately protect adjacent agricultural areas and activities, including silviculture, active agricultural and silvicultural activities, passive agricultural activities, and dormant, unique, and prime farmlands and soils.~~

~~(VI) Fails to maximize use of existing public facilities and services.~~

~~(VII) Fails to maximize use of future public facilities and services.~~

~~(VIII) Allows for land use patterns or timing which disproportionately increase the cost in time, money, and energy of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire and emergency response, and general government.~~

~~(IX) Fails to provide a clear separation between rural and urban uses.~~

~~(X) Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.~~

~~(XI) Fails to encourage a functional mix of uses.~~

~~(XII) Results in poor accessibility among linked or related land uses.~~

~~(XIII) Results in the loss of significant amounts of functional open space.~~

~~b. The future land use element or plan amendment shall be determined to discourage the proliferation of urban sprawl if it incorporates a development pattern or urban form that achieves four or more of the following:~~

~~(I) Directs or locates economic growth and associated land development to geographic areas of the community in a manner that does not have an adverse impact on and protects natural resources and ecosystems.~~

~~(II) Promotes the efficient and cost-effective provision or extension of public infrastructure and services.~~

~~(III) Promotes walkable and connected communities and provides for compact development and a mix of uses at densities and intensities that will support a range of housing choices and a multimodal transportation system, including pedestrian, bicycle, and transit, if available.~~

~~(IV) Promotes conservation of water and energy.~~

~~(V) Preserves agricultural areas and activities, including silviculture, and dormant, unique, and prime farmlands and~~

~~soils.~~

~~(VI) Preserves open space and natural lands and provides for public open space and recreation needs.~~

~~(VII) Creates a balance of land uses based upon demands of the residential population for the nonresidential needs of an area.~~

~~(VIII) Provides uses, densities, and intensities of use and urban form that would remediate an existing or planned development pattern in the vicinity that constitutes sprawl or if it provides for an innovative development pattern such as transit-oriented developments or new towns as defined in s. 163.3164.~~

10. The future land use element shall include a future land use map or map series.

a. The proposed distribution, extent, and location of the following uses shall be shown on the future land use map or map series:

(I) Residential.

(II) Commercial.

(III) Industrial.

(IV) Agricultural.

(V) Recreational.

(VI) Conservation.

(VII) Educational.

(VIII) Public.

b. The following areas shall also be shown on the future land use map or map series, if applicable:

(I) Historic district boundaries and designated historically significant properties.

(II) Transportation concurrency management area boundaries or transportation concurrency exception area boundaries.

(III) Multimodal transportation district boundaries.

(IV) Mixed-use categories.

c. The following natural resources or conditions shall be shown on the future land use map or map series, if applicable:

(I) Existing and planned public potable waterwells, cones of influence, and wellhead protection areas.

(II) Beaches and shores, including estuarine systems.

(III) Rivers, bays, lakes, floodplains, and harbors.

(IV) Wetlands.

(V) Minerals and soils.

(VI) Coastal high hazard areas.

Section 4. Section 163.3191, Florida Statutes, is amended to read:

163.3191 Evaluation and appraisal of comprehensive plan.—

(1) At least once every 7 years, each local government must ~~shall~~ evaluate its comprehensive plan to determine if plan amendments are necessary to reflect a minimum planning period of at least 10 years as provided in s. 163.3177(5), or to reflect changes in state requirements in this part since the last update

of the comprehensive plan, and notify the state land planning agency as to its determination. The notification shall include a separate affidavit, signed by the chair of the governing body of the county and the mayor of the municipality, attesting that all elements of its comprehensive plan comply with this subsection. The affidavit must also include a certification that the adopted comprehensive plan contains the minimum planning period of 10 years, as provided in s. 163.3177(5), and must cite the source and date of the population projections used in establishing the 10-year planning period.

(2) If the local government determines amendments to its comprehensive plan are necessary to reflect changes in state requirements, the local government shall prepare and transmit within 1 year such plan amendment or amendments for review pursuant to s. 163.3184.

(3) Local governments must ~~are encouraged to~~ comprehensively evaluate and, as necessary, update comprehensive plans to reflect changes in local conditions. Plan amendments transmitted pursuant to this section shall be reviewed pursuant to s. 163.3184(4). Updates to the required elements of the comprehensive plan must be processed in the same plan amendment cycle. Optional elements of the comprehensive plan may not be updated until the required elements have been updated, unless otherwise required by general law.

(4) If a local government fails to submit the ~~its~~ letter

and affidavit prescribed by subsection (1) or update its plan pursuant to subsection (3) within 1 year from the date the letter was transmitted to the state land planning agency ~~(2)~~, it may not initiate or adopt any publicly initiated plan amendments to ~~amend~~ its comprehensive plan until such time as it complies with this section, unless otherwise required by general law. This prohibition on plan amendments does not apply to privately initiated plan amendments. The failure of the local government to update its plan in a timely manner may not be the basis for the denial of a privately initiated comprehensive plan amendment.

(5) If it is determined that a local government has failed to update its comprehensive plan pursuant to this section, the state land planning agency shall provide the required population projections that must be used by the local government to update the comprehensive plan. The local government shall initiate an update to its comprehensive plan within 3 months following the receipt of the population projections and must complete the update within 12 months. During the update process, the local government may provide alternative population projections based on professionally accepted methodologies, but only if those population projections exceed the population projections provided by the state land planning agency and only if the update is completed within the time period provided in this subsection.

(6) ~~(5)~~ The state land planning agency may not adopt rules to implement this section, other than procedural rules or a schedule indicating when local governments must comply with the requirements of this section.

Section 5. Subsections (2) and (5) of section 163.3202, Florida Statutes, are amended to read:

163.3202 Land development regulations.—

(2) Local land development regulations must ~~shall~~ contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall at a minimum:

(a) Regulate the subdivision of land.

(b) Establish minimum lot sizes within single-family, two-family, and fee-simple, single-family townhome zoning districts to accommodate the maximum density authorized in the comprehensive plan, net of the land area required to be set aside for subdivision roads, sidewalks, stormwater ponds, open space, landscape buffers, and any other mandatory land development regulations that require land to be set aside that could otherwise be used for the development of single-family homes, two-family homes, and fee-simple, single-family townhomes.

(c) Establish infill development standards for single-family homes, two-family homes, and fee-simple townhome dwelling units to allow for the administrative approval of development of infill single-family homes, two-family homes, and fee-simple,

single-family townhomes.

(d) ~~(b)~~ Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space.

(e) ~~(c)~~ Provide for protection of potable water wellfields.

(f) ~~(d)~~ Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management.

(g) ~~(e)~~ Ensure the protection of environmentally sensitive lands designated in the comprehensive plan.

(h) ~~(f)~~ Regulate signage.

(i) ~~(g)~~ Provide that public facilities and services meet or exceed the standards established in the capital improvements element required by s. 163.3177 and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development. A local government may not issue a development order or permit that results in a reduction in the level of services for the affected public facilities below the adopted level of services provided in the local government's comprehensive plan. Levels of service established in a comprehensive plan solely for planning purposes may not be used as a basis for the denial of a development order or permit.

(j) ~~(h)~~ Ensure safe and convenient onsite traffic flow, considering needed vehicle parking.

(k) ~~(i)~~ Maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in the unincorporated areas that have sufficient infrastructure, as determined by a local governing authority, and are not located within a coastal high-hazard area under s. 163.3178.

(l) ~~(j)~~ Incorporate preexisting development orders identified pursuant to s. 163.3167(3).

(5)(a) Land development regulations relating to building design elements may not be applied to a single-family or two-family dwelling unless:

1. The dwelling is listed in the National Register of Historic Places, as defined in s. 267.021(5); is located in a National Register Historic District; or is designated as a historic property or located in a historic district, under the terms of a local preservation ordinance;

2. The regulations are adopted in order to implement the National Flood Insurance Program;

3. The regulations are adopted pursuant to and in compliance with chapter 553;

4. The dwelling is located in a community redevelopment area, as defined in s. 163.340(10);

5. The regulations are required to ensure protection of coastal wildlife in compliance with s. 161.052, s. 161.053, s. 161.0531, s. 161.085, s. 161.163, or chapter 373; or

~~6. The dwelling is located in a planned unit development or master planned community created pursuant to a local ordinance, resolution, or other final action approved by the local governing body; or~~

6.~~7.~~ The dwelling is located within the jurisdiction of a local government that has a design review board or architectural review board created before January 1, 2020.

(b) For purposes of this subsection, the term~~:~~

~~1.~~ "Building design elements" means the external building color; the type or style of exterior cladding material; the style or material of roof structures or porches; the exterior nonstructural architectural ornamentation; the location or architectural styling of windows or doors; the location or orientation of the garage; the number and type of rooms; and the interior layout of rooms. The term does not include the height, bulk, orientation, or location of a dwelling on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or to protect the privacy of neighbors.

~~2. "Planned unit development" or "master planned community" means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a~~

~~whole rather than to individual lots.~~

(c) This subsection does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements.

Section 6. Paragraph (g) of subsection (5) of section 163.3246, Florida Statutes, is amended to read:

163.3246 Local government comprehensive planning certification program.—

(5) If the local government meets the eligibility criteria of subsection (2), the state land planning agency shall certify all or part of a local government by written agreement, which shall be considered final agency action subject to challenge under s. 120.569. The agreement must include the following components:

(g) Criteria to evaluate the effectiveness of the certification process in achieving the community-development goals for the certification area including:

1. Measuring the compactness of growth, expressed as the ratio between population growth and land consumed;

2. Increasing residential density and <u>intensity</u> ~~intensities~~ of use;

3. Measuring and reducing vehicle miles traveled and increasing the interconnectedness of the street system, pedestrian access, and mass transit;

4. Measuring the balance between the location of jobs and

676 housing;
677 5. Improving the housing mix within the certification
678 area, including the provision of mixed-use neighborhoods,
679 affordable housing, and the creation of an affordable housing
680 program if such a program is not already in place;
681 6. Promoting mixed-use developments as an alternative to
682 single-purpose centers;
683 7. Promoting clustered development having dedicated open
684 space;
685 8. Linking commercial, educational, and recreational uses
686 directly to residential growth;
687 9. Reducing per capita water and energy consumption;
688 10. Prioritizing environmental features to be protected
689 and adopting measures or programs to protect identified
690 features;
691 11. Reducing hurricane shelter deficits and evacuation
692 times and implementing the adopted mitigation strategies; and
693 12. Improving coordination between the local government
694 and school board.
695 Section 7. Paragraph (a) of subsection (2) of section
696 189.08, Florida Statutes, is amended to read:
697 189.08 Special district public facilities report.—
698 (2) Each independent special district shall submit to each
699 local general-purpose government in which it is located a public
700 facilities report and an annual notice of any changes. The

public facilities report shall specify the following information:

(a) A description of existing public facilities owned or operated by the special district, and each public facility that is operated by another entity, except a local general-purpose government, through a lease or other agreement with the special district. This description shall include the current capacity of the facility, the current demands placed upon it, and its location. This information shall be required in the initial report and updated every 7 years at least 12 months before the submission date of the evaluation and appraisal notification letter of the appropriate local government required by s. 163.3191. The department shall post a schedule on its website, based on the evaluation and appraisal notification schedule prepared pursuant to s. 163.3191(6) ~~s. 163.3191(5)~~, for use by a special district to determine when its public facilities report and updates to that report are due to the local general-purpose governments in which the special district is located.

Section 8. Subsection (29) of section 479.01, Florida Statutes, is amended to read:

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

(29) "Zoning category" means the designation under the land development regulations or other similar ordinance enacted to regulate the use of land as provided in s. 163.3202(2) ~~s. 163.3202(2)(b)~~, which designation sets forth the allowable uses,

restrictions, and limitations on use applicable to properties within the category.

Section 9. This act shall take effect July 1, 2023.

COMMERCE COMMITTEE

HB 439 by Rep. McClain
Land Use and Development Regulations

AMENDMENT SUMMARY
April 10, 2023

Amendment 1 by Rep. McClain (strike all):

- Clarifies language related to land use and environmental dispute resolutions, support data and the summaries utilized in the preparation of the comprehensive plan, and the evaluation and appraisal of comprehensive plan.
- Reverts some definitions back to current law, including density, urban service area, and urban sprawl.
- Reverts the local government comprehensive planning certification program back to current law.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (h) of subsection (18) of section 70.51, Florida Statutes, is redesignated as paragraph (i), paragraph (a) of subsection (17), paragraph (a) of subsection (21), and subsection (25) are amended, and a new paragraph (h) is added to subsection (18) of that section, to read:

70.51 Land use and environmental dispute resolution.—

(17) In all respects, the hearing must be informal and open to the public and does not require the use of an attorney. The hearing must operate at the direction and under the supervision of the special magistrate. The object of the hearing

is to focus attention on the impact of the governmental action giving rise to the request for relief and to explore alternatives to the development order or enforcement action and other regulatory efforts by the governmental entities in order to recommend relief, when appropriate, to the owner.

(a) The first responsibility of the special magistrate is to facilitate a resolution of the conflict between the owner and governmental entities to the end that some modification of the owner's proposed use of the property or adjustment in the development order or enforcement action or regulatory efforts by one or more of the governmental parties may be reached. Accordingly, the special magistrate shall act as a facilitator or mediator between the parties in an effort to effect a mutually acceptable solution. The parties shall be represented at the mediation by persons with authority to bind their respective parties to a solution, or by persons with authority to recommend a solution directly to the persons with authority to bind their respective parties to a solution. A negotiated settlement may include, but is not limited to, one or more of the following types of relief or other extraordinary relief deemed appropriate by the parties:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land for the property subject to the dispute or other property owned or controlled by the parties to the settlement.

2. Increases or modifications in the density, intensity, or use of areas of development.

3. The transfer of development rights.

4. Land swaps or exchanges.

5. Mitigation relief, including payments in lieu of onsite mitigation.

6. Location on the least sensitive portion of the property.

7. Conditioning the amount of development or use permitted.

8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.

9. Issuance of the development order, a variance, a special exception, or other extraordinary relief, including withdrawal of the enforcement action.

10. Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of compensation.

(18) The circumstances to be examined in determining whether the development order or enforcement action, or the development order or enforcement action in conjunction with regulatory efforts of other governmental parties, is unreasonable or unfairly burdens use of the property may include, but are not limited to:

(h) The public interest served by the local comprehensive plan provisions that are inconsistent with the proposed relief granted by the special magistrate's recommendation.

(21) Within 45 days after receipt of the special magistrate's recommendation, the governmental entity responsible for the development order or enforcement action and other governmental entities participating in the proceeding must consult among themselves and each governmental entity must:

(a) Accept the recommendation of the special magistrate as submitted and proceed to implement it by development agreement, when appropriate, or by other method, in the ordinary course and consistent with the rules and procedures of that governmental entity. However, the decision of the governmental entity to accept the recommendation of the special magistrate with respect to granting a rezoning, modification, variance, or special exception to the application of statutes, rules, regulations, comprehensive plans, or ordinances as they would otherwise apply to the subject property does not require an owner to duplicate previous processes in which the owner has participated in order to effectuate the granting of the modification, variance, or special exception. Any recommendation of the special magistrate with respect to granting a rezoning of property is not considered contract zoning;

(25) Regardless of the action the governmental entity takes on the special magistrate's recommendation, a

recommendation that the development order or enforcement action, or the development order or enforcement action in combination with other governmental regulatory actions, is unreasonable or unfairly burdens use of the owner's real property may serve as an indication of sufficient hardship to support a rezoning, modification, variance ~~variances~~, or special exception ~~exceptions~~ to the application of statutes, rules, regulations, or ordinances to the subject property. If the relief granted within the special magistrate's recommendation or a negotiated settlement entered into under this section has the effect of contravening local comprehensive plans or is inconsistent with the local government's adopted comprehensive plan, the recommendation or approved negotiated settlement shall be deemed consistent with the comprehensive plan under s. 163.3194 if the special magistrate or the governing body of the local government finds that the settlement agreement and approved development protects the public interest served by the comprehensive plan provisions with which the development conflicts.

Section 2. Paragraph (f) of subsection (1), subsection (2), paragraph (a) of subsection (5), and paragraph (a) of subsection (6) of section 163.3177, Florida Statutes, are amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(1) The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

(f) All <u>required</u> ~~mandatory~~ and optional elements of the comprehensive plan and plan amendments <u>must</u> ~~shall~~ be based upon

relevant ~~and appropriate~~ data and an analysis by the local government that may include, but not be limited to, surveys, studies, ~~community goals and vision,~~ and other data available at the time of adoption of the comprehensive plan or plan amendment. To be based on data means to react to it ~~in an appropriate way and~~ to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue.

1. Surveys, studies, and data utilized in the preparation of the comprehensive plan may not be deemed a part of the comprehensive plan unless adopted as a part of it. Copies of such studies, surveys, data, and supporting documents for proposed plans and plan amendments must ~~shall~~ be made available for public inspection, and copies of such plans must ~~shall~~ be made available to the public upon payment of reasonable charges for reproduction. Support data or summaries shall be ~~are not~~ subject to the compliance review process. ~~, but~~ The comprehensive plan, the support data, and the summaries must be clearly based on current ~~appropriate~~ data and analysis, which is relevant to and correlates to the proposed amendment. Support data or summaries may be used to aid in the determination of compliance and consistency.

2. Data must be taken from professionally accepted sources. The application of a methodology utilized in data collection or whether a particular methodology is professionally

accepted may be evaluated. ~~However, the evaluation may not include whether one accepted methodology is better than another. Original data collection by local governments is not required. However, local governments may use original data so long as methodologies are professionally accepted.~~

3. The comprehensive plan must ~~shall~~ be based upon permanent and seasonal population estimates and projections, which must ~~shall~~ either be ~~those~~ published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology, whichever is greater. The plan must be based on at least the minimum amount of land required to accommodate the medium projections as published by the Office of Economic and Demographic Research for at least a 10-year planning period unless otherwise limited under s. 380.05, including related rules of the Administration Commission. Absent physical limitations on population growth, population projections for each municipality, and the unincorporated area within a county must, at a minimum, be reflective of each area's proportional share of the total county population and the total county population growth.

(2) Coordination of the required and optional ~~several~~ elements of the local comprehensive plan must ~~shall~~ be a major objective of the planning process. The required and optional ~~several~~ elements of the comprehensive plan must ~~shall~~ be

consistent. Optional elements of the comprehensive plan may not contain policies that restrict the density or intensity established in the future land use element. Where data is relevant to required and optional ~~several~~ elements, consistent data must ~~shall~~ be used, including population estimates and projections ~~unless alternative data can be justified for a plan amendment through new supporting data and analysis~~. Each map depicting future conditions must reflect the principles, guidelines, and standards within all elements, and each such map must be contained within the comprehensive plan.

(5)(a) Each local government comprehensive plan must include at least two planning periods, one covering at least the first 10-year ~~5-year~~ period occurring after the plan's adoption and one covering at least a 20-year ~~10-year~~ period. Additional planning periods for specific components, elements, land use amendments, or projects shall be permissible and accepted as part of the planning process.

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(a) A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public facilities, and other categories of the public and private uses

of land. The approximate acreage and the general range of density or intensity of use must ~~shall~~ be provided for the gross land area included in each existing land use category. The element must ~~shall~~ establish the long-term end toward which land use programs and activities are ultimately directed.

1. Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use must ~~shall~~ be shown on a land use map or map series which is ~~shall be~~ supplemented by goals, policies, and measurable objectives.

2. The future land use plan and plan amendments must ~~shall~~ be based upon surveys, studies, and data regarding the area, as applicable, including:

a. The amount of land required to accommodate anticipated growth, including the amount of land necessary to accommodate single-family, two-family, and fee simple townhome development.

b. The projected permanent and seasonal population of the area.

c. The character of undeveloped land.

d. The availability of water supplies, public facilities, and services.

e. The amount of land located outside the urban service area, excluding lands designated for conservation, preservation, or other public use.

f.~~e.~~ The need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community.

g.~~f.~~ The compatibility of uses on lands adjacent to or closely proximate to military installations.

h.~~g.~~ The compatibility of uses on lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02.

i.~~h.~~ The discouragement of urban sprawl.

j.~~i.~~ The need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy.

k.~~j.~~ The need to modify land uses and development patterns within antiquated subdivisions.

3. The future land use plan element must ~~shall~~ include criteria to be used to:

a. Achieve the compatibility of lands adjacent or closely proximate to military installations, considering factors identified in s. 163.3175(5).

b. Achieve the compatibility of lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02.

c. Encourage preservation of recreational and commercial working waterfronts for water-dependent uses in coastal communities.

d. Encourage the location of schools proximate to urban service ~~residential~~ areas to the extent possible and encourage the location of schools in all areas if necessary to provide adequate school capacity to serve residential development.

e. Coordinate future land uses with the topography and soil conditions, and the availability of facilities and services.

f. Ensure the protection of natural and historic resources.

g. Provide for the compatibility of adjacent land uses.

h. Provide guidelines for the implementation of mixed-use development including the types of uses allowed, the percentage distribution among the mix of uses, or other standards, and the density and intensity of each use.

4. The amount of land designated for future planned uses must ~~shall~~ provide a balance of uses that foster vibrant, viable communities and economic development opportunities and address outdated development patterns, such as antiquated subdivisions. The amount of land designated for future land uses should allow the operation of real estate markets to provide adequate choices for permanent and seasonal residents and business and may not be limited solely by the projected population. The element must

~~shall~~ accommodate at least the minimum amount of land required to accommodate the medium projections as published by the Office of Economic and Demographic Research for at least a 10-year planning period unless otherwise limited under s. 380.05, including related rules of the Administration Commission.

5. The future land use plan of a county may designate areas for possible future municipal incorporation.

6. The land use maps or map series must ~~shall~~ generally identify and depict historic district boundaries and must ~~shall~~ designate historically significant properties meriting protection.

7. The future land use element must clearly identify the land use categories in which public schools are an allowable use. When delineating the land use categories in which public schools are an allowable use, a local government shall include in the categories sufficient land proximate to residential development to meet the projected needs for schools in coordination with public school boards and may establish differing criteria for schools of different type or size. Each local government shall include lands contiguous to existing school sites, to the maximum extent possible, within the land use categories in which public schools are an allowable use.

8. Future land use map amendments must ~~shall~~ be based upon the following analyses:

a. An analysis of the availability of facilities and services.

b. An analysis of the suitability of the plan amendment for its proposed use considering the character of the undeveloped land, soils, topography, natural resources, and historic resources on site.

c. An analysis of the minimum amount of land needed to achieve the goals and requirements of this section.

9. The future land use element must ~~and any amendment to the future land use element shall~~ discourage the proliferation of urban sprawl by planning for future development as provided in this section.

a. The primary indicators that a plan or plan amendment does not discourage the proliferation of urban sprawl are listed below. The evaluation of the presence of these indicators shall consist of an analysis of the plan or plan amendment within the context of features and characteristics unique to each locality in order to determine whether the plan or plan amendment:

(I) Promotes, allows, or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses.

(II) Promotes, allows, or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while not using undeveloped lands that are available and suitable for development.

(III) Promotes, allows, or designates urban development in radial, strip, isolated, or ribbon patterns generally emanating from existing urban developments.

(IV) Fails to adequately protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems.

(V) Fails to adequately protect adjacent agricultural areas and activities, including silviculture, active agricultural and silvicultural activities, passive agricultural activities, and dormant, unique, and prime farmlands and soils.

(VI) Fails to maximize use of existing public facilities and services.

(VII) Fails to maximize use of future public facilities and services.

(VIII) Allows for land use patterns or timing which disproportionately increase the cost in time, money, and energy of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire and emergency response, and general government.

(IX) Fails to provide a clear separation between rural and urban uses.

(X) Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.

(XI) Fails to encourage a functional mix of uses.

(XII) Results in poor accessibility among linked or related land uses.

(XIII) Results in the loss of significant amounts of functional open space.

b. The future land use element or plan amendment shall be determined to discourage the proliferation of urban sprawl if it incorporates a development pattern or urban form that achieves four or more of the following:

(I) Directs or locates economic growth and associated land development to geographic areas of the community in a manner that does not have an adverse impact on and protects natural resources and ecosystems.

(II) Promotes the efficient and cost-effective provision or extension of public infrastructure and services.

(III) Promotes walkable and connected communities and provides for compact development and a mix of uses at densities and intensities that will support a range of housing choices and a multimodal transportation system, including pedestrian, bicycle, and transit, if available.

(IV) Promotes conservation of water and energy.

(V) Preserves agricultural areas and activities, including silviculture, and dormant, unique, and prime farmlands and soils.

(VI) Preserves open space and natural lands and provides for public open space and recreation needs.

(VII) Creates a balance of land uses based upon demands of the residential population for the nonresidential needs of an area.

(VIII) Provides uses, densities, and intensities of use and urban form that would remediate an existing or planned development pattern in the vicinity that constitutes sprawl or if it provides for an innovative development pattern such as transit-oriented developments or new towns as defined in s. 163.3164.

10. The future land use element must ~~shall~~ include a future land use map or map series.

a. The proposed distribution, extent, and location of the following uses must ~~shall~~ be shown on the future land use map or map series:

(I) Residential.

(II) Commercial.

(III) Industrial.

(IV) Agricultural.

(V) Recreational.

(VI) Conservation.

(VII) Educational.

(VIII) Public.

b. The following areas must ~~shall~~ also be shown on the future land use map or map series, if applicable:

(I) Historic district boundaries and designated historically significant properties.

(II) Transportation concurrency management area boundaries or transportation concurrency exception area boundaries.

(III) Multimodal transportation district boundaries.

(IV) Mixed-use categories.

c. The following natural resources or conditions must ~~shall~~ be shown on the future land use map or map series, if applicable:

(I) Existing and planned public potable waterwells, cones of influence, and wellhead protection areas.

(II) Beaches and shores, including estuarine systems.

(III) Rivers, bays, lakes, floodplains, and harbors.

(IV) Wetlands.

(V) Minerals and soils.

(VI) Coastal high hazard areas.

Section 3. Section 163.3191, Florida Statutes, is amended to read:

163.3191 Evaluation and appraisal of comprehensive plan.—

(1) At least once every 7 years, each local government shall evaluate its comprehensive plan to determine if plan

amendments are necessary to reflect a minimum planning period of at least 10 years as provided in s. 163.3177(5), or to reflect changes in state requirements in this part since the last update of the comprehensive plan, and notify the state land planning agency as to its determination. The notification shall include a separate affidavit, signed by the chair of the governing body of the county and the mayor of the municipality, attesting that all elements of its comprehensive plan comply with this subsection. The affidavit must also include a certification that the adopted comprehensive plan contains the minimum planning period of 10 years, as provided in s. 163.3177(5), and must cite the source and date of the population projections used in establishing the 10-year planning period.

(2) If the local government determines amendments to its comprehensive plan are necessary to reflect changes in state requirements, the local government must ~~shall~~ prepare and transmit within 1 year such plan amendment or amendments for review pursuant to s. 163.3184.

(3) Local governments shall ~~are encouraged to~~ comprehensively evaluate and, as necessary, update comprehensive plans to reflect changes in local conditions. Plan amendments transmitted pursuant to this section must ~~shall~~ be reviewed pursuant to s. 163.3184(4). Updates to the required and optional elements of the comprehensive plan must be processed in the same plan amendment cycle.

(4) If a local government fails to submit the ~~its~~ letter and affidavit prescribed by subsection (1) or transmit the update to its plan pursuant to subsection (3) within 1 year after the date the letter was transmitted to the state land planning agency ~~(2)~~, it may not initiate or adopt any publicly initiated plan amendments to ~~amend~~ its comprehensive plan until such time as it complies with this section, unless otherwise required by general law. This prohibition on plan amendments does not apply to privately initiated plan amendments. The failure of the local government to timely update its plan may not be the basis for the denial of privately initiated comprehensive plan amendments.

(5) If it is determined that a local government has failed to update its comprehensive plan pursuant to this section, the state land planning agency must provide the required population projections that must be used by the local government to update the comprehensive plan. The local government shall initiate an update to its comprehensive plan within 3 months after the receipt of the population projections and must transmit the update within 12 months. If the state land planning agency does not find the update to be in compliance, the agency must establish the timeline to address such deficiencies, not to exceed an additional 12-month period. If the update is challenged by a third party, the local government may seek approval from the state land planning agency to process publicly

initiated plan amendments that are necessary to accommodate population growth during the pendency of the litigation. During the update process, the local government may provide alternative population projections based on professionally accepted methodologies, but only if those population projections exceed the population projections provided by the state land planning agency and only if the update is completed within the time period provided in this subsection.

(6)~~(5)~~ The state land planning agency may not adopt rules to implement this section, other than procedural rules or a schedule indicating when local governments must comply with the requirements of this section.

Section 4. Subsections (2) and (5) of section 163.3202, Florida Statutes, are amended to read:

163.3202 Land development regulations.—

(2) Local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall at a minimum:

(a) Regulate the subdivision of land.

(b) Establish minimum lot sizes within single-family, two-family, and fee simple, single-family townhouse zoning districts to accommodate the maximum density authorized in the comprehensive plan, net of the land area required to be set aside for subdivision roads, sidewalks, stormwater ponds, open space, landscape buffers, and any other mandatory land

development regulations that require land to be set aside that could otherwise be used for the development of single-family homes, two-family homes, and fee simple, single-family townhouses.

(c) Establish infill development standards for single-family homes, two-family homes, and fee simple townhouse dwelling units to allow for the administrative approval of development of infill single-family homes, two-family homes, and fee simple, single-family townhouses.

(d) ~~(b)~~ Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space.

(e) ~~(c)~~ Provide for protection of potable water wellfields.

(f) ~~(d)~~ Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management.

(g) ~~(e)~~ Ensure the protection of environmentally sensitive lands designated in the comprehensive plan.

(h) ~~(f)~~ Regulate signage.

(i) ~~(g)~~ Provide that public facilities and services meet or exceed the standards established in the capital improvements element required by s. 163.3177 and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development. A local government may not issue a development order or permit that

results in a reduction in the level of services for the affected public facilities below the level of services provided in the local government's comprehensive plan.

(j)~~(h)~~ Ensure safe and convenient onsite traffic flow, considering needed vehicle parking.

(k)~~(i)~~ Maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in the unincorporated areas that have sufficient infrastructure, as determined by a local governing authority, and are not located within a coastal high-hazard area under s. 163.3178.

(l)~~(j)~~ Incorporate preexisting development orders identified pursuant to s. 163.3167(3).

(5)(a) Land development regulations relating to building design elements may not be applied to a single-family or two-family dwelling unless:

1. The dwelling is listed in the National Register of Historic Places, as defined in s. 267.021(5); is located in a National Register Historic District; or is designated as a historic property or located in a historic district, under the terms of a local preservation ordinance;

2. The regulations are adopted in order to implement the National Flood Insurance Program;

3. The regulations are adopted pursuant to and in compliance with chapter 553;

4. The dwelling is located in a community redevelopment area, as defined in s. 163.340(10);

5. The regulations are required to ensure protection of coastal wildlife in compliance with s. 161.052, s. 161.053, s. 161.0531, s. 161.085, s. 161.163, or chapter 373; or

~~6. The dwelling is located in a planned unit development or master planned community created pursuant to a local ordinance, resolution, or other final action approved by the local governing body; or~~

6.~~7.~~ The dwelling is located within the jurisdiction of a local government that has a design review board or architectural review board created before January 1, 2020.

(b) For purposes of this subsection, the term~~:~~

~~1.~~ "building design elements" means the external building color; the type or style of exterior cladding material; the style or material of roof structures or porches; the exterior nonstructural architectural ornamentation; the location or architectural styling of windows or doors; the location or orientation of the garage; the number and type of rooms; and the interior layout of rooms. The term does not include the height, bulk, orientation, or location of a dwelling on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or to protect the privacy of neighbors.

~~2. "Planned unit development" or "master planned community" means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots.~~

(c) This subsection does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements.

Section 5. Paragraph (a) of subsection (2) of section 189.08, Florida Statutes, is amended to read:

189.08 Special district public facilities report.—

(2) Each independent special district shall submit to each local general-purpose government in which it is located a public facilities report and an annual notice of any changes. The public facilities report shall specify the following information:

(a) A description of existing public facilities owned or operated by the special district, and each public facility that is operated by another entity, except a local general-purpose government, through a lease or other agreement with the special district. This description shall include the current capacity of the facility, the current demands placed upon it, and its location. This information shall be required in the initial

report and updated every 7 years at least 12 months before the submission date of the evaluation and appraisal notification letter of the appropriate local government required by s. 163.3191. The department shall post a schedule on its website, based on the evaluation and appraisal notification schedule prepared pursuant to s. 163.3191(6) ~~s. 163.3191(5)~~, for use by a special district to determine when its public facilities report and updates to that report are due to the local general-purpose governments in which the special district is located.

Section 6. Subsection (29) of section 479.01, Florida Statutes, is amended to read:

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

(29) "Zoning category" means the designation under the land development regulations or other similar ordinance enacted to regulate the use of land as provided in s. 163.3202(2) ~~s. 163.3202(2)(b)~~, which designation sets forth the allowable uses, restrictions, and limitations on use applicable to properties within the category.

Section 7. This act shall take effect July, 1, 2023

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

Remove everything before the enacting clause and insert:

An act relating to land use and development regulations; amending s. 70.51, F.S.; providing the types of relief that may

be included in a negotiated settlement; requiring a special magistrate to consider the public interest served by comprehensive plan provisions that are inconsistent with proposed relief; revising the requirements of a governmental entity after the receipt of a special magistrate's recommendation; revising the effect of a special magistrate's recommendation; providing procedures for deeming relief granted by a special magistrate's recommendation or a negotiated settlement consistent with comprehensive plan; amending s. 163.3177, F.S.; revising the types of data that comprehensive plans and plan amendments must be based on; revising means by which an application of a methodology used in data collection or whether a particular methodology is professionally accepted may be evaluated; revising the elements that must be included in a comprehensive plan; revising the planning periods that must be included in a comprehensive plan; amending s. 163.3191, F.S.; revising the frequency at which a local government must evaluate its comprehensive plan for specified purposes; requiring, rather than authorizing, a local government to comprehensively evaluate and update its comprehensive plans to reflect changes in local conditions; requiring a local government to submit an affidavit for specified purposes; prohibiting a local government from publicly initiating or adopting plan amendments to its comprehensive plan when it fails to meet certain requirements; requiring the state land planning agency to provide certain

information when a local government fails to update its comprehensive plan; setting forth procedures when the state land planning agency does not find such update to be in compliance or if the update is challenged by a third party; amending s. 163.3202, F.S.; revising content requirements for local land development regulations; revising exceptions to applicability of land development regulations relating to single-family or two-family dwelling building design elements; deleting a definition; amending ss. 189.08 and 479.01, F.S.; conforming cross-references; providing an effective date

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	15 Y, 0 N	Wright	Anstead
2) Commerce Committee		Wright	Hamon

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]
- 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.

[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*.

- 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:

1. Applicability of Municipality/County Mandates Provision:

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

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[10] 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. Section 564.09, F.S.

[11] S. 775.083(1)(e), F.S.

[12] S. 775.082(4)(b), F.S.

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.

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

CS/HB 541

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 541 Motor Vehicle Glass
SPONSOR(S): Insurance & Banking Subcommittee, Griffitts
TIED BILLS: **IDEN./SIM. BILLS:** SB 1002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Fortenberry	Lloyd
2) Civil Justice Subcommittee	12 Y, 4 N	Mawn	Jones
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The deductible provisions of a motor vehicle insurance policy providing comprehensive or combined additional coverage do not apply to the repair or replacement of the damaged windshield of any motor vehicle covered under such policy. Therefore, a consumer often qualifies for motor vehicle glass repair or replacement without paying a deductible out-of-pocket. Further, some motor vehicle glass repair shops (repair shop) currently offer incentives, including cash and gift cards, in exchange for a consumer filing an insurance claim for motor vehicle glass repair or replacement. This, combined with the practice of repair shops accepting an assignment of the consumer's post-loss repair benefits for windshield repair or replacement under a motor vehicle insurance policy, may have contributed to the steep rise in motor vehicle glass lawsuits over the last few years. The rise in such lawsuits may have, in turn, contributed to the increase in motor vehicle insurance premiums faced by Florida consumers in recent years.

The bill:

- Expands the definition of "motor vehicle repair" to include advanced driver assistance system (ADAS) calibration or recalibration.
- Defines ADAS to mean any motor vehicle electronic safety system that is associated with motor vehicle glass and is designed to support the driver and motor vehicle in a manner intended to increase motor vehicle safety and reduce losses associated with motor vehicle crashes.
- Prohibits a repair shop or its employees from:
  - Offering to a customer anything of value in exchange for making an insurance claim for motor vehicle glass replacement or repair, including ADAS calibration or recalibration, and prohibits a non-employee who is compensated for soliciting insurance claims from making such offers.
  - Failing to provide electronic or written notice to the customer as to whether the calibration or recalibration of ADAS is required as part of the replacement or repair of motor vehicle glass.
- Authorizes an insurer to offer to an insured or an applicant for insurance, upon the issuance or renewal of a policy providing comprehensive or combined additional coverage, a deductible of $250 for claims of damage to the windshield of any motor vehicle covered under such policy, which the insured or applicant may decline.
- Prohibits a policyholder or any other person from entering into an assignment agreement for post-loss benefits for motor vehicle glass replacement or repair under a motor vehicle insurance policy issued or renewed on or after July 1, 2023; provides that any such agreement is void; and, unenforceable, and defines "assignment agreement" for the purposes of this provision.

The bill does not appear to have a fiscal impact on state or local governments. It may have a positive or negative direct economic impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Background

Motor Vehicle Repair Shops

Motor vehicle repair shops in Florida are regulated by the Department of Agriculture and Consumer Services (DACS) under the Florida Motor Vehicle Repair Act (Repair Act).[1] The Repair Act requires that all motor vehicle repair shops, with minor exceptions, register with DACS.[2] A motor vehicle repair shop may be fixed or mobile and includes a person or business that does motor vehicle glass work for compensation.[3]

Under the Repair Act, it is unlawful for a motor vehicle repair shop or its employee to engage in certain activities including misrepresenting that repairs have been made to a motor vehicle or fraudulently altering any customer contract, estimate, invoice, or other document.[4] The Repair Act provides for various remedies for unlawful acts by motor vehicle repair shops, including notices of noncompliance, administrative fines, orders to cease and desist, probation of registrants, and suspension or revocation of registrations.[5]

Motor Vehicle Insurance

When a consumer purchases the minimum motor vehicle insurance required by Florida law, including personal injury protection coverage (PIP), that consumer does not have first-party insurance coverage for the repair or replacement of motor vehicle glass. However, a consumer who purchases comprehensive coverage, which pays for damage to a motor vehicle caused by an event besides a collision, generally has coverage for damaged or broken motor vehicle glass.[6] Because lenders often require borrowers who obtain motor vehicle loans to also purchase comprehensive motor vehicle insurance coverage, a consumer who owes money on a motor vehicle often has motor vehicle glass coverage.[7]

Incentives for Motor Vehicle Glass Insurance Claims

Some motor vehicle glass repair shops currently offer incentives, including cash and gift cards, in exchange for a consumer filing an insurance claim for motor vehicle glass repair or replacement.[8] Consumers have also complained to DACS that they never received the incentives promised by the motor vehicle glass repair shops, even after their motor vehicle glass was replaced and the claims were submitted to the motor vehicle insurance companies.[9]

Auto Glass America, a motor vehicle glass repair shop that advertises up to $100 cash back and a $100 gift card for submitting a "qualifying" motor vehicle glass insurance claim, filed over 15,300 motor

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[1] Ss. 559.901-559.9221, F.S.
[2] S. 559.904, F.S.
[3] S. 559.903(6) and (7), F.S.
[4] S. 559.920, F.S.
[5] S. 559.921, F.S.
[6] *See* Florida Department of Financial Services, *Automobile Insurance a Toolkit for Consumers,* https://www.myfloridacfo.com/docs-sf/consumer-services-libraries/consumerservices-documents/understanding-coverage/consumer-guides/english---automobile-insurance-toolkit.pdf?sfvrsn=6b999793_4 (last visited Mar. 11, 2023).
[7] *Id.* See discussion on deductible below.
[8] *See, e.g.,* https://webuywindshields.com/ (last visited Mar. 11, 2023).
[9] *See, e.g.,* Consumer Complaint No.: 225337/Case No. 1509-37312, submitted to DACS on Sept. 18, 2015; available on request from DACS.

vehicle glass related lawsuits against insurers in Florida between January 1, 2016, and February 7, 2019.[10]

Recognizing the dangers posed to consumers, many industries and professions currently prohibit incentives in exchange for an act for which the inducer would earn additional income. For example:

- Section 456.054, F.S., prohibits a healthcare provider from offering a kickback to anyone in exchange for patient referrals;
- Section 468.456(1)(f), F.S., prohibits an athlete agent from offering anything of value to a student athlete to induce the athlete to enter into an agreement for representation;
- Section 626.854(7)(a)2., F.S., prohibits a public adjuster from inducing an insured to submit an insurance claim; and
- Section 626.9541, F.S., prohibits an insurance agent from offering inducements in many situations, including offering a rebate to induce a customer to enter into an insurance contract, or offering a reduced fee for providing title insurance.

Effect of the Bill – Incentives for Motor Vehicle Glass Insurance Claims

The bill provides that a motor vehicle repair shop may not offer a customer a rebate, gift, gift card, cash, coupon, or other thing of value in exchange for making an insurance claim for motor vehicle glass replacement or repair, including related services. The bill prohibits an employee of a motor vehicle repair shop or a nonemployee, who is compensated by a motor vehicle repair shop for the solicitation of claims, from offering such an inducement.

Advanced Driver Assistance Systems (ADAS)

ADAS include automatic emergency braking, lane and highway assistance features, and driver monitoring.[11] They make roadways safer and help save lives by using radar, lidar, cameras, computer imaging, sensors, networking, and other features.[12] While repair or replacement of motor vehicle glass often includes calibration or recalibration of ADAS, the Repair Act does not currently include a definition of ADAS.

Effect of the Bill – ADAS

The bill establishes that it is a violation of law for a motor vehicle repair shop, or an employee of such shop, to fail to provide electronic or written notice to a customer whether the calibration or recalibration of an ADAS is required as part of the replacement or repair of motor vehicle glass to make the ADAS operable and ensure that the service meets or exceeds the specifications of the vehicle manufacturer.

The bill defines ADAS for its use in the Repair Act. According to the bill, ADAS means any motor vehicle electronic safety system associated with motor vehicle glass and designed to support the driver and motor vehicle in a manner intended to:

- Increase motor vehicle safety; and
- Reduce losses associated with motor vehicle crashes.

Additionally, the bill expands the definition of "motor vehicle repair" to include ADAS calibration or recalibration.

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[10] Data retrieved from Department of Financial Services Service of Process Reports application, https://apps.fldfs.com/LSOPReports/Reports/Report.aspx (last visited Feb. 7, 2019).
[11] ARM, *Advanced Driver Assistance Systems*, https://www.arm.com/markets/automotive/adas?utm_source=google&utm_medium=cpc&utm_content=solutions&utm_campaign=2022_automotive_mk12_adas&utm_term=adas%20system&gclid=Cj0KCQiA6rCgBhDVARIsAK1kGPL3OcDDtlD90i-oBymynl453g40Y5iNZmFyjRcQmdqeFYag_tACRlYaAoPSEALw_wcB (last visited Mar. 11, 2023).
[12] Florida Department of Financial Services, Agency Analysis of 2023 Senate Bill 1002, p. 1 (Feb. 27, 2023) (Senate Bill 1002 is the companion bill to PCS for HB 541).

Windshield Deductibles

A "deductible" is the amount an insured must pay before an insurance company will make any payment on an insurance claim. Pursuant to s. 627.7288, F.S., the deductible provisions of a motor vehicle insurance policy "delivered or issued" in Florida and providing "comprehensive coverage or combined additional coverage shall not be applicable to the damage to the windshield of any motor vehicle covered under such policy."[13] Therefore, a consumer who owes money on a motor vehicle often qualifies for motor vehicle glass repair or replacement without paying a deductible out of pocket.[14]

Effect of the Bill – Windshield Deductibles

The bill allows an insurer, when issuing or renewing a policy providing comprehensive coverage or combined additional coverage, to offer an insured or applicant a deductible of $250 for claims of damage to the windshield of a motor vehicle. The insured or applicant may decline the offer of the deductible. The bill also establishes that, if a deductible for comprehensive coverage or combined additional coverage is applied to a loss that includes other damage in addition to windshield damage, no windshield damage deductible may apply.

Assignment of Post-loss Motor Vehicle Glass Benefits

Motor Vehicle Glass Replacement and Repair

Florida law has no specific requirements applicable to insurance claims made for damaged motor vehicle glass.[15] Instead, these claims are handled according to the terms of a consumer's motor vehicle insurance policy.[16] Some Florida motor vehicle insurers have set up a network of motor vehicle glass repair shops that will provide motor vehicle glass repair or replacement at negotiated rates.[17] If a consumer utilizes one of these network shops, the consumer's motor vehicle glass is repaired or replaced and paid for directly by the insurance company.[18] If an insured uses an motor vehicle glass repair shop that is not within the insurer's network, the provider often obtains an assignment of benefits from the consumer.[19]

An assignment of benefits (AOB) is a binding agreement between an insured and a provider of repair services that allows a third-party, in this instance a motor vehicle glass repair shop, to "stand in the shoes" of the insured to obtain the benefits the insured is entitled to under the motor vehicle insurance contract, including payment of the claim. The glass repair shop to which the insured has assigned benefits can negotiate directly with, or file a lawsuit in the name of the insured against, the insurer if the insurer and the glass repair company do not agree on the amount that the insurer will pay for the motor vehicle glass claim.

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[13] Combined additional coverage is an obsolete auto physical damage term that still appears in the Florida Insurance Code. It refers to hazards other than fire or theft. *IRMI,* combined additional coverage, https://www.irmi.com/term/insurance-definitions/combined-additional-coverage (last visited Mar. 11, 2023).
[14] Department of Financial Services, *supra* note 6.
[15] Dale Parker and Brendan McKay, *Florida Auto Glass Claims: A Cracked System*, Trial Advocate Quarterly Fall 2016, *21 (Westlaw Citation: 35 No. 4 Trial Advoc. Q. 20).
[16] *Id.*
[17] *Id.*
[18] *See id.*
[19] *See id.*

Motor Vehicle Glass Litigation

According to data provided by the Department of Financial Services, the number of motor vehicle glass lawsuits has increased significantly in the past decade:[20]

Year	2011	2012	2021	2022
Number of Lawsuits	478	1,389	24,080	33,196

Florida law allows the insured or the assignee to obtain attorney fees from the insurer if the insured or assignee obtains a judgment against an insurer in a lawsuit regarding an motor vehicle insurance claim.[21] However, this operates in one direction. An insurer that prevails in a lawsuit against an insured or assignee is not permitted to recover attorney fees.[22] The purpose is to "discourage contesting of valid claims of insureds against insurance companies . . . and to reimburse successful insureds reasonably for their outlays for attorney's fees when they are compelled to defend or to sue to enforce their contracts. . . ."[23]

Some insurers have asserted that the increase in litigation is the result of the practice by some motor vehicle glass repair shops to execute AOBs, sue for unpaid claims, and collect attorney fees under s. 627.428, F.S.[24] They have also alleged that some motor vehicle glass repair shops obtain AOBs from the insured and inflate the costs of the motor vehicle glass repair or replacement when billing insurance companies.[25] Insurers also believe that some motor vehicle glass claims submitted by assignees are fraudulent.[26] If they believe claims are fraudulent or inflated, insurers are left with a choice between paying those claims or paying attorneys to litigate cases that may result in payment of attorney's fees to assignees if the insurers do not prevail regardless of the amount of increased benefit payment awarded.

Some motor vehicle glass repair shops have argued that litigation is necessary because motor vehicle insurers have entered into agreements with preferred vendors (i.e., the network shops) and the insurers will not pay the "prevailing competitive price" for motor vehicle glass repair or replacement.[27] These repair shops contend that the insurers will only pay them the price that they pay to their preferred vendors and that they must litigate against the insurers to force them to pay the "prevailing competitive price" provided for by insurance policies.[28]

Effect of the Bill – Assignment of Post-loss Motor Vehicle Glass Benefits

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[20] Data provided by the Department of Financial Services to the Senate Committee on Banking and Insurance on January 22, 2019 (Senate Meeting Packet), http://flsenate.gov/PublishedContent/Committees/2018-2020/BI/MeetingRecords/MeetingPacket_4350.pdf (last visited Mar. 11, 2023) and data provided in Florida Department of Financial Services, Agency Analysis of 2023 Senate Bill 1002, p. 1 (Feb. 27, 2023) (Senate Bill 1002 is the companion bill to PCS for HB 541).

[21] S. 627.428, F.S.; The Florida Supreme Court has recognized the right of assignees to obtain attorney fees under s. 627.428, F.S., (and its predecessor statute) since at least 1972. *See All Ways Reliable Building Maintenance, Inc. v. Moore*, 261 So. 2d 131 (Fla. 1972). The First District Court of Appeal has recognized the right since at least 1961. *See Travelers Insurance Co. v. Tallahassee Bank and Trust Co.*, 133 So. 2d 463 (Fla. 1st DCA 1961). However, in December 2022, the Legislature prohibited the use of AOBs for property insurance claims, and the recovery of attorney fees for litigation regarding property insurance claims.

[22] In certain circumstances, insurers can recovery attorney fees by using offers of judgment and proposals for settlement. *See* s. 768.79, F.S., and Fla. R. Civ. P. 1.442.

[23] *Wilder v. Wright,* 269 So. 2d 434, 436 (Fla. 2d DCA 1972).

[24] *See Parker and McKay, supra* note 10.

[25] *Id.*

[26] *See, e.g., Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.,* 2017 WL 1196438 (M.D. Fla. Mar. 29, 2017).

[27] *VIP Auto Glass, Inc. v. Geico General Insurance Co.,* 2017 WL 3712918, *1 (M.D. Fla. Mar. 17, 2017).

[28] *Id.*

The bill prohibits a policyholder, or another person, from signing an AOB for motor vehicle glass replacement or repair, including, but not limited to, calibration or recalibration of an ADAS, under an motor vehicle insurance policy issued or renewed on or after July 1, 2023. The bill also provides a definition of an AOB for motor vehicle glass replacement or repair, which includes inspecting, protecting, repairing, restoring, or replacing the glass, or calibrating or recalibrating an ADAS.

B. SECTION DIRECTORY:

Section 1. Amends s. 559.903, F.S, relating to definitions.

Section 2. Amends s. 559.920, F.S., relating to unlawful acts and practices.

Section 3. Amends s. 627.7288, F.S., relating to comprehensive coverage; deductible not to apply to motor vehicle glass.

Section 4. Creates s. 627.7289, F.S., relating to assignment of post-loss motor vehicle glass benefits prohibited.

Section 5. 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:

Indeterminate. Motor vehicle repair shops may claim their business is negatively affected by the inability to provide incentives to consumers. However, given the number motor vehicle glass lawsuits over the past several years, and the reports of individuals receiving incentives to submit motor vehicle glass claims to their motor vehicle insurers, it is possible that eliminating incentives provided by motor vehicle repair shops for these claims would reduce the number of disputed motor vehicle glass claims, and thereby reduce the number of motor vehicle glass lawsuits. Additionally, the elimination of AOBs for motor vehicle glass claims, will likely reduce the number of motor vehicle glass lawsuits.

The reduction in the number of motor vehicle glass lawsuits may have a positive impact on motor vehicle insurance premiums, particularly the portion of the rate that pertains to comprehensive coverage. Policyholders' election of deductibles for windshield glass may also reduce their motor vehicle insurance premiums.

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 14, 2023, the Insurance & Banking Subcommittee considered a proposed committee substitute for the bill, and reported the bill favorably as a committee substitute. The proposed committee substitute made the following changes to the bill:

- Provides that a motor vehicle repair shop may not offer a customer a rebate, gift, gift card, cash, coupon, or other thing of value in exchange for making an insurance claim for motor vehicle glass replacement or repair, including calibration or recalibration of an ADAS.
- Prohibits an employee of a motor vehicle repair shop or a nonemployee, who is compensated by a motor vehicle repair shop for the solicitation of claims, from offering such an inducement.
- Establishes that it is a violation of law for a motor vehicle repair shop, or an employee of such shop, to fail to provide electronic or written notice to a customer whether the calibration or recalibration of an ADAS is required as part of the replacement or repair of motor vehicle glass to make the ADAS operable and ensure that the service meets or exceeds the specifications of the vehicle manufacturer.
- Defines ADAS for its use in the Repair Act. According to the bill, ADAS means any motor vehicle electronic safety system associated with motor vehicle glass and designed to support the driver and motor vehicle in a manner intended to:
    - Increase motor vehicle safety; and
    - Reduce losses associated with motor vehicle crashes.
- Allows an insurer, when issuing or renewing a policy providing comprehensive coverage or combined additional coverage, to offer an insured or applicant a deductible of $250 for claims of damage to the windshield of a motor vehicle. The insured or applicant may decline the offer of the deductible.
- Establishes that, if a deductible for comprehensive coverage or combined additional coverage is applied to a loss that includes other damage in addition to windshield damage, no windshield damage deductible may apply.
- Clarifies the definition of an AOB for a motor vehicle glass claim to include calibrating or recalibrating an ADAS.
- Applies the prohibition on AOBs only to motor vehicle glass claims, rather than motor vehicle insurance, generally.

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

A bill to be entitled

An act relating to motor vehicle glass; amending s. 559.903, F.S.; defining the term "advanced driver assistance system"; revising the definition of the term "motor vehicle repair"; amending s. 559.920, F.S.; prohibiting motor vehicle repair shops or their employees from offering anything of value to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair, including offers made through certain persons; specifying that the failure to provide certain electronic or written notice relating to calibrating or recalibrating an advanced driver assistance system is unlawful; amending s. 627.7288, F.S.; authorizing an optional deductible for windshield; specifying deductible amount; limiting deductible application; creating s. 627.7289, F.S.; prohibiting persons from entering into assignment agreements of post-loss benefits for motor vehicle glass replacement or repair on or after a specified date; providing that such assignment agreements are void and unenforceable; defining the term "assignment agreement"; providing an effective date.

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

Section 1. Present subsections (1) through (5), (6), and (7) of section 559.903, Florida Statutes, are redesignated as subsections (2) through (6), (8), and (9), respectively, a new subsection (1) is added to that section, and present subsection (8) of that section is amended, to read:

559.903 Definitions.—As used in this act:

(1) "Advanced driver assistance system" means any motor vehicle electronic safety system that is associated with motor vehicle glass and is designed to support the driver and motor vehicle in a manner intended to increase motor vehicle safety and reduce losses associated with motor vehicle crashes.

(7) ~~(8)~~ "Motor vehicle repair" means all maintenance of and modifications and repairs to motor vehicles, and diagnostic work incident thereto, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, calibration or recalibration of advanced driver assistance systems, and other work customarily undertaken by motor vehicle repair shops.

Section 2. Section 559.920, Florida Statutes, is amended to read:

559.920 Unlawful acts and practices.—It is ~~shall be~~ a violation of this act for any motor vehicle repair shop or employee thereof to do any of the following:

(1) Engage or attempt to engage in repair work for

compensation of any type without first being registered with or having submitted an affidavit of exemption to the department.~~;~~

(2) Make or charge for repairs that ~~which~~ have not been expressly or impliedly authorized by the customer.~~;~~

(3) Misrepresent that repairs have been made to a motor vehicle.~~;~~

(4) Misrepresent that certain parts and repairs are necessary to repair a vehicle.~~;~~

(5) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.~~;~~

(6) Fraudulently alter any customer contract, estimate, invoice, or other document.~~;~~

(7) Fraudulently misuse any customer's credit card.~~;~~

(8) Make or authorize in any manner or by any means ~~whatever~~ any written or oral statement that ~~which~~ is untrue, deceptive, or misleading~~,~~ and that ~~which~~ is known, or that ~~which~~ by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading.~~;~~

(9) Make false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.~~;~~

(10) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor

vehicle owner and to her or his insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.~~;~~

(11) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.~~;~~

(12) Fail or refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.~~;~~

(13) Willfully depart from or disregard accepted practices and professional standards.~~;~~

(14) Have repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair shop or employee thereof demonstrates that the customer could not reasonably have been notified.~~;~~

(15) Conduct the business of motor vehicle repair in a location other than that stated on the registration certificate.~~;~~

(16) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.~~; or~~

(17) Offer to a customer a rebate, gift, gift card, cash,

coupon, or any other thing of value in exchange for making an insurance claim for motor vehicle glass replacement or repair, including, but not limited to, calibration or recalibration of an advanced driver assistance system. A nonemployee who is compensated for the solicitation of insurance claims is also prohibited from making such offer.

(18) Fail to provide electronic notice or written notice in at least 12-point type to the customer whether the calibration or recalibration of the advanced driver assistance system is required as part of the replacement or repair of motor vehicle glass to make such system operable and to ensure such service is performed in a manner that meets or exceeds the vehicle manufacturer's specifications.

(20) Perform any other act that is a violation of this part or that constitutes fraud or misrepresentation.

(19) ~~(18)~~ Violate any provision of s. 713.585.

Section 3. Section 627.7288, Florida Statutes, is amended to read:

627.7288 Comprehensive coverage; deductible not to apply to motor vehicle windshield; exceptions ~~glass~~.—

(1) Except as otherwise provided in this section, the deductible provisions of any policy of motor vehicle insurance, delivered or issued in this state by an authorized insurer, providing comprehensive coverage or combined additional coverage shall not be applicable to damage to the windshield of any motor

vehicle covered under such policy.

(2) An insurer may offer to an applicant or insured, upon the issuance or renewal of a policy providing comprehensive coverage or combined additional coverage, a deductible of $250 for claims of damage to the windshield of any motor vehicle covered under such policy. The applicant or insured may decline the offer of a deductible.

(3) If a deductible for comprehensive coverage or combined additional coverage is applied to a loss that includes damage in addition to windshield damage, the windshield deductible under this section may not apply.

Section 4. Section 627.7289, Florida Statutes, is created to read:

627.7289 Assignment of post-loss motor vehicle glass benefits prohibited.—

(1) A policyholder or any other person may not enter into an assignment agreement of post-loss benefits for motor vehicle glass replacement or repair, including, but not limited to, for calibration or recalibration of advanced driver assistance systems as defined in s. 559.903, under a policy of motor vehicle insurance issued or renewed in this state by an authorized insurer on or after July 1, 2023. Any such assignment agreement entered into in violation of this subsection is void and unenforceable.

(2) As used in this section, the term "assignment

agreement" means any instrument, regardless of how such agreement is named or styled, by which post-loss benefits, including, but not limited to, claim payments, under a motor vehicle insurance policy are, in whole or in part, assigned or transferred to, or acquired in any manner by, a person providing services for motor vehicle glass replacement or repair, including, but not limited to, inspecting, protecting, repairing, restoring, or replacing the motor vehicle glass or calibrating or recalibrating advanced driver assistance systems.

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

COMMERCE COMMITTEE

CS/HB 541 by Rep. Griffitts
Relating to Motor Vehicle Glass

AMENDMENT SUMMARY
April 10, 2023

Amendment 1 by Rep. Griffitts (Line 159): The amendment:

- Prohibits the steering of motor vehicle windshield glass repair claims.
- Requires insurers, agents, and adjusters to provide at least two names of motor vehicle glass shops to claimants, if they provide any names.
- Permits the explanation of a claimant's motor vehicle comprehensive coverage benefits to the claimant.
- Requires insurers to offer discounts if a policy contains a managed repair arrangement.
- Specifies that the bill does not create a private cause of action.
- Applies only to personal lines motor vehicle insurance policies.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 159 and 160, insert:

Section 5. Section 627.7290, Florida Statutes, is created to read:

Section 627.7290 Motor vehicle windshield claims and practices; steering prohibited; exceptions.—

(1) No person, including an insurer, agent, adjuster, or any person or entity acting on the insurer’s, agent’s, or adjuster's behalf, may require a claimant to use a particular company or location for the provision of motor vehicle windshield glass replacement, repair, or calibration services or windshield glass products which are subject to a claim for

replacement, repair, or calibration, in whole or in part, under the terms of a personal lines automobile insurance policy.

(2) An insurer, agent, adjuster, or any person or entity acting on the insurer’s, agent’s, or adjuster's behalf:

(a) Must provide a claimant with two or more names of motor vehicle windshield repair shops, if it chooses to provide names of such repair shops.

(b) May provide an explanation of motor vehicle comprehensive coverage benefits and any applicable limit of liability to a claimant.

(3) An insurer, or any person or entity acting on the insurer’s behalf must provide an actuarially sound discount to the insured if they offer, and an insured accepts, a policy that contains a managed repair arrangement for the provision of windshield glass replacement, repair, or calibration services or windshield glass products.

(4) Nothing in this section shall be construed to create a private cause of action.

This section applies to motor vehicle windshield glass claims under the comprehensive or combined additional coverage provisions of a personal lines motor vehicle insurance policy.

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

Remove line 22 and insert:

term "assignment agreement"; creates s. 627.7290, F.S.; prohibiting insurers, agents, and adjusters from requiring a claimant to use a specific motor vehicle repair shop for windshield glass replacement; requiring insurance premium discount under certain circumstances; requiring insurers to provide claimants with certain information; prohibiting a private cause of action; providing for application of statutory provisions; providing an effective

HB 599

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 599 Debt Management Services
SPONSOR(S): Garcia
TIED BILLS: **IDEN./SIM. BILLS:** SB 628

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N	Fletcher	Lloyd
2) Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

Debt management services laws regulate the fees credit counseling organizations may charge debtors for debt management services and credit counseling services. Debt management services include effectuating an adjustment, compromise, or discharge of indebtedness, and advising debtors on debt reduction and general money management practices.

There are two types of organization that provide debt management services: non-profit, 501(c)(3) credit counseling agencies and debt settlement companies, typically for-profit organizations. Nonprofit credit counseling agencies work with debtors' creditors, educate debtors about credit practices, and enroll qualifying debtors in debt management plans tailored to their specific situation and budget.

The Legislature created laws in 2004 limiting the amount and types of fees credit counseling agencies may charge debtors for debt management services. Since 2004, however, Florida's limitation on fees for debt management services has not been increased.

The bill revises the fee chargeable to a debtor for receiving from the debtor, and subsequently disbursing to a creditor, money or anything of value from greater of 7.5 percent of the monthly payment or $35 monthly to the lesser of 15 percent of the monthly payment or $75 monthly.

This bill will not have a fiscal impact on state and local governments but will have both positive and negative fiscal impacts on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Credit Counseling Organizations

Debtors seeking to manage and reduce their debts often engage credit counseling organizations who provide debt management services and credit counseling services.[1] Non-profit credit counseling agencies assist debtors with managing and reducing their debt by offering free counseling on credit practices, enrolling qualifying debtors in debt management plans, and providing community education to individuals and families on money management skills.[2]

Floridians are among the many individuals who could benefit from non-profit credit counseling organizations. According to Experian, the average Floridian carried $84,926 in debt in 2021.[3] The majority consisted of mortgages which averaged $208,536.[4] Credit card debt, student loans, and auto loans accounted for the other main sources, with a state average of $5,620, $40,866, and $10,110, respectively.[5] In 2022, the average Floridian carried $89,195 in debt, a 5% increase from 2021.[6]

Debt Management Services

Debt management services is defined by Florida statute as services provided for a fee to "effect the adjustment, compromise, or discharge of any unsecured note, account, or other indebtedness of the debtor; or receive from the debtor and disburse to a creditor any money or other item of value."[7]

Credit counseling agencies and creditors classify individuals who find it particularly difficult to manage their debt, whether due to their health or specific situation, as "vulnerable."[8] If an agency or creditor is aware an individual is vulnerable, taking extra measures to ensure the individual receives the same services as others, while not being placed at a disadvantage because of their unique situation, is imperative.[9]

Florida's Limitations on Fees for Debt Management Services

In 2004, the Legislature recognized the importance of easy access to debt management services, while also acknowledging the vulnerability of debtors, by prescribing the maximum fees a person or entity could charge a debtor for debt management services.[10]

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[1] Consumer Financial Protection Bureau, *What is credit counseling?*, https://www.consumerfinance.gov/ask-cfpb/what-iscredit-counseling-en-1451/ (last visited Mar. 10, 2023)
[2] Financial Counseling Association of America, https://fcaa.org/ (last visited Mar. 10, 2023)
[3] Experian, *Average Consumer Debt Levels Increase in 2022*, https://www.experian.com/blogs/askexperian/research/consumer-debt-study/ (last visited Mar. 7, 2023).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] S. 817.801(4), F.S.
[8] Step Change: Debt Charity, *Dealing with the debts of a vulnerable person*, https://www.stepchange.org/debtinfo/dealing-with-the-debts-of-vulnerable-people.aspx (last visited Mar. 10, 2023).
[9] *Id.*
[10] Chapter 2004-351, Laws of Florida, created s. 817.802, F.S.

Specifically, the 2004 legislation made it unlawful for any entity or individual engaging in debt management services or credit counseling services, to charge a debtor:

- a fee greater than $50 for an initial consultation;[11] and
- a fee greater than $120 per year for additional consultations or, alternatively, in the case of receiving debt payments from the debtor and disbursing to a creditor any money or other item of value, the greater of 7.5% of the amount paid monthly by the debtor or $35 per month.[12]

No state agency directly regulates credit counseling organizations. Regulation is self-executing by means of private civil actions under part II of ch. 501, including possible action by the Attorney General or local prosecutors.[13] Any person in violation of the debt services statute "commits an unfair or deceptive trade practice."[14] A violation results in criminal and civil penalties. Namely, a violation is a third-degree felony, and an individual injured by a violation can bring an action for damages, where judgement is entered for actual damages no less than the amount paid by the aggrieved individual to the credit counseling organization.[15]

Although a 2006 amendment narrowed the scope of debtors protected to those debtors specifically residing in the State of Florida,[16] the limitation on fees for debt management services has not been increased since its enactment in 2004.

Effect of the Bill

The bill changes the fee a person or entity may charge for the debt management services described in s. 817.802(4)(b) (namely, receiving from the debtor and disbursing to a creditor any money or item of value) to the lesser of 15 percent of the amount paid monthly by the debtor or $75 per month, rather than the greater of 7.5 percent of the amount paid or $35 per month. The following table illustrates the current and proposed fees.

	Current			HB 599			
	Greater of			Lesser of			
Monthly Payment	7.5% of monthly	$35	Monthly Fee Allowed	15% of monthly	$75	Monthly Fee Allowed	Result of Current vs. HB 599
$100	$ 7.50	$ 35.00	$ 35.00	$ 15.00	$ 75.00	$ 15.00	Reduction
$500	$ 37.50	$ 35.00	$ 37.50	$ 75.00	$ 75.00	$ 75.00	Increase
$1,000	$ 75.00	$ 35.00	$ 75.00	$ 150.00	$ 75.00	$ 75.00	No Change
$1,500	$ 112.50	$ 35.00	$ 112.50	$ 225.00	$ 75.00	$ 75.00	Reduction

B. SECTION DIRECTORY:

Section 1. Amends s. 817.802(1), F.S., relating to unlawful fees and costs.

Section 2. Provides an effective date of July 1, 2023.

[11] S. 817/802(1), F.S.
[12] *Id.*
[13] Ch. 501, part II, F.S., relating to the protection of consumers from unfair trade practices, and remedies for violations thereof, similar to federal policies relating to consumer protection.
[14] S. 817.806, F.S.
[15] S. 17.806, F.S.
[16] Chapter 2006-136, Laws of Florida, amended s. 817.802, F.S.

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:

Credit counseling organizations and debtors residing in Florida would experience fiscal impact from this bill. Specifically, the change in fees to the greater of 15% of the amount paid monthly by the debtor and $75 would likely result in an increase in some revenue for credit counseling organizations. On the other hand, the increase in the maximum chargeable amount might have a negative, possibly significant, fiscal impact on debtors residing in Florida.[17] Please see *Section III.C., Drafting Issues or Other Comments*, below.

D. FISCAL COMMENTS:

The bill would increase some revenues for credit counseling organizations, but the bill would have a negative fiscal impact on debtors residing in Florida.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY

This bill does not appear to amend or create rulemaking authority.

[17] Florida Office of Financial Regulations, Agency Analysis of 2023 House Bill 599, p. 3 (Mar. 3, 2023).

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law and the bill provide for a specified monthly fee allowed to debt management services providers. However, correspondence received from Cambridge Credit indicates that they charge less than the allowed fee. If the bill were to provide for a fee "up to" the lesser of 15 percent of the monthly amount or $75, then the debt management service providers would be specifically authorized to charge less than a maximum allowed fee. The providers would then have the option to operate within a range of allowed monthly fees, subject to a statutory cap.[18] This could also mitigate the possible direct fiscal impacts on the private sector (i.e., debtors receiving debt management services). An amendment is expected to address this issue.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[18] Email from Martin Lynch, President, Cambridge Credit, Re: HB 599, regarding fee practices (Mar. 10, 2023)

A bill to be entitled

An act relating to debt management services; amending s. 817.802, F.S.; increasing the maximum fee that may be charged for debt management services; providing an effective date.

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

Section 1. Subsection (1) of section 817.802, Florida Statutes, is amended to read:

817.802 Unlawful fees and costs.—

(1) It is unlawful for any person, while engaging in debt management services or credit counseling services, to charge or accept from a debtor residing in this state, directly or indirectly, a fee or contribution greater than $50 for the initial setup or initial consultation. Subsequently, the person may not charge or accept a fee or contribution from a debtor residing in this state greater than $120 per year for additional consultations or, alternatively, if debt management services as defined in s. 817.801(4)(b) are provided, the person may charge the lesser ~~greater~~ of 15 ~~7.5~~ percent of the amount paid monthly by the debtor to the person or $75 ~~$35~~ per month.

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

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

COMMERCE COMMITTEE

HB 599 by Rep. Garcia
Relating to Debt Management Services

AMENDMENT SUMMARY
April 7, 2023

Amendment 1 by Rep. Garcia (Line 21): The amendment authorizes debt management service providers to charge less than a maximum allowed fee.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Garcia offered the following:

Amendment

Remove line 21 and insert:

up to the lesser ~~greater~~ of 15 ~~7.5~~ percent of the amount paid monthly

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 607 Money Services Businesses
SPONSOR(S): Steele
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N	Sellas	Lloyd
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N	Perez	Topp
3) Commerce Committee		Sellas	Hamon

SUMMARY ANALYSIS

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

Access to the FBI's criminal history record information (CHRI) system is authorized for fingerprints pursuant to current law. However, in order to gain access to CHRI data for applicants to the recently created Financial Technology Sandbox, FDLE sent correspondence to the FBI to obtain a new non-criminal justice Originating Agency Identifier (ORI). ORI validates legal authorization to obtain criminal justice information and identifies the specific agency requesting the information. The Financial Technology Sandbox derived its CHRI access from the preexisting Money Services Businesses law, which as of 2021, authorized the Office to request fingerprints of each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in an MSB.

FBI responded to the Financial Technology Sandbox ORI request by stating that the MSB licensing statute does not qualify for access to CHRI data because the terms "responsible person" and "control of a money services business", as used in that statute to specify persons who are required to submit fingerprints, are overly broad and, thus, do not sufficiently define the categories of people subject to the background check. To address this issue the Florida Legislature passed Chapter 2022-135, Laws of Florida, which created the term "control person" to replace the use of "officer" and "responsible person," as well as various other terms. However, this new "control person" term was still too broad for FBI approval, and thus OFR still lacks the ORI approval.

FBI acknowledged that MSB fingerprinting was previously approved, and that the FBI will continue to honor fingerprints submitted for MSB licensure. However, FBI has placed MSB fingerprinting on a grace period of unspecified length in order to allow Florida to amend MSB fingerprinting statutes such that the statutes specifically identify the categories of licensees or employees falling within the purview of the statutes; FBI will not allow fingerprinting of additional categories of applicants (i.e., those applying under the Financial Technology Sandbox) during this grace period.

The bill revises the term "control person" to create a more definite list of individuals who are subject to required fingerprinting to better meet the requirements of federal law while also ensuring appropriate consumer protection.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The Division of Consumer Finance within OFR licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S.

An MSB is any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as the following:[2]

- *Payment instrument seller*: A payment instrument seller sells, issues, provides, or delivers payment instruments.[3]
- *Foreign currency exchanger*: A foreign currency exchanger exchanges, for compensation, currency[4] of the United States or a foreign government to currency of another government.[5]
- *Check casher*: A check casher sells, issues, provides, or delivers currency[6] in exchange for payment instruments[7] received, except travelers checks.[8]
- *Money transmitter*: A money transmitter receives currency,[9] monetary value,[10] or payment instruments[11] for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.[12]

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

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[1] S. 20.121(3)(a)2., F.S.
[2] S. 560.103(23), F.S.
[3] S. 560.103(30) and (34), F.S. The term "payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. S. 560.103(29), F.S.
[4] The term "currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. S. 560.103(12), F.S.
[5] S. 560.103(18), F.S.
[6] Definition of "currency", *supra* note 4.
[7] Definition of "payment instrument", *supra* note 3.
[8] S. 560.103(6) and (34), F.S.
[9] Definition of "currency", *supra* note 4.
[10] The term "monetary value" means a medium of exchange, whether or not redeemable in currency. S. 560.103(22), F.S.
[11] Definition of "payment instrument", *supra* note 3.
[12] S. 560.103(24), F.S.
[13] S. 560.403, F.S.
[14] S. 560.204(2), F.S.
[15] S. 560.104, F.S.

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

- An application;[16]
- A nonrefundable application fee;[17]
- A copy of the applicant's written anti-money laundering program required by federal law;[18] and
- Fingerprints for the following individuals:[19]
  - A person who holds the title of president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, or compliance officer for a money services business.[20]
  - A person who holds any of the officer positions named in the money services business's governing documents.[21]
  - A person who holds any position named by the money services business's liability insurance coverage for directors and officers, if the business has such coverage.[22]
  - A director of the money services business's board of directors.[23]
  - A person who directs the affairs of a money services business or who participates in, or has authority to participate in, the major policy making functions of a money services business, regardless of whether the person has an official title or receives a salary or other compensation.[24]
  - For a money services business that is a corporation, all shareholders that, directly or indirectly, own 25 percent or more or that have the power to vote 25 percent or more of a class of voting securities.[25]
  - For a money services business that is a partnership, all general partners, and those limited or special partners that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the partnership's capital.[26]
  - For a money services business that is a limited liability company, all managers, and those members that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the limited liability company's capital.[27]

Fingerprints are not required if the applicant is a publicly traded corporation.[28]

If fingerprints are required, the fingerprints must be submitted for live-scan processing.[29] Live-scan is a device that electronically takes fingerprints and other information and uploads that information to the Florida Department of Law Enforcement (FDLE) who, in turn, sends the fingerprints to the Federal Bureau of Investigation (FBI) for a fingerprint background check.[30] The fingerprints may be submitted through a third-party vendor authorized by FDLE to provide live-scan fingerprinting.[31] FDLE must conduct the state criminal history background check, and a federal criminal history background check must be conducted through the FBI.[32]

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[16] S. 560.141(1)(a), F.S.
[17] Ss. 560.141(1)(b) and 560.143, F.S.
[18] S. 560.141(d), F.S.
[19] Ss. 560.141(c) and 560.127, F.S.
[20] S. 560.103(10)(a), F.S.
[21] S. 560.103(10)(b), F.S.
[22] S. 560.103(10)(c), F.S.
[23] S. 560.103(10)(d), F.S.
[24] S. 560.103(10)(e), F.S.
[25] S. 560.103(10)(f), F.S.
[26] S. 560.103(10)(g), F.S
[27] S. 560.103(10)(h), F.S
[28] S. 560.141(1)(c)6., F.S.
[29] S. 560.141(1)(c), F.S.
[30] Florida Live Scan, https://livescanflorida.com/#:~:text=LiveScan%20is%20a%20device%20that,for%20a%20fingerprint%20background%20check. (last visited Feb. 27, 2023).
[31] S. 560.141(1)(c)1., F.S.
[32] S. 560.141(1)(c)2., F.S.

The costs of fingerprint processing, including the cost of retaining the fingerprints, must be borne by the person subject to the background check.[33] OFR must review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.[34]

An MSB license must be renewed every two years.[35]

Once licensed, an MSB is required to report any change in control persons.[36] If any person, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in an MSB, such person or group must submit a new application for licensure at least 30 days before such purchase or acquisition.[37] Such a change of control application is not required where the person or group of persons has previously complied with applicable licensing provisions, provided that they are currently affiliated with the MSB, or where the person or group of persons is currently licensed with OFR as an MSB.[38] A change of control application must be accompanied by the payment of an initial licensing fee[39] and a fee per branch or authorized vendor[40], up to a maximum of $20,000.[41]

As previously mentioned, when fingerprinting is required, the fingerprints must be submitted to FDLE for a state and federal criminal history background check. The federal background check is conducted through the FBI's criminal history record information (CHRI) system. Federal law Pub. L. 92-544 authorizes the exchange of CHRI data with officials of state and local governmental agencies for licensing and employment purposes.[42] One of the primary purposes for enacting Pub. L. 92-544 was to establish a national policy with adequate sanctions and administrative safeguards regarding the dissemination of the FBI's CHRI data to state and local governments for non-criminal justice licensing and employment purposes.[43] The FBI, with the assistance of the United States Department of Justice, has determined the parameters of Pub. L. 92-544.[44] The criteria for granting access to the FBI's CHRI data are as follows:

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

Access to the FBI's CHRI data is authorized for fingerprints pursuant to ch. 560, F.S. However, in order to gain access to CHRI data for applicants to the recently created Financial Technology Sandbox under s. 559.952, F.S., created in the 2020 legislative session,[45] FDLE sent correspondence to the FBI's

[33] S. 560.141(1)(c)4., F.S.
[34] S. 560.141(1)(c)5., F.S.
[35] Ss. 560.141(2) and 560.142, F.S.
[36] S. 560.126(3), F.S.
[37] S. 560.126(3)(a), F.S.; r. 69v-560.201(4), F.A.C.
[38] S. 560.126(3)(c), F.S.; r. 69v-560.201(6), F.A.C.
[39] Fees are determined by whether the MSB is licensed under Part II or Part III of Chapter 560. Initial licensing fees under Part II licenses require a $375 license application fee per § 560.143(1)(a). Part III licenses require a $188 license application fee per § 560.143(b).
[40] Both the per branch fee and the authorized vendor fee are $38. § 560.143(1)(c); § 560.143(1)(d).
[41] Ss. 560.126(3) and 560.143(1), F.S.
[42] 20 C.F.R. § 20.33.
[43] Federal Bureau of Investigation, *Testimony of Dennis Lormel Before the House Financial Services Committee (Mar. 06, 2001)*, https://archives.fbi.gov/archives/news/testimony/fbis-perspective-on-criminal-history-record-information-checks-on-individuals-conducting-insurance-business (last visited Feb. 27, 2023).
[44] Email from Heather R. Postlethwait, FBI Office of the General Counsel, to Nathan Pate, Florida Department of Law Enforcement, RE: ORI Request - Florida Office of Financial Regulation (Mar. 22, 2021).
[45] Ch. 2020-161, Laws of Fla.

Criminal Justice Information Law Unit (CJILU) to obtain an Originating Agency Identifier (ORI). The ORI validates legal authorization to obtain criminal justice information and identifies the specific agency requesting the information. CJILU reviewed s. 559.952, F.S., which derives its fingerprinting authority from s. 560.141, F.S.

CJILU responded to this request stating that s. 560.141, F.S., does not qualify for access to CHRI data because the terms "responsible person" and "control of a money services business" as used in s. 560.141, F.S., are overly broad and, thus, do not sufficiently define the categories of people subject to the background check.[46] In 2022, the Legislature passed a bill to address this issue by creating the term "control person" to replace the use of "officer" and "responsible person" throughout ch. 560 F.S.[47] This solution sought to address the concerns of CJILU by narrowing the scope of applicable parties. However, CJILU found that the revised statute was still too broad.

The CJILU acknowledged that MSB fingerprinting was previously approved by the CJILU and that the FBI will continue to honor fingerprints submitted for MSB licensure.[48] However, the CJILU has placed MSB fingerprinting on a grace period of unspecified length in order to allow Florida to amend MSB fingerprinting statutes such that the statutes specifically identify the categories of licensees or employees falling within the purview of the statutes. CJILU will not allow fingerprinting of additional categories of applicants (i.e., those applying under the Financial Technology Sandbox) during this grace period.[49]

Effect of the Bill

The bill amends the term "control person" to identify the specific categories of licensees or employees falling within the purview of the statute.

The bill requires the following MSB-related "control persons" to be fingerprinted for the background check:

- A person who holds any of the officer, manager, or managing member positions named in the money services business's governing documents.[50]
- A director of the money service's business's board of directors.
- A person with a 25% or greater transferable interest in a money services business that is either a corporation or foreign corporation.[51]
- A person with a 25% or greater transferable interest in a money services business that is either a limited partnership, limited liability limited partnership, foreign limited partnership, or foreign limited liability limited partnership.[52]
- A person with a 25% or greater transferable interest in a money services business that is either a limited liability company or a foreign limited liability company.[53]

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

B. SECTION DIRECTORY:

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

Section 2. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[46] Email from Heather R. Postlethwait, *supra* note 44.
[47] Ch. 2022-135, Laws of Fla.
[48] *Id*.
[49] *Id*.
[50] Governing documents is defined as including bylaws, articles of incorporation or organization, partnership agreements, shareholder agreements, and management or operating agreements.
[51] As defined in s. 607.01401, F.S.
[52] As defined in s. 620.1102, F.S.
[53] As defined in s. 605.0102, F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has minimal fiscal impact related to rulemaking and any cost would be absorbed within the Office of Financial Regulation's current budget.[54]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a minimal impact on vendors from a slight increase or decrease in the number of individuals subject to fingerprinting.[55]

D. FISCAL COMMENTS:

The bill has minimal fiscal impact on state government expenditures.

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 provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[54] Email from Ash Mason, Legislative & Cabinet Affairs Director, Florida Office of Financial Regulation, RE: OFR Questions (HB607 – Chapter 560 Fingerprint Bill) (Mar. 13,2023).
[55] *Id.*

A bill to be entitled

An act relating to money services businesses; amending s. 560.103, F.S.; revising the definition of the term "control person" for purposes of ch. 560, F.S.; defining the term "governing documents"; providing an effective date.

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

Section 1. Subsection (10) of section 560.103, Florida Statutes, is amended to read:

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

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

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

(b) A person who holds any of the officer, manager, or managing member positions named in the money services business's governing documents. As used in this paragraph, the term "governing documents" includes bylaws, articles of incorporation or organization, partnership agreements, shareholder agreements, and management or operating agreements.

(c) ~~A person who holds any position named by the money services business's liability insurance coverage for directors~~

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

~~and officers, if the business has such coverage.~~

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

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

(d)~~(f)~~ For a money services business that is a corporation or a foreign corporation, as those terms are defined in s. 607.01401, each person who is a 25 percent or greater interest holder as that term is defined in s. 607.01401(44)(a)~~, all shareholders that, directly or indirectly, own 25 percent or more or that have the power to vote 25 percent or more of a class of voting securities~~.

(e)~~(g)~~ For a money services business that is a limited partnership, limited liability limited partnership, foreign limited partnership, or foreign limited liability limited partnership as those terms are defined in s. 620.1102, each person who has a 25 percent or greater transferable interest as that term is defined in s. 620.1102 ~~all general partners, and those limited or special partners that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the partnership's capital~~.

(f)~~(h)~~ For a money services business that is a limited

liability company or a foreign limited liability company, as those terms are defined in s. 605.0102, each person who is a 25 percent or greater interest holder as that term is defined in s. 605.0102(31)(f)~~, all managers, and those members that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the limited liability company's capital~~.

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

COMMERCE COMMITTEE

HB 607 by Rep. Steele
Money Services Businesses

AMENDMENT SUMMARY
April 10, 2023

Amendment 1 by Rep. Steele (Lines 13): The amendment implements new feedback received from the FBI to limit the breadth of the fingerprinting requirements applicable to persons involved in money services businesses by more narrowly specifying the individuals who must be fingerprinted. It also generally conforms to the Senate companion.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 13-57 and insert:

(10) "Control person" means, with respect to a money services business, any of the following:

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

(b) A person who holds any of the officer, general partner, manager, or managing member positions named in the money services business's governing documents. As used in this paragraph, the term "governing documents" includes bylaws, articles of incorporation or organization, partnership

agreements, shareholder agreements, and management or operating agreements.

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

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

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

(d) ~~(f)~~ A shareholder whose name shares are registered in the records of a corporation for profit, whether incorporated under the laws of this state or organized under the laws of any other jurisdiction and existing in that legal form, who owns 25 percent or more of a class of the company's equity securities ~~For a money services business that is a corporation, all shareholders that, directly or indirectly, own 25 percent or more or that have the power to vote 25 percent or more of a class of voting securities~~.

(e) ~~(g)~~ A general partner or a limited partner, as those terms are defined in s. 620.1102, who has a 25 percent or more transferable interest, as defined in s. 620.1102, of a limited partnership, limited liability limited partnership, foreign

limited partnership, or foreign limited liability limited partnership, as those terms are defined in s. 620.1102. ~~For a money services business that is a partnership, all general partners, and those limited or special partners that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the partnership's capital.~~

(f) ~~(h)~~ A member, who is a person that owns a membership interest in a limited liability company or a foreign limited liability company, as those terms are defined in s. 605.0102(36) and (26), respectively, that holds a 25 percent or more membership interest in such companies. As used in this subsection, the term "membership interest" means a member's right to receive distributions or other rights, such as voting rights or management rights, under the articles of organization ~~For a money services business that is a limited liability company, all managers, and those members that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the limited liability company's capital~~.

(g) A natural person who indirectly owns 25 percent or more of the shares or stock interest, transferable interest as defined in s. 620.1102, or membership interest as defined in paragraph (f), of any legal entities referred to in paragraphs (d)-(f).

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 721 Paid Family Leave Insurance
SPONSOR(S): Insurance & Banking Subcommittee, Chaney and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 670

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N, As CS	Fletcher	Lloyd
2) Appropriations Committee	26 Y, 0 N	Helpling	Pridgeon
3) Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

Currently, life insurers in the state are authorized to transact health insurance, disability income insurance, excess coverage for health maintenance organizations and multiple-employer welfare arrangements, but are not expressly authorized to issue paid family leave insurance.

Family leave guarantees originated with the Family Medical Leave Act of 1993 (FMLA), requiring covered employers to provide eligible employees job-protected leave for qualifying family and medical reasons. Covered employers under FMLA include private-sector employers who employ 50 or more employees in 20 or more workweeks during a calendar year, all public agencies, and all educational agencies. FMLA protects leave for the birth or adoption of a child, the serious health condition of an employee, care for an employee's family member who has a serious health condition, and reasons related to a family member's service in the military.

The bill creates a regulatory structure for creation and sale of paid family leave insurance policies by life insurers. Notably, the bill does not create a right to paid family leave benefits for employees not otherwise eligible under FMLA. Rather, the bill gives their employers the option to offer, and authorizes life insurers to transact, paid family leave insurance providing benefits covering certain lost wages.

The bill:

- revises the definition of "kinds of insurance" to include paid family leave insurance,
- defines "paid family leave insurance,"
- specifies requirements under which family leave insurance benefits may be provided,
- requires insurance policies to specify details and requirements for covered leave reasons,
- specifies requirements for polices relating to benefit periods and waiting periods,
- permits limitations, exclusions and reductions for eligibility, and
- authorizes the Financial Services Commission to adopt rules.

While the bill does not have a fiscal impact on local governments, the bill does have an indeterminate, but likely positive, fiscal impact on state government. The bill has a positive and negative fiscal impact on the private sector.

The bill will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida's Insurance Industry

The Florida Office of Insurance Regulation (OIR) regulates the insurance industry in the state. OIR is responsible for the regulation of all activities in the state concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision.[1]

OIR is housed within the Florida Department of Financial Services (DFS), and its funding is appropriated by the Legislature from the Insurance Regulatory Trust Fund (IRTF).[2] The IRTF is funded by insurance company licensing fees, premium tax, surplus lines tax, and fines that may be levied for non-compliance with provisions of the Florida Insurance Code (Insurance Code).[3]

Under Florida's Insurance Code, a qualifying insurer is authorized to transact any one kind or combination of insurance, including life, health, property, casualty, surety, marine, and title.[4] Among the types of authorized insurance, paid family leave insurance is not currently included. Nonetheless, OIR has already approved paid family leave insurance products and such products have been sold and marketed in the state as riders to disability income benefits for individuals utilizing family and medical leave.[5]

Paid Family Leave Insurance

The federal Family Medical Leave Act of 1993 (FMLA) requires covered employers to provide eligible employees job-protected leave for qualifying family and medical reasons. Covered employers under FMLA include private-sector employers who employ 50 or more employees in 20 or more workweeks during a calendar year, all public agencies, and all educational agencies. FMLA protects leave for the birth or adoption of a child, the serious health condition of an employee, care for an employee's family member who has a serious health condition, and reasons related to a family member's service in the military.

In 2022, the National Council of Insurance Legislators (NCOIL) adopted the Paid Family Leave Insurance Model Act (Model Act).[6] The Model Act created a new product of life insurance, known as paid family leave insurance, under which any insurer licensed to transact life insurance or disability income insurance business could be authorized to issue policies covering benefits for employees unable to work due to circumstances eligible for FMLA protection.

Some states provide a program using either a social insurance policy design that funds benefits through pooled payroll taxes on employees and/or employers, or private insurance to fund the programs.[7] Programs available in these states are the result of legislation either making such programs mandatory or

[1] Florida Office of Insurance Regulation, *Organization and Operation*, https://floir.com/about-us/organization-and-operation#:~:text=The%20Florida%20Office%20of%20Insurance,settlements%2C%20premium%20financing%2C%20and%20administrative (last visited Mar. 10, 2023). *See also* s. 624.308, F.S., and R. 69O, *et seq.*, F.A.C.
[2] Florida Office of Insurance Regulation, *Organization and Operation*, https://floir.com/about-us/organization-and-operation#:~:text=The%20Florida%20Office%20of%20Insurance,settlements%2C%20premium%20financing%2C%20and%20administrative (last visited Mar. 10, 2023).
[3] *Id.* Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the Florida Insurance Code. *See also* s. 624.01, F.S.
[4] Ss. 624.406(1), and 624.6011, F.S.
[5] Email from Stephen Marante, Deputy Director of Government Affairs, Office of Insurance Regulation, Re: Family Leave Insurance (Feb. 17, 2023).
[6] National Council of Insurance Legislators, *Paid Family Leave Insurance Model Act* (Adopted on Nov. 19, 2022).
[7] Department of Financial Services, Agency Analysis of SB 670, p. 1 (Feb. 27, 2023).

voluntary.[8] States currently offering paid family leave insurance benefits through private insurers are New York (mandatory), New Hampshire (voluntary), and Virginia (voluntary).[9]

Effect of the Bill

The bill creates a regulatory structure for creation and sale of paid family leave insurance policies both as a stand-alone product, as a group insurance policy, and as a rider to a group disability income policy. Notably, the bill does not create a right to paid family leave benefits for employees not otherwise eligible under FMLA, but rather gives their employers the option to offer, and authorizes life insurers to transact, paid family leave insurance benefits.

The bill includes paid family leave insurance as a type of insurance product with life, health, property, casualty, surety, marine, and title insurance products. The bill defines paid family leave insurance as insurance issued to an employer to pay for a percentage or portion of the employee's income loss due to:

- The birth of a child or adoption of a child by the employee;
- Placement of a foster child with the employee;
- Care of an employee's family member who has a serious health condition; or
- Circumstances arising out of the fact the employee's family member is a servicemember on active duty or has been notified of an impending call or order to active duty.

Defined Terms

The bill defines the following terms:

- "Armed Forces of the United States" means an officer or enlisted member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard of the United States, the Florida National Guard, and the United States Reserve Forces.
- "Child" is someone who is:
    - Under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability; and
    - A biological, adopted, or foster son or daughter; a stepson or stepdaughter; a legal ward; or a son or daughter of a person to whom the employee stands in loco parentis.
- "Family leave" is any leave taken by an employee for work for any of the reasons specified in the newly created s. 627.445(4), F.S. (as more particularly described below).
- "Family member" includes a child, spouse, or parent, or other person defined as a family member in the policy.
- "Health care provider" means any hospital licensed under ch. 395, F.S., and any health care institution licensed under ch. 400 or ch. 429, F.S., or an individual licensed under ch. 458, 459, 460, 461, 464, or 466, F.S.
- "Parent" means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or other person who stood in loco parentis to the employee when the employee was a child.
- "Serious health condition" means an illness, injury, impairment, or physical or mental condition, including, but not limited to, pregnancy complications that threaten the life of the mother or unborn child; transplantation preparation and recovery from surgery related to organ or tissue donation, which involves inpatient care in a hospital, hospice, or residential health care facility; continuing treatment; or continuing supervision by a health care provider. Continuing supervision by a health care provider includes a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective and where the family member need not be receiving active treatment by a health care provider.

Requirements and Specifications for the Policy

The bill provides family leave insurance may be written as an amendment or a rider to a group disability income policy, included in a group disability income policy, or written as a separate group insurance policy purchased by an employer. The bill also provides the policy must specify:

[8] *Id.*
[9] *Id.*

- Details and requirements with regard to each of the covered family leave reasons;
- The length of family leave insurance benefits available for each covered family leave reason, which may not be less than 2 weeks during a period of 52 consecutive calendar weeks;
- Whether there is an unpaid waiting period, and if so, the terms and conditions of the unpaid waiting period;
- The amount of benefits that will be paid for covered family reasons;
- Definition of the wages or other income upon which the amount of family leave insurance benefits will be issued; and
- Whether the family leave insurance benefits are subject to offsets for wages or other income received or for which the insured may be eligible, and if so, all such wages or income that may be set off and the circumstances under which it may be offset.

Permissible Limitations, Exclusions and Reductions for Eligibility

The bill allows eligibility for family leave insurance benefits to be limited, excluded, or reduced, but requires any such limitation, exclusion, or reduction be specified in the policy. Permissible limitations, exclusions, and reductions under the bill include, but are not limited to, any period of leave:

- Wherein the required notice and medical certification as prescribed in the policy has not been provided;
- Related to a serious health condition or other harm to a family member caused by the willful intention of the employee;
- During which the employee performed work for remuneration or profit;
- For which the employee is eligible to receive from his or her employer, or from a fund to which the employer has contributed, remuneration or maintenance;
- In which the employee is eligible to receive benefits under any other statutory program or employer-sponsored program, including, but not limited to, unemployment insurance benefits, workers' compensation benefits, statutory disability benefits, statutory paid leave benefits, or any paid time off or employer's paid leave policy;
- Commencing before the employee becomes eligible for family leave insurance benefits under the policy; or
- Where more than one person seeks family leave insurance for the same family member.

The bill requires that family leave insurance benefits be paid periodically and promptly, except as to a contested period of leave and subject to any of the limitations, exclusions, or reductions explained above. Rates for policies or riders providing paid family leave insurance benefits must meet Florida's rate making standard, to wit, they must not be inadequate, excessive, or unfairly discriminatory[10] and that the applicable insurance forms are subject to review by OIR.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.406, F.S., authorizing life insurers to transact paid family leave insurance.

Section 2. Creates s. 624.6011, F.S., defining "Paid family leave insurance", providing circumstances under which paid family leave insurance may be issued and purchased.

Section 3. Amends s., 627.445, F.S., defining terms, providing circumstances under which family leave insurance benefits may be provided.

Section 4. Provides the bill shall become effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[10] S. 627.062, F.S.

The bill has an indeterminate, but likely positive, fiscal impact on state government. The state may see increased premium tax revenues to the extent that a paid family leave insurance market develops.

2. Expenditures:

   OIR will need to add family leave coverage as a new line of business to the correct IT systems.[11]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Employees eligible to receive family leave insurance benefits can receive compensation they would not have otherwise received while unable to work due to eligible parental leave or their own or their family member's serious health condition or military service. Although the paid family leave insurance is optional for private employers not otherwise covered under FMLA, the insurance policy would be funded by the employer and/or the employee.

D. FISCAL COMMENTS:

The bill has an indeterminate impact on state government and none on local governments. If a private employer offers the insurance, the bill has a positive fiscal impact for eligible employees and a negative fiscal impact for employers and employees due to premiums funding the policies. However, such private employers may see greater employee satisfaction and productivity and may also be more competitive in hiring quality employees.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Financial Services Commission to adopt rules to administer the Paid Family Leave Income Replacement Act, s. 627.445, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[11] Office of Insurance Regulation, Agency Analysis of 2023 HB 721, p. 4 (Mar. 8, 2023).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 14, 2023, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Revised definitions, including:
  - Armed Forces of the United States,
  - Health care provider, and
  - Serious health condition;
- Established that forms for policies or riders providing paid family leave insurance benefits are subject to review by the Florida Office of Insurance Regulation;
- Made technical changes to conform the model act on which the bill is based to conform to the requirements of the Florida Insurance Code; and
- Removed superfluous language from the bill.

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

A bill to be entitled

An act relating to paid family leave insurance; amending s. 624.406, F.S.; authorizing life insurers to transact paid family leave insurance; creating s. 624.6086, F.S.; defining terms; providing circumstances under which paid family leave insurance may be issued and purchased; creating s. 627.445, F.S.; defining terms; providing circumstances under which family leave insurance benefits may be provided; requiring paid family leave insurance policies to specify details and requirements with regard to covered circumstances; specifying requirements for policies relating to benefit periods, waiting periods, benefit amounts, certain offsets, and the payment of benefits; providing that eligibility for family leave insurance benefits may be limited, excluded, or reduced but must be specified in the policy; providing circumstances under which limitations, exclusions, and reductions are permissible; providing applicable provisions for calculating rates; providing that paid family leave insurance forms and riders are subject to review by the Office of Insurance Regulation; specifying the means by which a policy may offer family leave insurance benefits; authorizing the Financial Services Commission to adopt rules;

providing an effective date.

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

Section 1. Subsection (1) of section 624.406, Florida Statutes, is amended to read:

624.406 Combinations of insuring powers, one insurer.—An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in part V except:

(1) A life insurer may also grant annuities, but shall not be authorized to transact any other kind of insurance except health insurance, disability income insurance, paid family leave insurance, excess coverage for health maintenance organizations, or excess insurance, specific and aggregate, for self-insurers of a plan of health insurance and multiple-employer welfare arrangements.

Section 2. Section 624.6086, Florida Statutes, is created to read:

624.6086 "Paid family leave insurance" defined; paid family leave insurance issuance and purchase.—

(1) "Paid family leave insurance" is insurance issued to an employer which is related to a benefit program provided to an employee to pay for a percentage or portion of the employee's income loss due to:

(a) The birth of a child or adoption of a child by the employee;

(b) Placement of a child with the employee for foster care;

(c) Care of the employee's family member who has a serious health condition; or

(d) Circumstances arising out of the fact that the employee's family member who is a servicemember is on active duty or has been notified of an impending call or order to active duty.

As used in this subsection, the terms "child," "family leave," and "family member" have the same meanings as provided in s. 627.445(1).

(2) Paid family leave insurance may be issued to and purchased by an employer as an amendment or a rider to a group disability income policy, included in a group disability income policy, or issued as a separate group insurance policy.

Section 3. Section 627.445, Florida Statutes, is created to read:

627.445 Paid family leave insurance.—

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

(a) "Armed Forces of the United States" means an officer or enlisted member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard of the United States, the Florida

National Guard, or the United States Reserve Forces.

(b) "Child" means a person who is:

1. Under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability; and

2. A biological, adopted, or foster son or daughter; a stepson or stepdaughter; a legal ward; or a son or daughter of a person to whom the employee stands in loco parentis.

(c) "Family leave" is any leave taken by an employee from work for any of the circumstances specified in subsection (2).

(d) "Family member" includes a child, spouse, or parent, or other person defined as a family member of the employee in the policy.

(e) "Health care provider" means a hospital licensed under chapter 395, a health care institution licensed under chapter 400 or chapter 429, or a person licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, or chapter 466.

(f) "Parent" means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or other person who stood in loco parentis to the employee when the employee was a child.

(g) "Serious health condition" means an illness, injury, impairment, or physical or mental condition, including, but not limited to, pregnancy complications that threaten the life of

the mother or unborn child; transplantation preparation and recovery from surgery related to organ or tissue donation which involve inpatient care in a hospital, hospice, or residential health care facility; continuing treatment; or continuing supervision by a health care provider. Continuing supervision by a health care provider includes a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective and during which the family member need not be receiving active treatment by a health care provider.

(2) COVERED FAMILY LEAVE INSURANCE BENEFITS.—Family leave insurance benefits provided in a paid family leave insurance policy may be provided for any leave taken by an employee from work for any of the following circumstances:

(a) Participation in providing care, including physical or psychological care, for a family member made necessary by a serious health condition of the family member;

(b) Bonding with the employee's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption by or foster care with the employee;

(c) Addressing a qualifying exigency as interpreted under the Family and Medical Leave Act of 1993, 29 U.S.C. s. 2612(a)(1)(E) and 29 C.F.R. s. 825.126(a)(1)-(8), arising out of the fact that the spouse, child, or parent of the employee is on active duty or has been notified of an impending call or order

to active duty in the Armed Forces of the United States;

(d) Caring for a family member who was injured in the line of duty while serving in the Armed Forces of the United States; or

(e) Caring for a family member or taking other leave as specified in the policy.

(3) REQUIRED POLICY SPECIFICITY.—The policy must specify all of the following:

(a) Details and requirements with regard to each of the covered circumstances specified in subsection (2).

(b) The length of family leave insurance benefits available for each covered circumstance, which may not be less than 2 weeks during a period of 52 consecutive calendar weeks.

(c) Whether there is an uncovered waiting period and, if so, the terms and conditions of the uncovered waiting period, which may include, but are not limited to, whether:

1. The period runs over a consecutive calendar day period;

2. The period is counted toward the annual allotment of covered family leave insurance benefits or is in addition to the annual allotment of covered family leave insurance benefits;

3. The period must be met only once per benefit year or must be met for each separate claim for benefits; and

4. The employee may work or receive paid time off or other compensation during the period.

(d) The amount of benefits that will be paid for covered

circumstances specified in subsection (2).

(e) The definition of the wages or other income upon which the amount of benefits will be issued.

(f) The method by which such wages or other income will be calculated.

(g) If the family leave insurance benefits are subject to offsets for wages or other income received or for which the insured may be eligible, all such wages or other income that may be offset and the circumstances under which it may be offset.

(h) The frequency of payments due for covered benefits.

(4) CALCULATION OF 52 CONSECUTIVE CALENDAR WEEKS.—For purposes of this section, 52 consecutive calendar weeks may be calculated by:

(a) A calendar year;

(b) Any fixed period starting on a particular date, such as the effective or anniversary date of the policy;

(c) The employee's hiring date or anniversary of hiring date;

(d) The period measured forward from the employee's first day of family leave;

(e) A rolling period measured by looking back from the employee's first day of family leave; or

(f) Any other method specified in the policy.

(5) PERMISSIBLE LIMITATIONS, EXCLUSIONS, OR REDUCTIONS.—Eligibility for family leave insurance benefits under this

section may be limited, excluded, or reduced, but any limitation, exclusion, or reduction must be specified in the policy and not conflict with the insurance code. Limitations, exclusions, or reductions are permissible for any of the following circumstances:

(a) For any period during which the required notice and medical certification as prescribed in the policy have not been provided;

(b) For any leave related to a serious health condition or other harm to a family member brought about by a willful act by the employee;

(c) For any period during which the employee performed work for remuneration or profit;

(d) For any period for which the employee is eligible to receive remuneration or maintenance from her or his employer, or from a fund to which the employer has contributed;

(e) For any period during which the employee is eligible to receive benefits under any other statutory program or employer-sponsored program, including, but not limited to, unemployment insurance benefits, workers' compensation benefits, or any paid time off or employer's paid leave policy;

(f) For any period commencing before the employee becomes eligible for family leave insurance benefits under the policy;

(g) For any period during which more than one person seeks family leave for the same family member under the same policy,

unless the policy specifies otherwise; or

(h) Other reasons specified in the policy.

(6) PAYMENT OF FAMILY LEAVE INSURANCE BENEFITS.—Family leave insurance benefits provided under a policy that complies with this section must be paid periodically and promptly, as specified in the policy, except as to a contested period of family leave and subject to any of the limitations, exclusions, or reductions permitted under subsection (5).

(7) INSURANCE POLICY.—

(a) Rates for policies or riders providing paid family leave insurance benefits must be calculated in accordance with the rate standards provided in s. 627.062.

(b) Forms for policies or riders providing paid family leave insurance benefits are subject to review by the office under s. 627.410.

(c) A policy issued under this section must meet the requirements of s. 624.6086(2).

(8) RULEMAKING.—The commission may adopt rules to implement this section.

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

COMMERCE COMMITTEE

CS/HB 721 by Rep. Chaney
Relating to Paid Family Leave Insurance

AMENDMENT SUMMARY
April 7, 2023

Amendment 1 by Rep. Chaney (Strike-all): The amendment makes non-substantive, technical changes to conform the bill with its Senate companion.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 624.406, Florida Statutes, is amended to read:

624.406 Combinations of insuring powers, one insurer.—An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in part V except:

(1) A life insurer may also grant annuities, but shall not be authorized to transact any other kind of insurance except health insurance, disability income insurance, paid family leave insurance, excess coverage for health maintenance organizations, or excess insurance, specific and aggregate, for self-insurers

of a plan of health insurance and multiple-employer welfare arrangements.

Section 2. Section 624.6086, Florida Statutes, is created to read:

624.6086 "Paid family leave insurance" defined.—

(1) "Paid family leave insurance" is insurance issued to an employer which is related to a benefit program provided to an employee to pay for a percentage or portion of the employee's income loss due to:

(a) The birth of a child or the adoption of a child by the employee;

(b) Placement of a child with the employee for foster care;

(c) Care of the employee's family member who has a serious health condition; or

(d) Circumstances arising out of the fact that the employee's family member who is a servicemember is on active duty or has been notified of an impending call or order to active duty.

(2) Paid family leave insurance may be issued to and purchased by an employer as an amendment or a rider to a group disability income policy, included in a group disability income policy, or issued as a separate group insurance policy.

(3) As used in this section, the terms "child," "family leave," and "family member" have the same meanings as provided

in s. 627.445(1).

Section 3. Section 627.445, Florida Statutes, is created to read:

627.445 Paid family leave insurance.—

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

(a) "Armed Forces of the United States" means an officer or enlisted member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard of the United States, the Florida National Guard, and the United States Reserve Forces.

(b) "Child" means a person who is:

1. Under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability; and

2. A biological, adopted, or foster son or daughter; a stepson or stepdaughter; a legal ward; or a son or daughter of a person to whom the employee stands in loco parentis.

(c) "Family leave" means any leave taken by an employee from work for any of the circumstances specified in subsection (2).

(d) "Family member" includes a child, spouse, or parent, or other person defined as a family member of the employee in the policy.

(e) "Health care provider" means any hospital licensed under chapter 395 and any health care institution licensed under chapter 400 or chapter 429 or an individual licensed under

chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, or chapter 466.

(f) "Parent" means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or other person who stood in loco parentis to the employee when the employee was a child.

(g) "Serious health condition" means an illness, an injury, an impairment, or a physical or mental condition, including, but not limited to, pregnancy complications that threaten the life of the mother or unborn child; transplantation preparation and recovery from surgery related to organ or tissue donation, which involves inpatient care in a hospital, hospice, or residential health care facility; continuing treatment; or continuing supervision by a health care provider. Continuing supervision by a health care provider includes a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective and where the family member need not be receiving active treatment by a health care provider.

(2) COVERED FAMILY LEAVE BENEFITS.—Family leave insurance benefits provided in a paid family leave insurance policy may be provided for any leave taken by an employee from work for any of the following circumstances:

(a) Participation in providing care, including physical or psychological care, for a family member made necessary by a

serious health condition of the family member;

(b) Bonding with the employee's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption by or foster care with the employee;

(c) Addressing a qualifying exigency as interpreted under the Family and Medical Leave Act of 1993, 29 U.S.C. s. 2612(a)(1)(E) and 29 C.F.R. s. 825.126(a)(1)-(8), arising out of the fact that the spouse, child, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces of the United States;

(d) Caring for a family member injured in the line of duty with the Armed Forces of the United States; or

(e) Caring for a family member or other leave as specified in the policy.

(3) REQUIRED POLICY SPECIFICITY.—The policy must specify:

(a) Details and requirements with regard to each of the covered circumstances specified in subsection (2),

(b) The length of family leave insurance benefits available for each covered circumstance, which may not be less than 2 weeks during a period of 52 consecutive calendar weeks.

(c) Whether there is an uncovered waiting period, and if so, the terms and conditions of the uncovered waiting period, which may include, but are not limited to, whether:

1. The period runs over a consecutive calendar day period;

2. The period is counted toward the annual allotment of covered family leave insurance benefits or is in addition to the annual allotment of covered family leave insurance benefits;

3. The period must be met only once per benefit year or must be met for each separate claim for benefits; and

4. The employee may work or receive paid time off or other compensation during the period.

(d) The amount of benefits that will be paid for covered circumstances provided in subsection (2).

(e) The definition of the wages or other income upon which the amount of benefits will be issued.

(f) How such wages or other income will be calculated.

(g) If the family leave insurance benefits are subject to offsets for wages or other income received or for which the insured may be eligible, all such wages or other income that may be set off and the circumstances under which it may be offset.

(h) The frequency of payments due for covered benefits.

(4) CALCULATION OF 52 CONSECUTIVE CALENDAR WEEKS.-For purposes of this section, 52 consecutive calendar weeks may be calculated by:

(a) A calendar year;

(b) Any fixed period starting on a particular date, such as the effective or anniversary date of the policy;

(c) The employee's hiring date or anniversary of hiring date;

(d) The period measured forward from the employee's first day of family leave;

(e) A rolling period measured by looking back from the employee's first day of family leave; or

(f) Any other method specified in the policy.

(5) PERMISSIBLE LIMITATIONS, EXCLUSIONS, OR REDUCTIONS.—Eligibility for family leave insurance benefits under this section may be limited, excluded, or reduced, but any limitation, exclusion, or reduction must be specified in the policy and not conflict with the Florida Insurance Code. Permissible limitations, exclusions, or reductions may be made for the following:

(a) For any period wherein the required notice and medical certification as prescribed in the policy has not been provided;

(b) For any leave related to a serious health condition or other harm to a family member brought about by a willful act by the employee;

(c) For any period during which the employee performed work for remuneration or profit;

(d) For any period for which the employee is eligible to receive remuneration or maintenance from her or his employer, or from a fund to which the employer has contributed;

(e) For any period during which the employee is eligible to receive benefits under any other statutory program or employer-sponsored program, including, but not limited to,

unemployment insurance benefits, workers' compensation benefits, or any paid time off or employer's paid leave policy;

(f) For any period commencing before the employee becomes eligible for family leave insurance benefits under the policy;

(g) For periods where more than one person seeks family leave for the same family member under the same policy, unless the policy specifies otherwise; or

(h) For other reasons specified in the policy.

(6) PAYMENT OF FAMILY LEAVE BENEFITS.—Family leave insurance benefits provided under a policy that complies with this section must be paid periodically and promptly, as specified in the policy, except as to a contested period of family leave and subject to any of the limitations, exclusions, or reductions permitted under subsection (5).

(7) INSURANCE POLICY.—

(a) Rates for policies or riders providing paid family leave insurance benefits must be calculated in accordance with the rate standards provided in s. 627.062.

(b) Forms for policies or riders providing paid family leave insurance benefits are subject to review by the office under s. 627.410.

(c) A policy issued under this section must be issued as provided in s. 624.6086(2).

(8) RULEMAKING.—The commission may adopt rules to administer this section.

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

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to paid family leave insurance; amending s. 624.406, F.S.; authorizing life insurers to transact paid family leave insurance; creating s. 624.6086, F.S.; defining terms; creating s. 627.445, F.S.; defining terms; specifying circumstances under which family leave insurance benefits may be provided under a paid family leave insurance policy; requiring that paid family leave insurance policies specify details and requirements with regard to covered circumstances; specifying requirements for policies relating to benefit periods, waiting periods, benefit amounts and certain offsets, and the payment of benefits; providing that eligibility for family leave insurance benefits may be limited, excluded, or reduced, but must be specified in the policy; specifying permissible limitations, exclusions, and reductions; providing applicable provisions for calculating rates; specifying the means by which a policy must offer family leave insurance benefits;

authorizing the Financial Services Commission to adopt rules; providing an effective date.

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	15 Y, 0 N	Larkin	Anstead
2) Commerce Committee		Larkin	Hamon

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, and
- 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;

[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.

[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, 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:

The sponsor has indicated that he will file an amendment to clarify that “coins” not “money” are excluded from the holding period.

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.

COMMERCE COMMITTEE

HB 737 by Rep. Barnaby and Rep. Mooney
Secondhand Goods

AMENDMENT SUMMARY
April 10, 2023

Amendment 1 by Rep. Barnaby (line 18):

- Reverts to current law regarding the holding period for “coins.”

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Barnaby offered the following:

Amendment

Remove line 18 and insert:

furniture~~;~~ pianos~~;~~ books~~;~~ clothing~~;~~ organs~~;~~ coins~~;~~

HB 743

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 743 Estoppel Letters
SPONSOR(S): Fabricio
TIED BILLS: **IDEN./SIM. BILLS:** SB 708

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N	Fletcher	Lloyd
2) Civil Justice Subcommittee	14 Y, 0 N	Mathews	Jones
3) Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

A mortgagor selling collateralized property, refinancing a mortgage, or paying off a mortgage may request an estoppel letter from the mortgagee or mortgage servicer (lender). Florida law currently defines an "estoppel letter" as a statement of the amount of the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges due under or secured by the mortgage, and the interest on a per-day basis for the unpaid balance. A lender must deliver an estoppel letter to the requesting party within 14 days after receiving a written request for the same.

In some estoppel letters, lenders expressly reserve the right to change the amounts listed and disclaim the reliance of others on the letter. Further, if after sending an estoppel letter the lender determines the mortgagor owes additional funds beyond those stated in the letter, some lenders return payments made in reliance on the letter. Until the discrepancy in amounts owed is resolved, interest and potential fees continue to accrue and title to the property remains unclear.

The bill revises the estoppel letter process. The bill:

- Reduces the timeframe within which a lender must send a requested estoppel letter from 14 days to 10 days;
- Prohibits a lender from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on information provided in an estoppel letter;
- Allows a lender to send a corrected estoppel letter to supersede prior estoppel letters if the corrected letter is received by a certain date and time and before any payment is made in reliance on a previous estoppel letter;
- Prohibits a lender from denying the accuracy of an estoppel letter against anyone who relied on it, but permits recovery of the sum owed from the mortgagor;
- Requires a lender to both accept payment received in reliance on an estoppel letter and promptly apply such payment to the unpaid balance of the loan;
- Requires a lender to execute and record an instrument confirming release of the mortgage in the official records of the proper county, and send the recorded instrument to the mortgagor, within 60 days of receiving full payment of the loan secured by the mortgage; and
- Revises the definition of "estoppel letter."

The bill has no fiscal impact on state or local governments. It may have an indeterminate positive fiscal impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law currently defines an "estoppel letter" as a statement of the amount of the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges due under or secured by the mortgage, and the interest on a per-day basis for the unpaid balance.[1] An estoppel letter is often requested when selling property that serves as collateral for a mortgage, refinancing a mortgage, or paying off a mortgage. The request may be made by the mortgagor,[2] the record title owner of the property, a fiduciary or trustee lawfully acting on behalf of the record title owner, or any other person lawfully authorized to act on behalf of the mortgagor or record title owner.[3]

Depending on who requests the estoppel letter, the following information must be included:

- If the requesting party is the mortgagor or someone lawfully authorized to act on behalf of the mortgagor, the estoppel letter *must* include an itemization of the principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.[4]
- If the requesting party is the record title owner of the property or someone lawfully authorized to act on behalf of the record title owner, the estoppel letter may include the itemization of the information required above, but at a minimum must include the total unpaid balance due under or secured by the mortgage on a per-day basis.[5]

Where the amount of money owed on a mortgage loan has been fully paid, the mortgagee or mortgage servicer (lender) must execute an instrument in writing confirming release of the mortgage, have the instrument acknowledged, and record the executed, acknowledged instrument in the official records of the property county.[6] Within 60 days of receiving full payment of the mortgage loan, the lender must send the recorded release to the person who made the full payment.[7] In the case of a civil action arising out of this requirement, the prevailing party is entitled to attorney fees and costs.[8]

Some estoppel letters include language reserving the lender's right to change the amounts listed in the estoppel letter and disclaiming the reliance of others on the information included in the estoppel letter. If the lender determines after sending the estoppel letter that the mortgagor owes additional money, some lenders return the funds received from the closing which were sent in reliance on the amount stated in the estoppel letter. This results in the continued accrual of interest, potential fees, and unclear title to the property until resolution of the discrepancy.

[1] S. 701.041(1)(a), F.S.
[2] Mortgagor means "[s]omeone who mortgages property; the mortgage-debtor or borrower." Black's Law Dictionary (11th ed. 2019).
[3] S. 701.04(1), F.S.
[4] S. 704.04(1)(a), F.S.
[5] S. 704.04(1)(b), F.S.
[6] S. 704.04(2), F.S.
[7] *Id.*
[8] *Id.*

Effect of the Bill

Content of Estoppel Letters

The bill standardizes the information that must be contained in an estoppel letter, regardless of whether the requestor is the mortgagor, a record title owner, or a person lawfully authorized to act on behalf of the mortgagor or record title owner. At a minimum, the letter must include:

- The unpaid balance of the loan secured by the mortgage as of the date specified in the letter, including an itemization of the principal, interest, and any other charges comprising the unpaid balance; and
- Interest accruing on a per-day basis for the unpaid balance, if applicable.

Prohibition of Certain Activities on Behalf of Lenders

The bill prohibits the lender from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on the information provided in an estoppel letter; any attempt to do so is void and unenforceable. This prohibition does not apply to mortgages for which a notice of a lawsuit in a foreclosure action or a suggestion of bankruptcy has been properly filed and recorded.

If the lender determines that any information in an estoppel letter is inaccurate, the lender may send a corrected estoppel letter. The corrected estoppel letter will supersede any prior estoppel letter, provided the corrected estoppel is received by 3 p.m. at least one business day before payment is made in reliance on the estoppel letter.

If any information in the estoppel letter is inaccurate and a timely corrected estoppel letter is not sent, the bill prohibits the lender from denying the accuracy of the estoppel letter against any person who relied on it. However, this does not affect the lender's right to recover any sum not included in the estoppel letter, nor does it limit any claim or defense to recovery that the borrower may have.

If a payment is received at the location and in the manner specified by the lender, the lender must accept and may not return any payment received in reliance on the estoppel letter, and the lender must promptly apply such payment to the unpaid balance of the mortgage loan. This will prevent the accrual of interest and potential fees while the lender and the borrower work through any discrepancies as to the amount owed.

Process for Requesting and Sending Estoppel Letters

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

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

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

If any of the foregoing days fall on a Saturday, Sunday, or holiday, the request for an estoppel letter is considered timely received by the lender on the next business day.
The bill also specifies the process by which an estoppel letter may be sent. The lender or servicer must send an estoppel letter by first-class mail; by common carrier delivery service; or by e-mail, facsimile, or

other electronic means, as directed in the written request, or through an automated system provided by the lender for this purpose. However, the lender is not required to pay for a common carrier delivery service. If the 10-day period after a written request is received by the lender ends on a Saturday, Sunday, or holiday, the estoppel letter is considered timely if it is sent by the close of business on the next business day.

The bill requires the lender, within 60 days after the mortgage loan has been fully paid or paid pursuant to the estoppel letter, to execute, have duly entered in the official records of the proper county, and send to the mortgagor or record title owner an instrument acknowledging release of the mortgage (i.e., a satisfaction of mortgage or a release of mortgage). The prevailing party in a civil action brought against the lender to enforce this requirement is entitled to reasonable attorney fees and costs. The recorded release of the mortgage does not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the mortgage loan. In the event of a discrepancy in the amount owed on the mortgage loan, this provision will ensure clear title to the property while maintaining the lender's ability to recover sums properly owed under the mortgage loan.

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

The bill provides legislative findings relating to the importance of the timeliness and accuracy of an estoppel letter to both the consumer and the lender.

The provisions of the bill will apply to all mortgages, and all loans secured by such mortgages, existing as of, or entered into on or after, October 1, 2023.

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

B. SECTION DIRECTORY:

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

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

Section 3. Provides legislative findings.

Section 4. Provides the bill applies to all mortgages, and all loans secured by such mortgages, existing as of, or entered into on or after, October 1, 2023.

Section 5. Provides an effective date of October 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 may have an indeterminate positive fiscal impact on the private sector. The bill may lead to smoother real estate closings to the extent that lenders provide more accurate information in estoppel letters. In the event of a discrepancy in the amount owed on the mortgage loan, the bill will prevent accrual of interest and potential fees while the lender and the borrower work through the issue. Additionally, the bill will ensure clear title to the property while maintaining the lender's ability to recover sums properly owed under the mortgage loan.

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

requiring such payments to be promptly applied to any unpaid balance of the loan properly due under or secured by a mortgage; providing methods for sending a written request for an estoppel letter and for sending an estoppel letter; providing that the mortgagee or mortgage servicer is not required to pay for a common carrier delivery service; requiring the mortgagee or mortgage servicer to take certain actions within a specified time after the unpaid balance of a loan properly secured by a mortgage has been fully paid or paid pursuant to an estoppel letter; authorizing reasonable attorney fees and costs for specified parties in certain civil actions; providing that certain persons may still be personally liable for a loan or other obligation after the recording of a release of a mortgage; conforming provisions to changes made by the act; amending s. 701.041, F.S.; revising the definition of the term "estoppel letter"; conforming provisions to changes made by the act; providing legislative findings; providing for retroactive applicability; providing an effective date.

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

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

701.04 Cancellation of mortgages, liens, and judgments.—

(1)(a) Within 10 ~~14~~ days after receipt of the written request of a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, the mortgagee ~~holder of a mortgage shall deliver~~ or mortgage ~~cause the~~ servicer shall send or cause to be sent ~~of the mortgage to deliver to the person making the request at a place designated in the written request~~ an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage. If the written request is made by a person other than the mortgagor, the request must include a copy of the instrument showing such person's title in the property or other lawful authorization, and the mortgagee or mortgage servicer must notify the mortgagor of the request.

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

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

~~title owner of the property, makes the request:~~

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

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

1. The ~~total~~ unpaid balance of the loan ~~due under or~~ secured by the mortgage as of the date specified in the estoppel letter, including an itemization of the principal, interest, and any other charges comprising the unpaid balance; and

2. Interest accruing on a per-day basis for the unpaid balance from and after the date specified in the estoppel letter, if applicable.

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

original written request. If the original written request is made by a person other than the mortgagor, the mortgagee or mortgage servicer must also provide a copy of any corrected estoppel letter to the mortgagor.

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

3. If any of the information provided in the estoppel letter under paragraph (b) was inaccurate, but the person who requested the estoppel letter did not timely receive a corrected estoppel letter as provided in subparagraph 2., the mortgagee or mortgage servicer may not deny the accuracy of such information as against any person who relied on it. This subparagraph does not affect the right of a mortgagee to recover any sum that it did not include in an estoppel letter from any person liable for payment of the loan or other obligations secured by the mortgage, nor does it limit any claim or defense to recovery which such person may have at law or in equity ~~on a per-day basis~~.

(d)~~3.~~ The mortgagee or mortgage servicer ~~of the mortgagee~~ acting in accordance with a request in substantial compliance with this subsection ~~paragraph~~ is expressly discharged from any

obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the terms of the estoppel letter.

(e) If a payment is received at the location and in the manner specified by the mortgagee or mortgage servicer, the mortgagee or mortgage servicer must accept and may not return any payment received in reliance on an estoppel letter and must promptly apply such payment to the unpaid balance of the loan properly due under or secured by the mortgage.

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

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

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

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

letter.

If any of the days in sub-subparagraph a., sub-subparagraph b., or sub-subparagraph c. fall on a Saturday, Sunday, or holiday specified in s. 110.117(1) or the laws of the United States, the request for an estoppel letter is considered timely received by the mortgagee or mortgage servicer on the next business day.

2. The mortgagee or mortgage servicer must send an estoppel letter by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic means, as directed in the written request, or through an automated system provided by the mortgagee or mortgage servicer for this purpose. However, the mortgagee or mortgage servicer is not required to pay for a common carrier delivery service. If the 10-day period after a written request is received by the mortgagee or mortgage servicer ends on a Saturday, Sunday, or holiday specified in s. 110.117(1) or the laws of the United States, the estoppel letter is considered timely if it is sent by the close of business on the next business day.

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

(2)(a) Within 60 days after the unpaid balance of a loan secured by a mortgage has been fully paid or paid pursuant to an estoppel letter under subsection (1), whichever is earlier, the mortgagee or mortgage servicer shall execute in writing an instrument acknowledging release of the mortgage; have the instrument acknowledged, or proven, and send it or cause it to be sent for recording in the official records of the proper county; and send or cause to be sent the recorded release to the mortgagor or record title owner of the property. The prevailing party in a civil action brought against the mortgagee or mortgage servicer to enforce the requirements of this paragraph is entitled to reasonable attorney fees and costs.

(b) The recorded release of the mortgage does not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations previously secured by the mortgage.

(3) ~~(2)~~ Within 60 days after the unpaid balance ~~Whenever the amount of money due~~ on a ~~any mortgage,~~ lien~~,~~ or judgment has been fully paid to the person ~~or party~~ entitled to the payment thereof, the ~~mortgagee,~~ creditor~~,~~ or assignee, or the attorney of record in the case of a judgment, to whom the payment was made~~,~~ shall execute in writing an instrument acknowledging satisfaction of the ~~mortgage,~~ lien~~,~~ or judgment; ~~and~~ have the instrument acknowledged, or proven, and send it or cause it to be sent for recording ~~duly entered~~ in the official records of

the proper county; and~~. Within 60 days after the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall~~ send or cause to be sent the recorded satisfaction to the person who has made the full payment. ~~In the case of a civil action arising out of this section,~~ The prevailing party in a civil action brought against the creditor or assignee, or the attorney of record in the case of a judgment, to enforce the requirements of this subsection is entitled to reasonable attorney fees and costs.

(4)~~(3)~~ When ~~Whenever~~ a writ of execution has been issued, docketed, and indexed with a sheriff and the judgment upon which it was issued has been fully paid, it is the responsibility of the person ~~party~~ receiving payment to request, in writing, addressed to the sheriff, return of the writ of execution as fully satisfied.

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

701.041 Title insurer; mortgage release certificate.—

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

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

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

~~due under or secured by the mortgage.~~

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

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

Section 3. The Legislature finds that the timeliness and accuracy of an estoppel letter is critical because the parties to a real estate transaction must rely on the estoppel letter to establish the loan payoff amount necessary to release the mortgage, which in turn will allow the owner to confer clean title to a buyer or to refinance the property. The Legislature further finds that estoppel letters increasingly contain conditional language disclaiming the ability of an owner to rely on the stated loan payoff amounts, extending even to the return of such payments submitted by owners. These practices create unnecessary delays in the efficient operation of this state's

real estate market, which is a vital economic contributor to this state, and impose needless costs and burdens on property owners and buyers. In addition, the Legislature finds that real estate lending, mortgages, real estate transactions, and estoppel letters are extensively regulated under both Florida and federal law. The Legislature finds and determines that this act makes changes to state law which appropriately balance the parties' interests, are reasonable and necessary to serve and achieve an important state interest, are necessary for the prosperity and welfare of the state and its property owners and inhabitants, and must be applied to existing mortgages in order to provide effective relief.

Section 4. This act applies to all mortgages, and all loans secured by such mortgages, existing as of, or entered into on or after, October 1, 2023.

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

CS/HB 745

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 745 Emergency Communications
SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee, McFarland
TIED BILLS: **IDEN./SIM. BILLS:** SB 1418

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	17 Y, 0 N, As CS	Walsh	Keating
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N	Helpling	Topp
3) Commerce Committee		Walsh	Hamon

SUMMARY ANALYSIS

The Division of Telecommunications (Division) within the Department of Management Service (DMS) is the state entity responsible for developing, maintaining, planning, and implementing a statewide E911 system. The secretary of DMS, or his or her designee, acts as the director of the system and is authorized to coordinate the activities of the system with state, county, local, and private agencies.

The system director also serves as chair of the state's E911 Board, an 11-member body that administers funds derived from fees imposed on each user of voice communications services in Florida.

To fund Florida's E911 system, voice communications services providers collect a fee from their customers on a service identifier basis (e.g., from each active phone line or number with access to the E911 system). All collected fees are deposited into the Emergency Communications Number E911 System Fund, which is segregated into three categories (wireless, prepaid wireless, and non-wireless) and distributed as provided by law to counties and wireless service providers.

The next progression in E911 systems is referred to as Next Generation 911 (NG911). Funds distributed by the E911 Board support routine, ongoing service and maintenance costs of equipment and networks, but do not cover all costs to upgrade systems and implement NG911 technologies.

The bill modifies the powers, duties, and composition of the E911 Board, which is renamed as the Emergency Communications Board (Board), and expands the list of items that may be funded with E911 fee disbursements. The bill modifies the statutory allocation of E911 fee revenues in the wireless category to more closely match the actual allocation approved by the Board and eliminates the small remaining allocation to wireless service providers.

The bill may have an indeterminate positive fiscal impact to the state and a minimal fiscal impact on local governments and the private sector. *See* Fiscal Analysis & Economic Impact Statement.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Since 1974, Florida law has designated the telephone number "911" as the state's emergency communications number to provide rapid direct access to public safety agencies.[1] In 1999, the concept of "Enhanced 911" or "E911" service was established in Florida law to describe 911 service provided to wireless telephone users.[2] Today, under the Emergency Communications Number E911 Act,[3] the term "E911," as used in Florida law, refers more broadly to an enhanced 911 system or service that provides any user of voice communications services[4] with 911 service. E911 service directs calls to appropriate public safety answering points (PSAPs)[5] by selective routing based on the geographical location from which a 911 call originated and provides for automatic number and location identification.[6]

The next progression in E911 systems is referred to as Next Generation 911 (NG911). According to the E911 Board's 2021 Annual Report, NG911 requires a total replacement of legacy 911 systems with Internet Protocol (IP) networks and core services. NG911 includes IP-based 911 call routing systems, geographic information systems, and management information systems to be implemented statewide with interconnectivity among systems and across jurisdictional boundaries. An NG911 call routing system is designed to handle voice, data, text and video on a standardized IP-based platform.[7]

Governance

The Division of Telecommunications (Division) within the Department of Management Service (DMS) is the state entity responsible for developing, maintaining, and implementing a statewide E911 system plan. The secretary of DMS or his or her designee acts as the director of the system and is authorized to coordinate the activities of the system with state, county, local, and private agencies. The system director must consult, cooperate, and coordinate with local law enforcement agencies.[8]

The system director also serves as chair of the state's E911 Board, an 11-member body that administers funds derived from fees imposed on each user of voice communications services with a Florida billing address (place of primary use). The remaining 10 members are appointed by the Governor. Five members must be county 911 coordinators, including one from a rural county, one from a medium county, one from a large county, and two at-large representatives recommended by the Florida Association of Counties in consultation with the county 911 coordinators. The other five members represent the telecommunications industry, including three representatives of local exchange companies and two representatives of the wireless industry. Members are appointed to staggered 4-year terms, subject to a limit of two successive terms.[9]

Funding

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[1] Ch. 74-357, L.O.F.
[2] *See* Ch. 99-367, L.O.F.
[3] Ch. 2007-78, L.O.F.
[4] S. 365.172, F.S., defines "voice communications services" as "two-way voice service, through the use of any technology, which actually provides access to E911 services, and includes communications services, as defined in s. 202.11, which actually provide access to E911 services and which are required to be included in the provision of E911 services pursuant to orders and rules adopted by the Federal Communications Commission. The term includes voice-over-Internet-protocol service. …"
[5] S. 365.172, F.S., defines a "public safety answering point" as "the public safety agency that receives incoming 911 requests for assistance and dispatches appropriate public safety agencies to respond to the requests in accordance with the state E911 plan."
[6] E911 service provided by a wireless provider is subject to orders and rules of the Federal Communications Commission. *See* s. 365.172(3)(h) and (t), F.S.
[7] Florida Department of Management Services, *2021 E911 Board Annual Report*, at p. 9-10, available at https://www.dms.myflorida.com/content/download/155677/1033501/E911BoardAnnualReportFor20202021final_2.28.2022.pdf (last visited March 3, 2023).
[8] S. 365.171(4) and (5), F.S.
[9] S. 365.172(5), F.S.

To fund Florida's E911 system, voice communications services providers (providers) collect a fee from their customers on a service identifier basis (e.g., from each active phone line or number with access to the E911 system). The fee is imposed upon local exchange services, prepaid and billed wireless services, and other voice communications services that have access to E911 service, such as Voice over Internet Protocol.[10] Sellers of prepaid wireless services (sellers) must collect this fee from customers with each retail transaction in the state.[11] The fee is currently set at a uniform statewide rate of 40 cents per month for each service identifier.[12] The E911 Board is authorized to adjust the fee as necessary to ensure full recovery of the costs incurred by counties and wireless service providers to provide E911 service and to prevent over-recovery of those costs, subject to a cap of 50 cents per month for each service identifier.[13,14]

All collected fees are deposited into the Emergency Communications Number E911 System Fund, which is segregated into three categories: wireless, prepaid wireless, and non-wireless.[15] Three percent of the funds in each category is distributed by the E911 Board to rural counties to provide facilities and network and service enhancements and assistance for their 911 or E911 systems and for grants to rural counties to upgrade and replace E911 systems. Further, the E911 Board may retain no more than one percent of the funds from each category to cover its administrative costs. For Fiscal Year (FY) 2020-2021, the E911 Board distributed the remaining 96 percent of funds to counties and wireless providers as follows:[16]

- Wireless Category
  - 94.75 percent to counties for authorized expenditures and costs to comply with FCC requirements for E911 service (funds allocated by county based on total number of service identifiers in each county)
  - An additional 1 percent to rural county grants
  - 0.25 percent to wireless service providers for reimbursement of actual costs to provide 911 or E911 service and costs to comply with FCC requirements for E911 service[17]

- Prepaid Wireless Category
  - 61 percent to counties for authorized expenditures (funds allocated by county based on total amount of fees reported and paid in each county)
  - 35 percent for statewide grants awarded by the E911 Board[18]

- Non-Wireless Category
  - 96 percent to counties for authorized expenditures (funds allocated by county based on total number of service identifiers in each county

The E911 Board's 2021 Annual Report states that, for FY 2020-2021, the allocation from the wireless category to wireless service providers was decreased from 8 percent down to 0.25 percent due to a

[10] S. 365.172(8), F.S.
[11] S. 365,172(9), F.S. Collection is optional for prepaid wireless service sales of 10 minutes or less or $5 or less.
[12] S. 365.172(8), F.S. In counties that, before July 1, 2007, had adopted an ordinance or resolution establishing a fee less than 50 cents per month per line, the applicable rate may be higher than 40 cents per month, but any future changes must be consistent with the uniform statewide rate. Those counties are Duval (44 cents per month), Lee (44 cents per month), and Volusia (41 cents per month). Florida Department of Management Service, *supra* note 5, at 7.
[13] *Id.*
[14] The statutory fee cap of 50 cents per month has remained unchanged since its adoption in 1985. *See* Ch. 85-317, L.O.F.
[15] S. 365.172(3)(k), (8)(d), and (9)(i); s. 365.173(1)(c), F.S. Each provider may retain 1 percent of collected fees as reimbursement for its administrative costs to bill, collect, and remit the fee. Each seller of prepaid wireless service may retain 5 percent of collected fees as a collection allowance. Fees collected from prepaid wireless service are remitted to the Department of Revenue, which may retain up to 3.2 percent of remitted fees to reimburse its direct costs to administer collection and remittance of the fees.
[16] S. 365.173 (2), F.S., specifies the allocation of these funds but authorizes the E911 Board to modify allocations if necessary to ensure full cost recovery or prevent over-recovery of costs incurred in the provision of E911 service. The allocations presented above are based on the E911 Board's 2021 Annual Report, *supra* note 6.
[17] The E911 Board may use, as needed, undisbursed funds from the allotment to wireless service providers to provide grants to counties for purposes of upgrading E911 systems. S. 365.172(6)(a)3.b., F.S.
[18] Grants awarded with these funds are prioritized as follows: first, for counties to upgrade or replace E911 systems; next, for counties to develop and maintain statewide 911 routing, geographic, and management information systems; last, for counties to develop and maintain next-generation 911 services and equipment. S. 365.173(h), F.S.

decrease in the need for reimbursements to those providers. As a result, the allocation to counties increased by 6.75 percent, and the remaining 1 percent was allocated to rural county grants.

Authorized expenditures include all costs directly attributable to the establishment or provision of E911 service and contracting for E911 services. Specifically, these costs include the acquisition, implementation, and maintenance of PSAP equipment and E911 service features, as defined in voice communications services providers' published schedules, or the acquisition, installation, and maintenance of other E911 equipment, including:

- Circuits
- Call answering equipment
- Call transfer equipment
- ANI or ALI controllers
- ANI or ALI displays
- Station instruments
- E911 telecommunications systems
- Visual call information and storage devices
- Recording equipment
- Telephone devices and other equipment for the hearing impaired used in the E911 system
- PSAP backup power systems
- Consoles
- Automatic call distributors, and interfaces, including hardware and software, for computer-aided dispatch (CAD) systems
- Integrated CAD systems for that portion of the systems used for E911 call taking
- GIS system and software equipment and information displays
- Network clocks
- Salary and associated expenses for E911 call takers for that portion of their time spent taking and transferring E911 calls, salary, and associated expenses for a county to employ a full-time equivalent E911 coordinator position and a full-time equivalent mapping or geographical data position, and technical system maintenance, database, and administration personnel for the portion of their time spent administrating the E911 system
- Emergency medical, fire, and law enforcement prearrival instruction software
- Charts and training costs
- Training costs for PSAP call takers, supervisors, and managers in the proper methods and techniques used in taking and transferring E911 calls
- Costs to train and educate PSAP employees regarding E911 service or E911 equipment, including fees collected by the Department of Health for the certification and recertification of 911 public safety telecommunicators as required under s. 401.465, F.S.
- Expenses required to develop and maintain all information, including ALI and ANI databases and other information source repositories, necessary to properly inform call takers as to location address, type of emergency, and other information directly relevant to the E911 call-taking and transferring function
- Next-generation E911 network services, next-generation E911 database services, next-generation E911 equipment, and wireless E911 routing systems

For FY 2020-2021, the E911 Board disbursed a total of $121.3 million. Of that amount, $104.8 million was disbursed to counties, $1.14 million was disbursed to wireless service providers, and $2 million was retained to cover the operation and administration of the E911 Board. The remaining $13.36 million was disbursed to counties as grants and supplemental disbursements.[19]

Status of Statewide E911, NG-911, and Text-to-911 Services

All 67 counties in Florida maintain and upgrade non-wireless and wireless E911 systems. Funds distributed by the E911 Board support routine, ongoing service and maintenance costs of equipment

[19] Florida Department of Management Services, *supra* note 7, at 8.

and networks, but do not cover all costs to upgrade systems and implement NG911 technologies. In 2021, fee revenue, special disbursements, and grants funded 44 percent of counties' total expenses.[20]

An early step toward NG911 is the provision of Text-to-911 service, which uses Short Message Service (SMS) to allows citizens who cannot hear or speak to gain access to 911 without the requirement of special equipment or subscription to relay services for the hearing and speech impaired. As of December 31, 2021, 85 percent of Florida counties (57 of 67), offered Text-to-911 service, with the remainder estimated to be completed in 2022.[21]

According to the E911 Board, some of the more progressive and financially capable counties in the state have already either started the NG911 planning for their counties or have begun the transition to NG-911 ready systems and networks without grant or supplemental funding sources. Some counties are taking advantage of E911 State Grant opportunities to initiate the NG911 transition.

Effect of the Bill

The bill modifies the powers, duties, and composition of the E911 Board, which is renamed as the Emergency Communications Board (Board), and expands the list of items that may be funded with E911 fee disbursements. The bill modifies the statutory allocation of E911 fee revenues in the wireless category to more closely match the actual allocation approved by the Board and eliminates the small remaining allocation to wireless service providers.

The bill amends the short title of s. 365.172, F.S., to reflect a move away from using the term "E911" in statute, by renaming the section the "Emergency Communications Act" (Act). The bill further reflects this change by replacing or striking language referencing "E911" throughout ss. 365.171-365.174, F.S., s. 365.177, F.S., and s. 212.05965, F.S.

The bill modifies the legislative intent of the Act. Per the changes in the bill, it is the intent of the Legislature that the Act:

- Establish and implement statewide emergency communications and response capabilities using modern technologies and methods;
- Provide funds to counties and state agencies that operate 911 centers for the costs of public safety and emergency response capabilities and costs incurred to purchase, upgrade, and maintain 911, computer aided dispatch, and interoperable radio communications systems;
- Levy a reasonable fee on users of voice communications services to accomplish these purposes;
- Provide for an Emergency Communications Board that is competitively and technologically neutral as to all communications services providers, not just voice communications services providers; and
- Ensure that the fee established by the Act for emergency communications systems is used exclusively by counties and state agencies that operate 911 centers.

The bill modifies the powers, duties, and composition of the newly renamed Emergency Communications Board (Board). The bill states that the Board, with oversight by the Division of Telecommunications (Division), is established to:

- Administer governance for how emergency infrastructure and information are handled from receipt at a PSAP and routing to first responders;
- Create a financial model for the state government and local governments to use existing revenue sources to invest in public safety communication and technology for first responders; and
- Administer a financially stable model of public safety communications and technology that will benefit the state government, local government, residents, and visitors.

[20] *Id.*, at 9, 15.
[21] *Id.*

The bill specifies that the public safety funding administered by the board is not limited to, but must focus on:

- Next Generation 911 (NG911);[22]
- Emergency Services IP Network (ESInet);
- Computer Aided Dispatch (CAD);[23]
- Interfaces, including Land Mobile Radio (LMR), Smart City Technology,[24] and In-Building Coverage;
- Public Safety Broadband Networks; and
- Cybersecurity.

The bill revises the structure of the Board, by reducing the number of Board members from eleven to nine, one of whom must be the system director. The bill states that the remaining eight members of the Board must be Florida residents and appointed by the Governor. The bill provides that consideration should be given for members from rural, medium, and large counties from a broad range of fields, including, but not limited to, experience in law enforcement, fire response, emergency medical services, 911 coordination, public safety dispatch, and telecommunications. The bill updates how the Governor may initially appoint members, by staggering the terms for which the initial Board members may be appointed.

Under the bill, the Board is given the additional responsibility of ensuring the interoperability of and connectivity between public safety communication systems within the state, such as:

- Call routing accuracy and timeliness of response;
- Improved interagency communication and situational awareness;
- Improved interagency connectivity;
- Improved response times;
- Maximized use of emerging technologies;
- Improved lifecycle management of the emergency response systems, equipment, and services that enable public safety officials to share information securely;
- Policy and procedure across public safety agencies; and
- Resilient, and secure emergency communication systems to reduce cybersecurity threats and vulnerabilities.

The bill provides that the Board may create subcommittees to advise the Board as needed.

The bill specifies that the Board may establish a schedule for implementing NG911 systems, public radio communications systems, and other public safety radio communications improvements. The bill authorizes the Board to prioritize disbursement of revenues pursuant to the established schedule in order to implement 911 services in the most efficient and cost-effective manner.

Under the current law, the Board must establish a committee to review requests for proposals. The bill removes the requirement that the committee include two members of the board, one of which is a county 911 coordinator and one of which represents a voice communications services providers.

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[22] The bill defines "Next Generation 911" or "NG911" as an Internet Protocol (IP) -based system comprised of:
- Managed Emergency Services IP networks (ESInets);
- Functional elements (applications); and
- Databases that replicate traditional E911 features and functions and provide additional capabilities.

The bill further clarifies that the NG911 system is "designed to provide access to emergency services from all connected communications sources and provide multimedia data capabilities for Public Safety Answering Points (PSAPs) and other emergency service organizations."

[23] The bill defines "Computer Aided Dispatch" or "CAD" as "a computerized system for entering, tracking, dispatching, and resolving requests for public safety services."

[24] Smart city technology refers to technology, including sensors, that a city uses to collect data for resource management; examples include: smart parking spots, water conservation technology, smart traffic system management, and adaptable buildings. *Smart City Technologies That Could Soon Change The Way We Live And Work*, Forbes (Jul. 27, 2022), https://www.forbes.com/sites/forbestechcouncil/2022/07/27/smart-city-technologies-that-could-soon-change-the-way-we-live-and-work/?sh=1a2c97371be0 (last visited Apr. 5, 2023).

Per the bill, the Board is also responsible for administering the Public Safety Emergency Communications Systems Fee (formerly the "E911" fee), including receiving revenues, distributing portions of the revenues, accounting for the moneys maintained in the fund, and providing annual reports for review and submission to the Governor and the Legislature.

The bill states that before the Board distributes revenue from the fund, it must provide 90 days' written notice to all counties and state agencies that operate 911 centers, and publish electronically an approved application process. The bill provides means by which county applications must be prioritized, which shall be based on the availability of funds, current system life expectancy, and system replacement needs. The board must, within its authority, ensure that county recipients of the funds use the funds only for the purpose for which they were provided. If the Board determines that the funds were not used for the purpose for which they were provided, the Board may, within its authority, secure county repayment of such funds.

The bill specifies that the Board must meet quarterly to review and authorize the schedule of fee allocation transfers and distributions to the counties and state agencies that operate 911 centers.

The bill strikes the following provisions under current law related to the Public Safety Emergency Communications Systems Fee:

- A county that before July 1, 2007, had a adopted an ordinance or resolution establishing a fee of less than 50 cents per month per access line is an exception to the requirement that the fee of 40 cents per month be applied uniformly and throughout the state; and
- The requirement that when the Board sets percentages or contemplates any adjustments to the fee, that the Board consider revenues currently allocated for wireless service provider costs for implementing E911 service and projected costs for implementing E911 service, including recurring costs for Phase I and Phase II and the effect of new technologies.

For the purposes of the fees, the bill states that emergency communications and 911 service include the functions relating to the receipt and transfer of requests for emergency assistance, of database management, call taking, and location verification. The bill also updates the list of costs that are eligible for expenditure of moneys derived from imposition of the fee, and requires that these costs be attributable to emergency communications equipment and services related to a primary or secondary public safety answering point. These costs now include:

- NG911 telecommunications systems;
- Emergency Services IP Network ESInet;
- Automatic call distributors,
- Interfaces, including hardware and software, for CAD systems, public safety land mobile radio systems (LMR) and radios consoles that provide two-way communication with responders, and in-building coverage;
- Cybersecurity, including hardware, software, and services;
- Salary associated with expenses for all 911 call takers and emergency dispatchers;
- Training costs for dispatchers in proper methods and techniques used in taking and transferring 911 calls;
- Costs to train and educate employees regarding 911 radio service or NG911 equipment; and
- Expenses required to develop and maintain all databases and information source repositories necessary to properly inform call takers as to smart city technology data, public safety broadband networks, and other information directly relevant to the processing of a request for emergency assistance.

The bill further clarifies that money from the fee may not be used for costs for utilities.

The bill modifies the statutory allocation of fee revenues in the wireless category by providing that:

- Ninety-four of the funds shall be distributed each month to counties, based on the total number of service identifiers in each county and shall be used exclusively for payment of authorized expenditures;
- One percent of the funds shall be distributed to state agencies that operate 911 centers and shall be used exclusively for authorized expenditures;
- An additional one percent of the funds shall be used to make monthly distributions to rural counties for certain purposes; and
- The Board will no longer transfer twenty percent of the funds to wireless providers for the cost of operating 911 or E911 services.

Lastly, the bill provides that the Division shall develop a new plan by December 30, 2023, to upgrade 911 public safety answering points within the state to allow the transfer of an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 365.172, F.S., relating to emergency communications.

Section 2. Amends s. 365.173, F.S., relating to Emergency Communications Fund.

Section 3. Amends s. 365.177, F.S., relating to transfers of E911 calls between systems.

Section 4. Amends s. 212.05965, F.S., relating to taxation of marketplace sales.

Section 5. Amends s. 365.171, F.S., relating to emergency communications state plan.

Section 6. Amends s. 365.174, F.S., relating to proprietary confidential business information.

Section 7. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may increase revenues to state agencies to the extent that funds are transferred for the operation of state 911 call centers.

2. Expenditures:

   The bill authorizes public safety emergency communications fees to be used by state agencies that have 911 call centers to pay for costs associated with public safety emergency response capabilities and costs incurred to purchase, upgrade, and maintain 911 systems, computer aided dispatch, and systems to create interoperable radio communications systems.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Three counties (Duval, Lee, and Volusia) will see a slight reduction in fee revenues from their Local Exchange Carriers (LECs). Currently Duval and Lee receive $0.44 and Volusia $0.41 per subscriber from their LECs and $0.40 from VoIP, wireless and prepaid providers. All other counties receive $0.40 across the board. This legislation will bring Duval, Lee, and Volusia counties into

alignment with the rest of the state. The decrease in revenue for these counties will be mitigated by the increase of wireless and VoIP subscribers as LEC subscribers upgrade to newer technology.[25]

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Wireless carries may see a small decrease in funds used for 911 implementation.

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:

The bill indicates that the Board is established to "[a]dminister governance for how emergency infrastructure and information, such as voice, text, data, and images, are handled from receipt at a PSAP and routing to first responders". This language is ambiguous as to whether the Board must adopt policies, enforce them, or both. The bill also states that the Board is established to "[a]dminister a financially sustainable model dedicated to public safety communications and technology . . ." The bill does not indicate what type of model is contemplated. An amendment is anticipated to address these concerns.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 7, 2023, the Energy, Communications & Cybersecurity Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Corrects obsolete references to "E911;"
- Clarifies the services on which public safety funding must be focused;
- Changes the number of Board members and refines the criteria and process for Board member appointment;
- Requires that the Board notify state agencies that operate 911 centers of an approved application process for funding;
- Reinserts the following provisions:
    - Providers are not obligated to take legal action to enforce collecting the public safety emergency communications systems fee (fee) from customers, and

[25] Florida Department of Management Services, Agency Analysis of 2023 HB 745, p. 5, (March 15, 2023).

    - A county subscribing to 911 service remains liable for charges owed to the provider delivering the 911 service or equipment;
- Clarifies that services related to a primary or secondary PSAP are eligible for funds derived from the fee;
- Updates the following items eligible to receive funds derived from the fee:
    - Types of radios, and
    - Types of databases and other information source repositories;
- Changes the percentage of funds in the wireless category to be distributed each month to counties to ninety-four percent;
- Requires one percent of the funds in the wireless category to be distributed to state agencies that operate 911 centers; and
- Clarifies that distributed funds shall be used for *authorized* expenditures.

This analysis is drafted to the committee substitute as passed by the Energy, Communications & Cybersecurity Subcommittee.

A bill to be entitled

An act relating to emergency communications; amending s. 365.172, F.S.; revising short title; revising legislative intent; revising and providing definitions; renaming the E911 Board as the Emergency Communications Board; providing the purpose of the board; revising the composition of the board; establishing board responsibilities; requiring the board to administer fees; authorizing the board to create subcommittees; authorizing the board to establish schedules for implementing certain wireless systems and improvements; establishing notice and publication requirements before distribution of revenues; providing for priority of county applications for funds; requiring board oversight of such funds; eliminating certain authority of the board; providing for the board's authority to implement changes to the allocation percentages or to adjust the fee; revising the frequency of board meetings and the business to be conducted at such meetings; revising the composition of a committee that reviews requests for proposals from the board regarding independent accounting firm selection; revising provisions relating to the public safety emergency communications systems fee; requiring

uniform application and imposition of the fee; revising the factors that the board considers when setting percentages or contemplating adjustments to the fee; updating provisions relating to the prepaid wireless public safety emergency communications systems fee; revising emergency communications and 911 service functions; revising the types of emergency communications equipment and services that are eligible for expenditure of moneys derived from the fee; amending s. 365.173, F.S.; renaming the Communications Number E911 System Fund as the Emergency Communications Fund; revising the percent distribution of the fund to be used exclusively for payment of certain authorized expenditures; removing the percent distribution of wireless providers; adding a specified percent distribution to rural counties; amending s. 365.177, F.S.; extending the date by which the Division of Telecommunications within the Department of Management Services must develop a plan to upgrade 911 public safety answering points; amending ss. 212.05965, 365.171, and 365.174, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 365.172, Florida Statutes, is amended to read:

365.172 Emergency communications. ~~number "E911."~~

(1) SHORT TITLE.—This section may be cited as the "Emergency Communications ~~Number E911~~ Act."

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to:

(a) Establish and implement a comprehensive statewide emergency communications and response capability using modern technologies and methods. ~~telecommunications number system that will provide users of voice communications services within the state rapid direct access to public safety agencies by accessing the telephone number "911."~~

(b) Provide funds to counties and state agencies that operate 911 centers to pay certain costs associated with their public safety emergency response capabilities and costs incurred to purchase, upgrade, and maintain 911 systems, computer aided dispatch, and systems to create interoperable radio communications systems ~~E911 or 911 systems, to contract for E911 services, and to reimburse wireless telephone service providers for costs incurred to provide 911 or E911 services~~.

(c) Levy a reasonable fee on users of voice communications services, unless otherwise provided in this section, to accomplish these purposes.

(d) Provide for an Emergency Communications Board ~~E911 board~~ to administer the fee, with oversight by the office, in a manner that is competitively and technologically neutral as to all ~~voice~~ communications services providers.

(e) Ensure that the fee established for emergency communications systems is used exclusively ~~for recovery by wireless providers and~~ by counties and state agencies that operate 911 centers for costs associated with developing and maintaining emergency communications ~~E911~~ systems and networks in a manner that is competitively and technologically neutral as to all ~~voice~~ communications services providers.

It is further the intent of the Legislature that the fee authorized or imposed by this section not necessarily provide the total funding required for establishing or providing emergency communications systems and services ~~E911 service~~.

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, 365.174, and 365.177, the term:

(a) "Authorized expenditures" means expenditures of the fee, as specified in subsection (10).

(b) "Automatic location identification" means the capability of the E911 service which enables the automatic display of information that defines the approximate geographic location of the wireless telephone, or the location of the address of the wireline telephone, used to place a 911 call.

(c) "Automatic number identification" means the capability of the E911 service which enables the automatic display of the service number used to place a 911 call.

(d) "Board" or "Emergency Communications Board" ~~"E911 Board"~~ means the board ~~of directors of the E911 Board~~ established in subsection (5).

(e) "Building permit review" means a review for compliance with building construction standards adopted by the local government under chapter 553 and does not include a review for compliance with land development regulations.

(f) "Collocation" means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antennae.

(g) "Computer Aided Dispatch" or "CAD" means a computerized system for entering, tracking, dispatching, and resolving requests for public safety services.

(h) ~~(g)~~ "Designed service" means the configuration and manner of deployment of service the wireless provider has designed for an area as part of its network.

(i) ~~(h)~~ "Enhanced 911" or "E911" means an enhanced 911 system or enhanced 911 service that is an emergency telephone

system or service that provides a subscriber with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the state plan under s. 365.171, and that provides for automatic number identification and automatic location-identification features. The 911 ~~E911~~ service provided by a wireless provider means E911 as defined in the order.

(j) ~~(i)~~ "Existing structure" means a structure that exists at the time an application for permission to place antennae on a structure is filed with a local government. The term includes any structure that can structurally support the attachment of antennae in compliance with applicable codes.

(k) ~~(j)~~ "Fee" or "public safety emergency communications systems fee" means the ~~E911~~ fee authorized and imposed under subsections (8) and (9).

(l) ~~(k)~~ "Fund" means the Emergency Communications ~~Number E911 System~~ Fund established in s. 365.173 and maintained under this section for the purpose of recovering the costs associated with providing emergency communications ~~911 service or E911 service~~, including the costs of implementing the order. The fund shall be segregated into wireless, prepaid wireless, and nonwireless categories.

(m) ~~(l)~~ "Historic building, structure, site, object, or district" means any building, structure, site, object, or

district that has been officially designated as a historic building, historic structure, historic site, historic object, or historic district through a federal, state, or local designation program.

(n) ~~(m)~~ "Land development regulations" means any ordinance enacted by a local government for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, the local government's comprehensive plan, or any other ordinance concerning any aspect of the development of land. The term does not include any building construction standard adopted under and in compliance with chapter 553.

(o) ~~(n)~~ "Local exchange carrier" means a "competitive local exchange telecommunications company" or a "local exchange telecommunications company" as defined in s. 364.02.

(p) ~~(o)~~ "Local government" means any municipality, county, or political subdivision or agency of a municipality, county, or political subdivision.

(q) ~~(p)~~ "Medium county" means any county that has a population of 75,000 or more but less than 750,000.

(r) ~~(q)~~ "Mobile telephone number" or "MTN" means the telephone number assigned to a wireless telephone at the time of initial activation.

(s) "Next Generation 911" or "NG911" means an Internet Protocol(IP)-based system comprised of managed Emergency

Services IP networks (ESInets), functional elements (applications), and databases that replicate traditional E911 features and functions and provides additional capabilities. The NG911 system is designed to provide access to emergency services from all connected communications sources and provide multimedia data capabilities for Public Safety Answering Points (PSAPs) and other emergency service organizations.

(t) ~~(r)~~ "Nonwireless category" means the revenues to the fund received from voice communications services providers other than wireless providers.

(u) ~~(s)~~ "Office" means the Division of Telecommunications within the Department of Management Services, as designated by the secretary of the department.

(v) ~~(t)~~ "Order" means:

1. The following orders and rules of the Federal Communications Commission issued in FCC Docket No. 94-102:

a. Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s. 20.03 and the creation of s. 20.18 of Title 47 of the Code of Federal Regulations adopted by the Federal Communications Commission pursuant to such order.

b. Memorandum and Order No. FCC 97-402 adopted on December 23, 1997.

c. Order No. FCC DA 98-2323 adopted on November 13, 1998.

d. Order No. FCC 98-345 adopted December 31, 1998.

2. Orders and rules subsequently adopted by the Federal Communications Commission relating to the provision of 911 services, including Order Number FCC-05-116, adopted May 19, 2005.

(w) ~~(u)~~ "Prepaid wireless category" means all revenues in the fund received through the Department of Revenue from the fee authorized and imposed under subsection (9).

(x) ~~(v)~~ "Prepaid wireless service" means a right to access wireless service that allows a caller to contact and interact with 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars, which units or dollars expire on a predetermined schedule or are decremented on a predetermined basis in exchange for the right to access wireless service.

(y) ~~(w)~~ "Public agency" means the state and any municipality, county, municipal corporation, or other governmental entity, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(z) ~~(x)~~ "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(aa) ~~(y)~~ "Public safety answering point," "PSAP," or "answering point" means the public safety agency that receives

incoming 911 requests for assistance and dispatches appropriate public safety agencies to respond to the requests in accordance with the state E911 plan.

(bb) ~~(z)~~ "Rural county" means any county that has a population of fewer than 75,000.

(cc) ~~(aa)~~ "Service identifier" means the service number, access line, or other unique identifier assigned to a subscriber and established by the Federal Communications Commission for purposes of routing calls whereby the subscriber has access to the E911 system.

(dd) ~~(bb)~~ "Tower" means any structure designed primarily to support a wireless provider's antennae.

(ee) ~~(cc)~~ "Voice communications services" means two-way voice service, through the use of any technology, which actually provides access to 911 ~~E911~~ services, and includes communications services, as defined in s. 202.11, which actually provide access to 911 ~~E911~~ services and which are required to be included in the provision of 911 ~~E911~~ services pursuant to orders and rules adopted by the Federal Communications Commission. The term includes voice-over-Internet-protocol service. For the purposes of this section, the term "voice-over-Internet-protocol service" or "VoIP service" means interconnected VoIP services having the following characteristics:

1. The service enables real-time, two-way voice

communications;

2. The service requires a broadband connection from the user's locations;

3. The service requires IP-compatible customer premises equipment; and

4. The service offering allows users generally to receive calls that originate on the public switched telephone network and to terminate calls on the public switched telephone network.

(ff) ~~(dd)~~ "Voice communications services provider" or "provider" means any person or entity providing voice communications services, except that the term does not include any person or entity that resells voice communications services and was assessed the fee authorized and imposed under subsection (8) by its resale supplier.

(gg) ~~(ee)~~ "Wireless 911 system" or "wireless 911 service" means an emergency telephone system or service that provides a subscriber with the ability to reach an answering point by accessing the digits 911.

(hh) ~~(ff)~~ "Wireless category" means the revenues to the fund received from a wireless provider from the fee authorized and imposed under subsection (8).

(ii) ~~(gg)~~ "Wireless communications facility" means any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a

wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility.

(jj) ~~(hh)~~ "Wireless provider" means a person who provides wireless service and:

1. Is subject to the requirements of the order; or

2. Elects to provide wireless 911 service, ~~or~~ E911 service, or NG911 service in this state.

(kk) ~~(ii)~~ "Wireless service" means "commercial mobile radio service" as provided under ss. 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term includes service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.

(4) POWERS AND DUTIES OF THE OFFICE.—The office shall

oversee the administration of the fee authorized and imposed under subsections (8) and (9).

(5) THE EMERGENCY COMMUNICATIONS ~~E911~~ BOARD.—

(a) The Emergency Communications ~~E911~~ Board is established ~~to administer~~, with oversight by the office, to:

1. Administer governance for how emergency infrastructure and information, such as voice, text, data, and images, are handled from receipt at a PSAP and routing to first responders;

2. Establish a financial model for the state and local governments to use existing revenue sources to invest in public safety communication and technology for first responders; and

3. Administer a financially sustainable model dedicated to public safety communications and technology that will benefit the state and local governments and all state residents and visitors.

(b) Public safety funding under paragraph (a) must focus on, but not be limited to:

1. Next Generation 911.

2. Emergency Services IP Network (ESInet).

3. Computer Aided Dispatch (CAD).

4. Interfaces:

a. Land Mobile Radio (LMR).

b. Smart City Technology.

c. In-Building Coverage.

5. Public Safety Broadband Networks.

6. Cyber Security.

~~, with oversight by the office, the fee imposed under subsections (8) and (9), including receiving revenues derived from the fee; distributing portions of the revenues to wireless providers, counties, and the office; accounting for receipts, distributions, and income derived by the funds maintained in the fund; and providing annual reports to the Governor and the Legislature for submission by the office on amounts collected and expended, the purposes for which expenditures have been made, and the status of E911 service in this state.~~ In order to advise and assist the office in implementing the purposes of this section, the board, which has the power of a body corporate, has the powers enumerated in subsection (6).

(c)~~(b)~~ The board shall consist of 9 ~~11~~ members, one of whom must be the system director designated under s. 365.171(5), or his or her designee, who shall serve as the chair of the board. The remaining 8 ~~10~~ members of the board shall be appointed by the Governor. All members shall be Florida residents. Consideration should be given for members from rural, medium, and large counties and from a broad range of fields, including, but not limited to, experience in law enforcement, fire response, emergency medical services, 911 coordination, public safety dispatch, and telecommunications ~~and must be composed of 5 county 911 coordinators, consisting of a representative from a rural county, a representative from a~~

~~medium county, a representative from a large county, and 2 at-large representatives recommended by the Florida Association of Counties in consultation with the county 911 coordinators; 3 local exchange carrier member representatives, one of whom must be a representative of the local exchange carrier having the greatest number of access lines in the state and one of whom must be a representative of a certificated competitive local exchange telecommunications company; and 2 member representatives from the wireless telecommunications industry, with consideration given to wireless providers that are not affiliated with local exchange carriers. Not more than one member may be appointed to represent any single provider on the board~~.

(d) ~~(c)~~ The system director, designated under s. 365.171(5), or his or her designee, must be a permanent member of the board. Each of the remaining 8 ~~10~~ members of the board shall be appointed to a 4-year term and may not be appointed to more than two successive terms. However, for the purpose of staggering terms, three ~~two~~ of the original board members shall be appointed to terms of 4 years, three ~~two~~ shall be appointed to terms of 3 years, and two ~~four~~ shall be appointed to terms of 2 years, as designated by the Governor. A vacancy on the board shall be filled in the same manner as the original appointment.

(e) The board shall be responsible for ensuring interoperability of and connectivity between public safety

communication systems within the state, including, but not limited to, the following:

1. Call routing accuracy and timeliness of response.

2. Improved interagency communication and situational awareness.

3. Improved interagency system connectivity.

3. Improved response times.

4. Maximized use of emerging technologies.

5. Improved lifecycle management of the systems, equipment, and services that enable responders and public safety officials to share information securely.

6. Developed governance, policy, and procedure across public safety agencies.

7. Established resilient and secure emergency communication systems to reduce cybersecurity threats and vulnerabilities.

(f) The board shall administer the fee imposed under subsections (8) and (9), including receiving revenues derived from the fee; distributing portions of the revenues to counties, state agencies that operate 911 centers, and the office; accounting for receipts, distributions, and income derived by the funds maintained in the fund; and providing annual reports for review and submission to the Governor and the Legislature on amounts collected and expended, the purposes for which expenditures have been made, and the status of emergency

communications services in this state.

(g) The board may create subcommittees to advise the board, as needed.

(6) AUTHORITY OF THE BOARD; ANNUAL REPORT.—

(a) The board shall:

1. Administer the public safety emergency communications systems ~~E911~~ fee.

2. Implement, maintain, and oversee the fund.

3. Review and oversee the disbursement of the revenues deposited into the fund as provided in s. 365.173.

a. The board may establish a schedule for implementing wireless NG911 systems, public safety radio communications systems, and other public safety communications improvements ~~E911 service by service area,~~ and prioritize disbursements of revenues from the fund to ~~providers and~~ rural counties as provided in s. 365.173(2)(f) ~~s. 365.173(2)(e) and (g)~~ pursuant to the schedule, in order to implement 911 ~~E911~~ services in the most efficient and cost-effective manner.

b. The board shall provide 90 days' written notice to all counties and state agencies that operate 911 centers and publish electronically an approved application process. Applications shall be prioritized based on the availability of funds, current system life expectancy, and system replacement needs. The board shall take all actions within its authority to ensure that county recipients of such funds use these funds only for the

purpose under which they have been provided and may take any actions within its authority to secure county repayment of revenues upon a determination that the funds were not used for the purpose for which the funds were dispersed.

~~b. Revenues in the fund which have not been disbursed because sworn invoices as required by s. 365.173(2)(c) have not been submitted to the board may be used by the board as needed to provide grants to counties for the purpose of upgrading E911 systems. The counties must use the funds only for capital expenditures or remotely provided hosted 911 answering point call-taking equipment and network services directly attributable to establishing and provisioning E911 services, which may include next-generation deployment. Prior to the distribution of grants, the board shall provide 90 days' written notice to all counties and publish electronically an approved application process. County grant applications shall be prioritized based on the availability of funds, current system life expectancy, system replacement needs, and Phase II compliance per the Federal Communications Commission. No grants will be available to any county for next-generation deployment until all counties are Phase II complete. The board shall take all actions within its authority to ensure that county recipients of such grants use these funds only for the purpose under which they have been provided and may take any actions within its authority to secure county repayment of grant revenues upon determination that the~~

~~funds were not used for the purpose under which they were provided.~~

~~c. When determining the funding provided in a state 911 grant application request, the board shall take into account information on the amount of carryforward funds retained by the counties. The information will be based on the amount of county carryforward funds reported in the financial audit required in s. 365.173(2)(d). E911 State Grant Program funding requests will be limited by any county carryforward funds in excess of the allowable 30 percent amount of fee revenue calculated on a 2-year basis.~~

~~d. The board shall reimburse all costs of a wireless provider in accordance with s. 365.173(2)(e) before taking any action to transfer additional funds.~~

~~e. After taking the action required in sub-subparagraphs a.-d., the board may review and, with all members participating in the vote, adjust the percentage allocations or adjust the amount of the fee as provided under paragraph (8)(g), and, if the board determines that the revenues in the wireless category exceed the amount needed to reimburse wireless providers for the cost to implement E911 services, the board may transfer revenue to the counties from the existing funds within the wireless category. The board shall disburse the funds equitably to all counties using a timeframe and distribution methodology established by the board.~~

4. Review documentation submitted by wireless providers which reflects current and projected funds derived from the fee. ~~, and the expenses incurred and expected to be incurred in order to comply with the E911 service requirements contained in the order for the purposes of:~~

~~a. Ensuring that wireless providers receive fair and equitable distributions of funds from the fund.~~

~~b. Ensuring that wireless providers are not provided disbursements from the fund which exceed the costs of providing E911 service, including the costs of complying with the order.~~

~~c. Ascertaining the projected costs of compliance with the requirements of the order and projected collections of the fee.~~

~~d. Implementing changes to the allocation percentages or adjusting the fee under paragraph (8)(h).~~

5. Implement changes to the allocation percentages or adjust the fee pursuant to s. 365.173.

6.~~5.~~ Meet quarterly ~~monthly~~ in the most efficient and cost-effective manner, including telephonically when practical, for the business to be conducted, to review and authorize the schedule of fee allocation transfer and distribution to the counties and state agencies that operate 911 centers ~~approve or reject, in whole or in part, applications submitted by wireless providers for recovery of moneys deposited into the wireless category, and to authorize the transfer of, and distribute, the fee allocation to the counties~~.

7.~~6.~~ Hire and retain employees, which may include an independent executive director who shall possess experience in the area of telecommunications and emergency 911 issues, for the purposes of performing the technical and administrative functions for the board.

8.~~7.~~ Make and enter into contracts, pursuant to chapter 287, and execute other instruments necessary or convenient for the exercise of the powers and functions of the board.

9.~~8.~~ Sue and be sued, and appear and defend in all actions and proceedings, in its corporate name to the same extent as a natural person.

10.~~9.~~ Adopt, use, and alter a common corporate seal.

11.~~10.~~ Elect or appoint the officers and agents that are required by the affairs of the board.

12.~~11.~~ The board may adopt rules under ss. 120.536(1) and 120.54 to implement this section and ss. 365.173 and 365.174.

13.~~12.~~ Provide coordination, support, and technical assistance to counties to promote the deployment of advanced public safety emergency communications ~~911 and E911~~ systems in the state.

14.~~13.~~ Provide coordination and support for educational opportunities related to 911 ~~E911~~ issues for the public safety emergency communications ~~E911~~ community in this state.

15.~~14.~~ Act as an advocate for issues related to public safety emergency communications ~~E911~~ system functions, features,

and operations to improve the delivery of public safety emergency communications ~~E911~~ services to the residents of and visitors to this state.

16.~~15.~~ Coordinate input from this state at national forums and associations, to ensure that policies related to public safety emergency communications ~~E911~~ systems and services are consistent with the policies of the public safety emergency communications ~~E911~~ community in this state.

17.~~16.~~ Work cooperatively with the system director established in s. 365.171(5) to enhance the state of public safety emergency communications ~~E911~~ services in this state and to provide unified leadership for all public safety emergency communications ~~E911~~ issues through planning and coordination.

18.~~17.~~ Do all acts and things necessary or convenient to carry out the powers granted in this section in a manner that is competitively and technologically neutral as to all voice communications services providers, including, but not limited to, consideration of emerging technology and related cost savings, while taking into account embedded costs in current systems.

19.~~18.~~ Have the authority to secure the services of an independent, private attorney via invitation to bid, request for proposals, invitation to negotiate, or professional contracts for legal services already established at the Division of Purchasing of the Department of Management Services.

(b) Board members shall serve without compensation; however, members are entitled to per diem and travel expenses as provided in s. 112.061.

(c) By February 28 of each year, the board shall prepare a report for submission by the office to the Governor, the President of the Senate, and the Speaker of the House of Representatives which addresses for the immediately preceding state fiscal year and county fiscal year:

1. The annual receipts, including the total amount of fee revenues collected by each provider, the total disbursements of money in the fund, ~~including the amount of fund-reimbursed expenses incurred by each wireless provider to comply with the order,~~ and the amount of moneys on deposit in the fund.

2. Whether the amount of the fee and the allocation percentages set forth in s. 365.173 have been or should be adjusted to comply with the ~~requirements of the order or other~~ provisions of this chapter, and the reasons for making or not making a recommended adjustment to the fee.

3. Any other issues related to providing emergency communications ~~E911~~ services.

4. The status of public safety emergency communications ~~E911~~ services in this state.

(7) REQUEST FOR PROPOSALS FOR INDEPENDENT ACCOUNTING FIRM.—

(a) The board shall issue a request for proposals as

provided in chapter 287 for the purpose of retaining an independent accounting firm. The independent accounting firm shall perform all material administrative and accounting tasks and functions required for administering the fee. The request for proposals must include, but need not be limited to:

1. A description of the scope and general requirements of the services requested.

2. A description of the specific accounting and reporting services required for administering the fund, including processing checks and distributing funds as directed by the board under s. 365.173.

3. A description of information to be provided by the proposer, including the proposer's background and qualifications and the proposed cost of the services to be provided.

(b) The board shall establish a committee to review requests for proposals which must include the statewide emergency communications systems ~~E911 system~~ director designated under s. 365.171(5), or his or her designee, and two members of the board~~, one of whom is a county 911 coordinator and one of whom represents a voice communications services provider~~. The review committee shall review the proposals received by the board and recommend an independent accounting firm to the board for final selection. By agreeing to serve on the review committee, each member of the review committee shall verify that he or she does not have any interest or employment, directly or

indirectly, with potential proposers which conflicts in any manner or degree with his or her performance on the committee.

(c) The board may secure the services of an independent accounting firm via invitation to bid, request for proposals, invitation to negotiate, or professional contracts already established at the Division of Purchasing, Department of Management Services, for certified public accounting firms, or the board may hire and retain professional accounting staff to accomplish these functions.

(8) PUBLIC SAFETY EMERGENCY COMMUNICATIONS SYSTEMS ~~E911~~ FEE.—

(a) Each voice communications services provider shall collect the fee described in this subsection, except that the fee for prepaid wireless service shall be collected in the manner set forth in subsection (9). Each provider, as part of its monthly billing process, shall bill the fee as follows. The fee shall not be assessed on any pay telephone in the state.

1. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber based on the number of access lines having access to the 911 ~~E911~~ system, on a service-identifier basis, up to a maximum of 25 access lines per account bill rendered.

2. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber on a basis of five service-identified access lines for each digital

transmission link, including primary rate interface service or equivalent Digital-Signal-1-level service, which can be channelized and split into 23 or 24 voice-grade or data-grade channels for communications, up to a maximum of 25 access lines per account bill rendered.

3. Except in the case of prepaid wireless service, each wireless provider shall bill the fee to a subscriber on a per-service-identifier basis for service identifiers whose primary place of use is within this state. The fee may ~~shall~~ not be assessed on or collected from a provider with respect to an end user's service if that end user's service is a prepaid wireless service sold before January 1, 2015.

4. Except in the case of prepaid wireless service, each voice communications services provider not addressed under subparagraphs 1., 2., and 3. shall bill the fee on a per-service-identifier basis for service identifiers whose primary place of use is within the state up to a maximum of 25 service identifiers for each account bill rendered.

The provider may list the fee as a separate entry on each bill, in which case the fee must be identified as a fee for 911 ~~E911~~ services. A provider shall remit the fee to the board only if the fee is paid by the subscriber. If a provider receives a partial payment for a monthly bill from a subscriber, the amount received shall first be applied to the payment due the provider

for providing voice communications service.

(b) A provider is not obligated to take any legal action to enforce collection of the fees for which any subscriber is billed. A county subscribing to 911 service remains liable to the provider delivering the 911 service or equipment for any 911 service, equipment, operation, or maintenance charge owed by the county to the provider.

(c) For purposes of this subsection, the state and local governments are not subscribers.

(d) Each provider may retain 1 percent of the amount of the fees collected as reimbursement for the administrative costs incurred by the provider to bill, collect, and remit the fee. The remainder shall be delivered to the board and deposited by the board into the fund. The board shall distribute the remainder pursuant to s. 365.173.

(e) Voice communications services providers billing the fee to subscribers shall deliver revenues from the fee to the board within 60 days after the end of the month in which the fee was billed, together with a monthly report of the number of service identifiers in each county. Each wireless provider and other applicable provider identified in subparagraph (a)4. shall report the number of service identifiers for subscribers whose place of primary use is in each county. All provider subscriber information provided to the board is subject to s. 365.174. If a provider chooses to remit any fee amounts to the board before

they are paid by the subscribers, a provider may apply to the board for a refund of, or may take a credit for, any such fees remitted to the board which are not collected by the provider within 6 months following the month in which the fees are charged off for federal income tax purposes as bad debt.

(f) The rate of the fee may not exceed 50 cents per month for each service identifier. Effective January 1, 2015, the fee shall be 40 cents per month for each service identifier. The fee shall apply uniformly and be imposed throughout the state~~, except for those counties that, before July 1, 2007, had adopted an ordinance or resolution establishing a fee less than 50 cents per month per access line. In those counties the fee established by ordinance may be changed only to the uniform statewide rate no sooner than 30 days after notification is made by the county's board of county commissioners to the board~~.

(g) The board may adjust the allocation percentages for distribution of the fund as provided in s. 365.173. ~~No sooner than June 1, 2015, the board may adjust the rate of the fee under paragraph (f) based on the criteria in this paragraph and paragraph (h).~~ Any adjustment in the rate must be approved by a two-thirds vote of the total number of ~~E911~~ board members. When setting the percentages or contemplating any adjustments to the fee, the board shall consider the following:

~~1. The revenues currently allocated for wireless service provider costs for implementing E911 service and projected costs~~

~~for implementing E911 service, including recurring costs for Phase I and Phase II and the effect of new technologies;~~

1.~~2.~~ The appropriate level of funding needed to fund the rural grant program provided for in s. 365.173(2)(f) ~~s. 365.173(2)(g)~~; and

2.~~3.~~ The need to fund statewide, regional, and county grants in accordance with sub-subparagraph (6)(a)3.b. and s. 365.173(2)(g) ~~s. 365.173(2)(h)~~.

(h) The board may adjust the allocation percentages or adjust the amount of the fee as provided in paragraph (g) if necessary to ensure full cost recovery or prevent over recovery ~~overrecovery~~ of costs incurred in the provision of 911 ~~E911~~ service, including costs incurred or projected to be incurred ~~to comply with the order~~. Any new allocation percentages or reduced or increased fee may not be adjusted for 1 year. In no event shall the fee exceed 50 cents per month for each service identifier. The fee, and any board adjustment of the fee, shall be uniform throughout the state~~, except for the counties identified in paragraph (f)~~. No less than 90 days before the effective date of any adjustment to the fee, the board shall provide written notice of the adjusted fee amount and effective date to each voice communications services provider from which the board is then receiving the fee.

(i) It is the intent of the Legislature that all revenue from the fee be used as specified in s. 365.173(2)(a)-(h) ~~s.~~

~~365.173(2)(a)-(i)~~.

(j) State and local taxes do not apply to the fee. The amount of the ~~E911~~ fee collected by a provider may not be included in the base for imposition of any tax, fee, surcharge, or other charge imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(k) A local government may not levy the fee or any additional fee on providers or subscribers for the provision of 911 ~~E911~~ service.

(l) For purposes of this section, the definitions contained in s. 202.11 and the provisions of s. 202.155 apply in the same manner and to the same extent as the definitions and provisions apply to the taxes levied under chapter 202 on mobile communications services.

(9) PREPAID WIRELESS PUBLIC SAFETY EMERGENCY COMMUNICATIONS SYSTEMS ~~E911~~ FEE.—

~~(a) Effective January 1, 2015, a prepaid wireless E911 fee is imposed per retail transaction at the rate established in paragraph (8)(f). In order to allow sellers of all sizes and technological capabilities adequate time to comply with this subsection, a seller of prepaid wireless service operating in this state before the prepaid wireless E911 fee is imposed shall retain 100 percent of the fee collected under this paragraph for the first 2 months to offset the cost of setup~~.

(a)~~(b)~~ Effective July 1, 2023 ~~March 1, 2015~~, the prepaid

wireless ~~E911~~ fee ~~imposed under paragraph (a)~~ shall be subject to remittance in accordance with paragraph (f) ~~(g)~~. In no event shall the fee exceed 50 cents for each retail transaction. At least 90 days before the effective date of any adjustment to the fee under paragraph (8)(g), the Department of Revenue shall provide written notice of the adjusted fee amount and its effective date to each seller from which the department is then receiving the fee. At least 120 days before the effective date of any adjustment to the fee imposed under this subsection, the board shall provide notice to the Department of Revenue of the adjusted fee amount and effective date of the adjustment.

(b) ~~(c)~~ The prepaid wireless ~~E911~~ fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless ~~E911~~ fee shall be separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer.

(c) ~~(d)~~ For purposes of paragraph (b) ~~(c)~~, a retail transaction that takes place in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Such transaction is deemed to have occurred in the county of the business location. When a retail transaction does not take place at the seller's business location, the transaction shall be treated as taking place at the consumer's shipping address or,

if no item is shipped, at the consumer's address or the location associated with the consumer's mobile telephone number. Such transaction is deemed to have occurred in the county of the consumer's shipping address when items are shipped to the consumer or, when no items are shipped, the county of the consumer's address or the location associated with the consumer's mobile telephone number. A transaction for which the specific Florida county cannot be determined shall be treated as nonspecific.

(d) ~~(c)~~ If a prepaid wireless device is sold for a single, nonitemized price with a prepaid wireless service of 10 minutes or less or $5 or less, the seller may elect not to apply the prepaid wireless ~~E911~~ fee to the transaction.

(e) ~~(f)~~ The amount of the prepaid wireless ~~E911~~ fee that is collected by a seller from a consumer and that is separately stated on an invoice, receipt, or similar document provided to the consumer by the seller, may not be included in the base for imposition of any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(f) ~~(g)~~ Beginning July 1, 2023 ~~April 1, 2015~~, each seller shall file a return and remit the prepaid wireless ~~E911~~ fees collected in the previous month to the Department of Revenue on or before the 20th day of the month. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by

returns are due on the next succeeding day that is not a Saturday, Sunday, or legal holiday observed by federal or state agencies as defined in chapter 683 and s. 7503 of the Internal Revenue Code of 1986, as amended. A seller may remit the prepaid wireless ~~E911~~ fee by electronic funds transfer and file a fee return with the Department of Revenue that is initiated through an electronic data interchange.

1. When a seller is authorized by the Department of Revenue pursuant to s. 212.11(1)(c) or (d) to file a sales and use tax return on a quarterly, semiannual, or annual reporting basis, the seller may file a return and remit the prepaid wireless ~~E911~~ fees on or before the 20th day of the month following the authorized reporting period for sales and use tax.

2. A seller collecting less than $50 per month of prepaid wireless ~~E911~~ fees may file a quarterly return for the calendar quarters ending in March, June, September, and December. The seller must file a return and remit the prepaid wireless ~~E911~~ fees collected during each calendar quarter on or before the 20th day of the month following that calendar quarter.

3. A seller must provide the following information on each prepaid wireless ~~E911~~ fee return filed with the Department of Revenue:

a. The seller's name, federal identification number, taxpayer identification number issued by the Department of Revenue, business location address and mailing address, and

county of the business location in accordance with paragraph (c) ~~(d)~~;

b. The reporting period;

c. The number of prepaid wireless services sold during the reporting period;

d. The amount of prepaid wireless ~~E911~~ fees collected and the amount of any adjustments to the fees collected;

e. The amount of any retailer collection allowance deducted from the amount of prepaid wireless ~~E911~~ fees collected; and

f. The amount to be remitted to the Department of Revenue.

4. A seller who operates two or more business locations for which returns are required to be filed with the Department of Revenue may file a consolidated return reporting and remitting the prepaid wireless ~~E911~~ fee for all business locations. Such sellers must report the prepaid wireless E911 fees collected in each county, in accordance with paragraph (c) ~~(d)~~, on a reporting schedule filed with the fee return.

5. A return is not required for a reporting period when no prepaid wireless ~~E911~~ fee is to be remitted for that period.

6. Except as provided in this section, the Department of Revenue shall administer, collect, and enforce the fee under this subsection pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212. The provisions of chapter

212 regarding authority to audit and make assessments, keeping of books and records, and interest and penalties on delinquent fees shall apply. The provisions of estimated tax liability in s. 212.11(1)(a) do not apply to the prepaid wireless ~~E911~~ fee.

(g)~~(h)~~ A seller of prepaid wireless services in this state must register with the Department of Revenue for each place of business as required by s. 212.18(3) and the Department of Revenue's administrative rule regarding registration as a sales and use tax dealer. A separate application is required for each place of business. A valid certificate of registration issued by the Department of Revenue to a seller for sales and use tax purposes is sufficient for purposes of the registration requirement of this subsection. There is no fee for registration for remittance of the prepaid wireless ~~E911~~ fee.

(h)~~(i)~~ The Department of Revenue shall deposit the funds remitted under this subsection into the Audit and Warrant Clearing Trust Fund established in s. 215.199 and retain up to 3.2 percent of the funds remitted under this subsection to reimburse its direct costs of administering the collection and remittance of prepaid wireless ~~E911~~ fees. Thereafter, the Department of Revenue shall transfer all remaining funds remitted under this subsection to the Emergency Communications ~~Number E911 System~~ Fund monthly for use as provided in s. 365.173.

(i)~~(j)~~ Beginning March 1, 2015, a seller may retain 5

percent of the prepaid wireless ~~E911~~ fees that are collected by the seller from consumers as a retailer collection allowance.

(j) ~~(k)~~ A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing or failing to provide emergency communications and 911 ~~or E911~~ service or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access emergency communications and 911 ~~or E911~~ service.

(k) ~~(l)~~ A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing any lawful assistance to any investigative or law enforcement officer of the United States, any state, or any political subdivision of any state in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.

(l) ~~(m)~~ The limitations of liability under this subsection for providers and sellers are in addition to any other limitation of liability provided for under this section.

(m) ~~(n)~~ A local government may not levy the fee or any additional fee on providers or sellers of prepaid wireless service for the provision of 911 ~~E911~~ service.

(n) ~~(o)~~ For purposes of this section, the state and local governments are not consumers.

(o) ~~(p)~~ For purposes of this subsection, the term:

1. "Consumer" means a person who purchases prepaid wireless service in a retail sale.

2. "Prepaid wireless ~~E911~~ fee" means the fee that is required to be collected by a seller from a consumer as provided in this subsection.

3. "Provider" means a person that provides prepaid wireless service pursuant to a license issued by the Federal Communications Commission.

4. "Retail transaction" means the purchase by a consumer from a seller of prepaid wireless service that may be applied to a single service identifier for use by the consumer. If a consumer makes a purchase of multiple prepaid wireless services in a single transaction, each individual prepaid wireless service shall be considered a separate retail transaction for purposes of calculating the prepaid wireless ~~E911~~ fee.

5. "Seller" means a person who makes retail sales of prepaid wireless services to a consumer.

(10) AUTHORIZED EXPENDITURES OF PUBLIC SAFETY EMERGENCY COMMUNICATIONS SYSTEMS ~~E911~~ FEE.—

(a) For purposes of this section, emergency communications and 911 ~~E911~~ service includes the functions relating to the receipt and transfer of requests for emergency assistance, of database management, call taking, and location verification~~, and call transfer~~. Department of Health certification and

recertification and training costs for ~~911~~ public safety telecommunications, including dispatching, are functions of public safety emergency telecommunications ~~911~~ services.

(b) All costs directly attributable to the establishment or provision of emergency communications equipment ~~E911 service~~ and ~~contracting for E911~~ services related to a primary or secondary Public Safety Answering Point (PSAP) are eligible for expenditure of moneys derived from imposition of the fee authorized by subsections (8) and (9). These costs include the acquisition, implementation, and maintenance of PSAP ~~Public Safety Answering Point (PSAP)~~ equipment and 911 ~~E911~~ service features, as defined in the providers' published schedules or the acquisition, installation, and maintenance of other ~~E911~~ equipment, including: circuits; call answering equipment; call transfer equipment; ANI or ALI controllers; ANI or ALI displays; station instruments; NG911 ~~E911~~ telecommunications systems; Emergency Services IP Network ESInet; visual call information and storage devices; recording equipment; telephone devices and other equipment for the hearing impaired used in the E911 system; PSAP backup power systems; consoles; automatic call distributors; ~~, and~~ interfaces, including hardware and software, for computer-aided dispatch (CAD) systems, public safety land mobile radio systems (LMR) and radio consoles that provide two-way radio communication with responders, and in-building coverage~~; integrated CAD systems for that portion of the systems~~

~~used for E911 call taking~~; GIS system and software equipment and information displays; network clocks; cybersecurity, including hardware, software, and services; salary and associated expenses for 911 ~~E911~~ call takers and emergency dispatchers ~~for that portion of their time spent taking and transferring E911 calls~~, salary, and associated expenses for a county to employ a full-time equivalent 911 ~~E911~~ coordinator position and a full-time equivalent mapping or geographical data position, and technical system maintenance, database, and administration personnel for the portion of their time spent administrating the emergency communications ~~E911~~ system; emergency medical, fire, and law enforcement prearrival instruction software; charts and training costs; training costs for PSAP call takers, dispatchers, supervisors, and managers in the proper methods and techniques used in taking and transferring 911 ~~E911~~ calls; costs to train and educate PSAP employees regarding 911 and radio ~~E911~~ service or NG911 ~~E911~~ equipment, including fees collected by the Department of Health for the certification and recertification of 911 public safety telecommunicators as required under s. 401.465; and expenses required to develop and maintain all information, including ALI and ANI databases and other information source repositories, necessary to properly inform call takers as to location address, type of emergency, smart city technology data, public safety broadband networks, and other information directly relevant to the processing of a

request for emergency assistance ~~E911 call-taking and transferring function. Moneys derived from the fee may also be used for next-generation E911 network services, next-generation E911 database services, next-generation E911 equipment, and wireless E911 routing systems~~.

(c) The moneys may not be used to pay for any item not listed in this subsection, including, but not limited to, any capital or operational ~~costs for emergency responses which occur after the call transfer to the responding public safety entity and the~~ costs for utilities, constructing, leasing, maintaining, or renovating buildings, except for those building modifications necessary to maintain the security and environmental integrity of the PSAP and emergency communications ~~E911~~ equipment rooms.

(11) LIABILITY OF COUNTIES.—A county subscribing to 911 service remains liable to the local exchange carrier for any 911 service, equipment, operation, or maintenance charge owed by the county to the local exchange carrier. As used in this subsection, the term "local exchange carrier" means a local exchange telecommunications service provider of 911 service or equipment to any county within its certificated area.

(12) INDEMNIFICATION AND LIMITATION OF LIABILITY.—A local government may indemnify local exchange carriers against liability in accordance with the published schedules of the company. Notwithstanding an indemnification agreement, a local exchange carrier, voice communications services provider, or

other service provider that provides 911, ~~or~~ E911, or NG911 service on a retail or wholesale basis is not liable for damages resulting from or in connection with 911, ~~or~~ E911, or NG911 service, or for identification of the telephone number, or address, or name associated with any person accessing 911, ~~or~~ E911, or NG911 service, unless the carrier or provider acted with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of a person when providing such services. A carrier or provider is not liable for damages to any person resulting from or in connection with the carrier's or provider's provision of any lawful assistance to any investigative or law enforcement officer of the United States, this state, or a political subdivision thereof, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer. For purposes of this subsection, the term "911, ~~or~~ E911, or NG911 service" means a telecommunications service, voice or nonvoice communications service, or other wireline or wireless service, including, but not limited to, a service using Internet protocol, which provides, in whole or in part, any of the following functions: providing members of the public with the ability to reach an answering point by using the digits 9-1-1; directing 911 calls to answering points by selective routing; providing for automatic number identification and automatic

location-identification features; or providing wireless E911 services as defined in the order.

(13) FACILITATING EMERGENCY COMMUNICATIONS ~~E911~~ SERVICE IMPLEMENTATION.—To balance the public need for reliable emergency communications ~~E911~~ services through reliable wireless systems and the public interest served by governmental zoning and land development regulations and notwithstanding any other law or local ordinance to the contrary, the following standards shall apply to a local government's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility. This subsection shall not, however, be construed to waive or alter the provisions of s. 286.011 or s. 286.0115. For the purposes of this subsection only, "local government" shall mean any municipality or county and any agency of a municipality or county only. The term "local government" does not, however, include any airport, as defined by s. 330.27(2), even if it is owned or controlled by or through a municipality, county, or agency of a municipality or county. Further, notwithstanding anything in this section to the contrary, this subsection does not apply to or control a local government's actions as a property or structure owner in the use of any property or structure owned by such entity for the placement, construction, or modification of wireless communications facilities. In the use of property or structures owned by the local government,

however, a local government may not use its regulatory authority so as to avoid compliance with, or in a manner that does not advance, the provisions of this subsection.

(a) Collocation among wireless providers is encouraged by the state.

1.a. Collocations on towers, including nonconforming towers, that meet the requirements in sub-sub-subparagraphs (I), (II), and (III), are subject to only building permit review, which may include a review for compliance with this subparagraph. Such collocations are not subject to any design or placement requirements of the local government's land development regulations in effect at the time of the collocation that are more restrictive than those in effect at the time of the initial antennae placement approval, to any other portion of the land development regulations, or to public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.

(I) The collocation does not increase the height of the tower to which the antennae are to be attached, measured to the highest point of any part of the tower or any existing antenna attached to the tower;

(II) The collocation does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment enclosures and ancillary facilities; and

(III) The collocation consists of antennae, equipment

enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennae placed on the tower and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the tower supporting the antennae. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the local government's land development regulations in effect at the time the initial antennae placement was approved.

b. Except for a historic building, structure, site, object, or district, or a tower included in sub-subparagraph a., collocations on all other existing structures that meet the requirements in sub-sub-subparagraphs (I)-(IV) shall be subject to no more than building permit review, and an administrative review for compliance with this subparagraph. Such collocations are not subject to any portion of the local government's land development regulations not addressed herein, or to public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.

(I) The collocation does not increase the height of the existing structure to which the antennae are to be attached, measured to the highest point of any part of the structure or

any existing antenna attached to the structure;

(II) The collocation does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;

(III) The collocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional collocations on the existing structure or procedural requirements, other than those authorized by this section, of the local government's land development regulations in effect at the time of the collocation application; and

(IV) The collocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with sub-sub-subparagraph (III) and were applied to the initial antennae placed on the structure and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the antennae.

c. Regulations, restrictions, conditions, or permits of the local government, acting in its regulatory capacity, that limit the number of collocations or require review processes inconsistent with this subsection shall not apply to

collocations addressed in this subparagraph.

d. If only a portion of the collocation does not meet the requirements of this subparagraph, such as an increase in the height of the proposed antennae over the existing structure height or a proposal to expand the ground space approved in the site plan for the equipment enclosure, where all other portions of the collocation meet the requirements of this subparagraph, that portion of the collocation only may be reviewed under the local government's regulations applicable to an initial placement of that portion of the facility, including, but not limited to, its land development regulations, and within the review timeframes of subparagraph (d)2., and the rest of the collocation shall be reviewed in accordance with this subparagraph. A collocation proposal under this subparagraph that increases the ground space area, otherwise known as the compound, approved in the original site plan for equipment enclosures and ancillary facilities by no more than a cumulative amount of 400 square feet or 50 percent of the original compound size, whichever is greater, shall, however, require no more than administrative review for compliance with the local government's regulations, including, but not limited to, land development regulations review, and building permit review, with no public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.

2. If a collocation does not meet the requirements of subparagraph 1., the local government may review the application under the local government's regulations, including, but not limited to, land development regulations, applicable to the placement of initial antennae and their accompanying equipment enclosure and ancillary facilities.

3. If a collocation meets the requirements of subparagraph 1., the collocation shall not be considered a modification to an existing structure or an impermissible modification of a nonconforming structure.

4. The owner of the existing tower on which the proposed antennae are to be collocated shall remain responsible for compliance with any applicable condition or requirement of a permit or agreement, or any applicable condition or requirement of the land development regulations to which the existing tower had to comply at the time the tower was permitted, including any aesthetic requirements, provided the condition or requirement is not inconsistent with this paragraph.

5. An existing tower, including a nonconforming tower, may be structurally modified in order to permit collocation or may be replaced through no more than administrative review and building permit review, and is not subject to public hearing review, if the overall height of the tower is not increased and, if a replacement, the replacement tower is a monopole tower or, if the existing tower is a camouflaged tower, the replacement

tower is a like-camouflaged tower. This subparagraph shall not preclude a public hearing for any appeal of the decision on the application.

(b)1. A local government's land development and construction regulations for wireless communications facilities and the local government's review of an application for the placement, construction, or modification of a wireless communications facility shall only address land development or zoning issues. In such local government regulations or review, the local government may not require information on or evaluate a wireless provider's business decisions about its service, customer demand for its service, or quality of its service to or from a particular area or site, unless the wireless provider voluntarily offers this information to the local government. In such local government regulations or review, a local government may not require information on or evaluate the wireless provider's designed service unless the information or materials are directly related to an identified land development or zoning issue or unless the wireless provider voluntarily offers the information. Information or materials directly related to an identified land development or zoning issue may include, but are not limited to, evidence that no existing structure can reasonably be used for the antennae placement instead of the construction of a new tower, that residential areas cannot be served from outside the residential area, as addressed in

subparagraph 3., or that the proposed height of a new tower or initial antennae placement or a proposed height increase of a modified tower, replacement tower, or collocation is necessary to provide the provider's designed service. Nothing in this paragraph shall limit the local government from reviewing any applicable land development or zoning issue addressed in its adopted regulations that does not conflict with this section, including, but not limited to, aesthetics, landscaping, land use-based ~~land use based~~ location priorities, structural design, and setbacks.

2. Any setback or distance separation required of a tower may not exceed the minimum distance necessary, as determined by the local government, to satisfy the structural safety or aesthetic concerns that are to be protected by the setback or distance separation.

3. A local government may exclude the placement of wireless communications facilities in a residential area or residential zoning district but only in a manner that does not constitute an actual or effective prohibition of the provider's service in that residential area or zoning district. If a wireless provider demonstrates to the satisfaction of the local government that the provider cannot reasonably provide its service to the residential area or zone from outside the residential area or zone, the municipality or county and provider shall cooperate to determine an appropriate location

for a wireless communications facility of an appropriate design within the residential area or zone. The local government may require that the wireless provider reimburse the reasonable costs incurred by the local government for this cooperative determination. An application for such cooperative determination shall not be considered an application under paragraph (d).

4. A local government may impose a reasonable fee on applications to place, construct, or modify a wireless communications facility only if a similar fee is imposed on applicants seeking other similar types of zoning, land use, or building permit review. A local government may impose fees for the review of applications for wireless communications facilities by consultants or experts who conduct code compliance review for the local government but any fee is limited to specifically identified reasonable expenses incurred in the review. A local government may impose reasonable surety requirements to ensure the removal of wireless communications facilities that are no longer being used.

5. A local government may impose design requirements, such as requirements for designing towers to support collocation or aesthetic requirements, except as otherwise limited in this section, but shall not impose or require information on compliance with building code type standards for the construction or modification of wireless communications facilities beyond those adopted by the local government under

chapter 553 and that apply to all similar types of construction.

(c) Local governments may not require wireless providers to provide evidence of a wireless communications facility's compliance with federal regulations, except evidence of compliance with applicable Federal Aviation Administration requirements under 14 C.F.R. part 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use, but may request the Federal Communications Commission to provide information as to a wireless provider's compliance with federal regulations, as authorized by federal law.

(d)1. A local government shall grant or deny each properly completed application for a collocation under subparagraph (a)1. based on the application's compliance with the local government's applicable regulations, as provided for in subparagraph (a)1. and consistent with this subsection, and within the normal timeframe for a similar building permit review but in no case later than 45 business days after the date the application is determined to be properly completed in accordance with this paragraph.

2. A local government shall grant or deny each properly completed application for any other wireless communications facility based on the application's compliance with the local government's applicable regulations, including but not limited

to land development regulations, consistent with this subsection and within the normal timeframe for a similar type review but in no case later than 90 business days after the date the application is determined to be properly completed in accordance with this paragraph.

3.a. An application is deemed submitted or resubmitted on the date the application is received by the local government. If the local government does not notify the applicant in writing that the application is not completed in compliance with the local government's regulations within 20 business days after the date the application is initially submitted or additional information resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination shall not be deemed as an approval of the application. If the application is not completed in compliance with the local government's regulations, the local government shall so notify the applicant in writing and the notification must indicate with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the local government shall notify the applicant, in writing, within the normal timeframes of review, but in no case longer than 20 business days after the additional information is submitted, of any remaining

deficiencies that must be cured. Deficiencies in document type or content not specified by the local government do not make the application incomplete. Notwithstanding this sub-subparagraph, if a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the local government may continue to request the information until such time as the specified deficiency is cured. The local government may establish reasonable timeframes within which the required information to cure the application deficiency is to be provided or the application will be considered withdrawn or closed.

b. If the local government fails to grant or deny a properly completed application for a wireless communications facility within the timeframes set forth in this paragraph, the application shall be deemed automatically approved and the applicant may proceed with placement of the facilities without interference or penalty. The timeframes specified in subparagraph 2. may be extended only to the extent that the application has not been granted or denied because the local government's procedures generally applicable to all other similar types of applications require action by the governing body and such action has not taken place within the timeframes specified in subparagraph 2. Under such circumstances, the local government must act to either grant or deny the application at its next regularly scheduled meeting or, otherwise, the

application is deemed to be automatically approved.

c. To be effective, a waiver of the timeframes set forth in this paragraph must be voluntarily agreed to by the applicant and the local government. A local government may request, but not require, a waiver of the timeframes by the applicant, except that, with respect to a specific application, a one-time waiver may be required in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government.

(e) The replacement of or modification to a wireless communications facility, except a tower, that results in a wireless communications facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the local government, are subject to no more than applicable building permit review.

(f) Any other law to the contrary notwithstanding, the Department of Management Services shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to state government-owned property not acquired for transportation purposes, and the Department of Transportation shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to

property acquired for state rights-of-way. On property acquired for transportation purposes, leases shall be granted in accordance with s. 337.251. On other state government-owned property, leases shall be granted on a space available, first-come, first-served basis. Payments required by state government under a lease must be reasonable and must reflect the market rate for the use of the state government-owned property. The Department of Management Services and the Department of Transportation are authorized to adopt rules for the terms and conditions and granting of any such leases.

(g) If any person adversely affected by any action, or failure to act, or regulation, or requirement of a local government in the review or regulation of the wireless communication facilities files an appeal or brings an appropriate action in a court or venue of competent jurisdiction, following the exhaustion of all administrative remedies, the matter shall be considered on an expedited basis.

(14) MISUSE OF 911, ~~OR~~ E911, OR NG911 SYSTEM; PENALTY.—911, ~~and~~ E911, and NG911 service must be used solely for emergency communications by the public. Any person who accesses the number 911 for the purpose of making a false alarm or complaint or reporting false information that could result in the emergency response of any public safety agency; any person who knowingly uses or attempts to use such service for a purpose other than obtaining public safety assistance; or any person who

knowingly uses or attempts to use such service in an effort to avoid any charge for service, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. After being convicted of unauthorized use of such service four times, a person who continues to engage in such unauthorized use commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, if the value of the service or the service charge obtained in a manner prohibited by this subsection exceeds $100, the person committing the offense commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(15) TEXT-TO-911 SERVICE.—Each county shall develop a countywide implementation plan addressing text-to-911 services and, by January 1, 2022, enact a system to allow text-to-911 services.

(16) STATE LAW NOT PREEMPTED.—This section and ss. 365.173 and 365.174 do not alter any state law that otherwise regulates voice communications services providers.

Section 2. Section 365.173, Florida Statutes, is amended to read:

365.173 Emergency Communications ~~Number E911 System~~ Fund.—

(1) REVENUES.—

(a) Revenues derived from the fee levied on subscribers under s. 365.172(8) must be paid by the board into the State Treasury on or before the 15th day of each month. Such moneys

must be accounted for in a special fund to be designated as the Emergency Communications ~~Number E911 System~~ Fund, a fund created in the Division of Telecommunications, or other office as designated by the Secretary of Management Services.

(b) Revenues derived from the fee levied on prepaid wireless service under s. 365.172(9), less the costs of administering collection of the fee, must be transferred by the Department of Revenue to the Emergency Communications ~~Number E911 System~~ Fund on or before the 25th day of each month following the month of receipt.

(c) For accounting purposes, the Emergency Communications ~~Number E911 System~~ Fund must be segregated into three separate categories:

1. The wireless category;

2. The nonwireless category; and

3. The prepaid wireless category.

(d) All moneys must be invested by the Chief Financial Officer pursuant to s. 17.61. All moneys in such fund are to be expended by the office for the purposes provided in this section and s. 365.172. These funds are not subject to s. 215.20.

(2) DISTRIBUTION AND USE OF FUNDS.—As determined by the board pursuant to s. 365.172(8)(f) ~~s. 365.172(8)(g)~~, and subject to any modifications approved by the board pursuant to s. 365.172(6)(a)3. or (8)(g) ~~s. 365.172(6)(a)3. or (8)(h)~~, the moneys in the fund shall be distributed and used only as

follows:

(a) Ninety-four ~~Seventy-six~~ percent of the moneys in the wireless category shall be distributed each month to counties, based on the total number of service identifiers in each county, and 1 percent shall be distributed each month to state agencies that operate 911 centers, to ~~and shall~~ be used exclusively for payment of~~:~~

~~1.~~ authorized expenditures, as specified in s. 365.172(10).

~~2. Costs to comply with the requirements for E911 service contained in the order and any future rules related to the order.~~

(b) Ninety-six percent of the moneys in the nonwireless category shall be distributed each month to counties based on the total number of service identifiers in each county and shall be used exclusively for payment of authorized expenditures, as specified in s. 365.172(10).

(c) Sixty-one percent of the moneys in the prepaid wireless category shall be distributed each month to counties based on the total amount of fees reported and paid in each county and shall be used exclusively for payment of authorized expenditures, as specified in s. 365.172(10). The moneys from prepaid wireless ~~E911~~ fees identified as nonspecific in accordance with s. 365.172(9) shall be distributed as determined by the Emergency Communications ~~E911~~ Board.

(d) Any county that receives funds under paragraphs (a), (b), and (c) shall establish a fund to be used exclusively for the receipt and expenditure of the revenues collected under paragraphs (a), (b), and (c). All fees placed in the fund and any interest accrued shall be used solely for costs described in subparagraphs (a)1. and 2. and may not be reduced, withheld, or allocated for other purposes. The money collected and interest earned in this fund shall be appropriated for these purposes by the county commissioners and incorporated into the annual county budget. The fund shall be included within the financial audit performed in accordance with s. 218.39. The financial audit shall assure that all emergency communications ~~E911~~ fee revenues, interest, and emergency communications ~~E911~~ grant funding are used for payment of authorized expenditures, as specified in s. 365.172(10) and as specified in the Emergency Communications ~~E911~~ Board grant and special disbursement programs. The county is responsible for all expenditures of revenues distributed from the county emergency communications ~~E911~~ fund and shall submit the financial audit reports to the board for review. A county may carry forward up to 30 percent of the total funds disbursed to the county by the board during a county fiscal year for expenditures for capital outlay, capital improvements, equipment replacement, or implementation of a hosted system if such expenditures are made for the purposes specified in subparagraphs (a)1. and 2.; however, the 30-percent

limitation does not apply to funds disbursed to a county under s. 365.172(6)(a)3., and a county may carry forward any percentage of the funds, except that any grant provided shall continue to be subject to any condition imposed by the board. In order to prevent an excess recovery of costs incurred in providing emergency communication ~~E911~~ service, a county that receives funds greater than the permissible emergency communication ~~E911~~ costs described in s. 365.172(10), including the 30-percent carryforward allowance, must return the excess funds to the ~~E911~~ board to be allocated under s. 365.172(6)(a).

~~(c) Twenty percent of the moneys in the wireless category shall be distributed to wireless providers in response to sworn invoices submitted to the board by wireless providers to reimburse such wireless providers for the actual costs incurred to provide 911 or E911 service, including the costs of complying with the order. Such costs include costs and expenses incurred by wireless providers to design, purchase, lease, program, install, test, upgrade, operate, and maintain all necessary data, hardware, and software required to provide E911 service. Each wireless provider shall submit to the board, by August 1 of each year, a detailed estimate of the capital and operating expenses for which it anticipates that it will seek reimbursement under this paragraph during the ensuing state fiscal year. In order to be eligible for recovery during any ensuing state fiscal year, a wireless provider must submit all~~

~~sworn invoices for allowable purchases made within the previous calendar year no later than March 31 of the fiscal year. By September 15 of each year, the board shall submit to the Legislature its legislative budget request for funds to be allocated to wireless providers under this paragraph during the ensuing state fiscal year. The budget request shall be based on the information submitted by the wireless providers and estimated surcharge revenues. Distributions of moneys in the fund by the board to wireless providers must be fair and nondiscriminatory. If the total amount of moneys requested by wireless providers pursuant to invoices submitted to the board and approved for payment exceeds the amount in the fund in any month, wireless providers that have invoices approved for payment shall receive a pro rata share of moneys in the fund and the balance of the payments shall be carried over to the following month or months until all of the approved payments are made. The board may adopt rules necessary to address the manner in which pro rata distributions are made when the total amount of funds requested by wireless providers pursuant to invoices submitted to the board exceeds the total amount of moneys on deposit in the fund.~~

(e)~~(f)~~ One percent of the moneys in each category of the fund shall be retained by the board to be applied to costs and expenses incurred for the purposes of managing, administering, and overseeing the receipts and disbursements from the fund and

other activities as defined in s. 365.172(6). Any funds retained for such purposes in a calendar year which are not applied to such costs and expenses by March 31 of the following year shall be redistributed as determined by the board.

(f) ~~(g)~~ Three percent of the moneys in each category of the fund and an additional 1 percent of the moneys collected in the wireless category shall be used to make monthly distributions to rural counties for the purpose of providing facilities and network and service enhancements and assistance for the emergency communications ~~911 or E911~~ systems operated by rural counties and for the provision of grants by the office to rural counties for upgrading and replacing emergency communications ~~E911~~ systems.

(g) ~~(h)~~ Thirty-five percent of the moneys in the prepaid wireless category shall be retained by the board to provide state emergency communications ~~E911~~ grants to be awarded in accordance with the following order of priority:

1. For all large, medium, and rural counties to upgrade or replace emergency communications ~~E911~~ systems.

2. For all large, medium, and rural counties to develop and maintain statewide 911 routing, geographic, and management information systems.

3. For all large, medium, and rural counties to develop and maintain next-generation 911 services and equipment.

(h) ~~(i)~~ If the wireless category has funds remaining in it

on December 31 after disbursements have been made during the calendar year immediately prior to December 31, the board may disburse the excess funds in the wireless category in accordance with s. 365.172(6)(a)3.b.

(3) The Legislature recognizes that the fee authorized under s. 365.172 may not necessarily provide the total funding required for establishing or providing the emergency communications ~~E911~~ service. It is the intent of the Legislature that all revenue from the fee be used as specified in subsection (2).

Section 3. Subsection (1) of section 365.177, Florida Statutes, is amended to read:

365.177 Transfer of E911 calls between systems.—

(1) The office shall develop a plan by December 30, 2023 ~~February 1, 2020~~, to upgrade 911 public safety answering points within the state to allow the transfer of an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state. Such transfer should include voice, text message, image, video, caller identification information, location information, and additional standards-based 911 call information.

Section 4. Subsection (10) of section 212.05965, Florida Statutes, is amended to read:

212.05965 Taxation of marketplace sales.—

(10) Notwithstanding any other law, the marketplace provider is also responsible for collecting and remitting any prepaid wireless public safety emergency communications systems ~~E911~~ fee under s. 365.172, waste tire fee under s. 403.718, and lead-acid battery fee under s. 403.7185 at the time of sale for taxable retail sales made through its marketplace.

Section 5. Section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications ~~number E911~~ state plan.—

(1) SHORT TITLE.—This section may be cited as the "Florida Emergency Communications ~~Number E911~~ State Plan Act."

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature that the communications number "911" be the designated emergency communications number. A public safety agency may not advertise or otherwise promote the use of any communications number for emergency response services other than "911." It is further the intent of the Legislature to implement and continually update a cohesive statewide emergency communications ~~number "E911"~~ plan for enhanced 911 services which will provide citizens with rapid direct access to public safety agencies by accessing "911" with the objective of reducing the response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services.

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

(a) "Office" means the Division of Telecommunications within the Department of Management Services, as designated by the secretary of the department.

(b) "Local government" means any city, county, or political subdivision of the state and its agencies.

(c) "Public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(d) "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(4) STATE PLAN.—The office shall develop, maintain, and implement appropriate modifications for a statewide emergency communications ~~E911 system~~ plan. The plan shall provide for:

(a) The public agency emergency communications requirements for each entity of local government in the state.

(b) A system to meet specific local government requirements. Such system shall include law enforcement, firefighting, and emergency medical services and may include other emergency services such as poison control, suicide prevention, and emergency management services.

(c) Identification of the mutual aid agreements necessary

to obtain an effective emergency communications systems ~~E911 system~~.

(d) A funding provision that identifies the cost necessary to implement the emergency communications ~~E911~~ system.

The office shall be responsible for the implementation and coordination of such plan. The office shall adopt any necessary rules and schedules related to public agencies for implementing and coordinating the plan, pursuant to chapter 120.

(5) SYSTEM DIRECTOR.—The secretary of the department or his or her designee is designated as the director of the statewide emergency communications ~~number E911~~ system and, for the purpose of carrying out the provisions of this section, is authorized to coordinate the activities of the system with state, county, local, and private agencies. The director in implementing the system shall consult, cooperate, and coordinate with local law enforcement agencies.

(6) REGIONAL SYSTEMS.—This section does not prohibit or discourage the formation of multijurisdictional or regional systems; and any system established pursuant to this section may include the jurisdiction, or any portion thereof, of more than one public agency. It is the intent of the Legislature that emergency communications services ~~E911 service~~ be available throughout the state. Expenditure by counties of the ~~E911~~ fee authorized and imposed under s. 365.172 should support this

intent to the greatest extent feasible within the context of local service needs and fiscal capability. This section does not prohibit two or more counties from establishing a combined emergency ~~E911~~ communications service by an interlocal agreement and using the fees authorized and imposed by s. 365.172 for such combined ~~E911~~ service.

(7) TELECOMMUNICATIONS INDUSTRY COORDINATION.—The office shall coordinate with the Florida Public Service Commission which shall encourage the Florida telecommunications industry to activate facility modification plans for timely emergency communications services ~~E911~~ implementation.

(8) COIN TELEPHONES.—The Florida Public Service Commission shall establish rules to be followed by the telecommunications companies in this state designed toward encouraging the provision of coin-free dialing of "911" calls wherever economically practicable and in the public interest.

(9) SYSTEM APPROVAL.—No emergency communications number E911 system shall be established and no present system shall be expanded without prior approval of the office.

(10) COMPLIANCE.—All public agencies shall assist the office in their efforts to carry out the intent of this section, and such agencies shall comply with the developed plan.

(11) FEDERAL ASSISTANCE.—The secretary of the department or his or her designee may apply for and accept federal funding assistance in the development and implementation of a statewide

emergency communications ~~number E911~~ system.

(12) CONFIDENTIALITY OF RECORDS.—

(a) Any record, recording, or information, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications ~~E911~~ system is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that such record or information may be disclosed to a public safety agency. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. A telecommunications company or commercial mobile radio service provider shall not be liable for damages to any person resulting from or in connection with such telephone company's or commercial mobile radio service provider's provision of any lawful assistance to any investigative or law enforcement officer of the State of Florida or political subdivisions thereof, of the United States, or of any other state or political subdivision thereof, in connection with any

lawful investigation or other law enforcement activity by such law enforcement officer unless the telecommunications company or commercial mobile radio service provider acted in a wanton and willful manner.

(b) Notwithstanding paragraph (a), a 911 public safety telecommunicator, as defined in s. 401.465, may contact any private person or entity that owns an automated external defibrillator who has notified the local emergency medical services medical director or public safety answering point of such ownership if a confirmed coronary emergency call is taking place and the location of the coronary emergency is within a reasonable distance from the location of the defibrillator, and may provide the location of the coronary emergency to that person or entity.

Section 6. Paragraph (b) of subsection (2) of section 365.174, Florida Statutes, is amended to read:

365.174 Proprietary confidential business information.—

(2)

(b) The Department of Revenue may provide information relative to s. 365.172(9) to the Secretary of Management Services, or his or her authorized agent, or to the Emergency Communications ~~E911~~ Board established in s. 365.172(5) for use in the conduct of the official business of the Department of Management Services or the Emergency Communications ~~E911~~ Board.

Section 7. This act shall take effect July 1, 2023.

Commerce Committee
CS/HB 745 by Rep. McFarland
Emergency Communications

AMENDMENT SUMMARY
April 10, 2023

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

- Modifies the purposes of the Emergency Communications Board (Board) to include:
  - Promoting interoperability between public safety answering points (PSAPs) through guidance and direction to counties and state agencies that operate 911 centers.
  - Establishing and administering allocations from the Emergency Communications Trust Fund (Fund) for investment on public safety communications and technology
  - Providing technical assistance to rural counties.
- Removes provisions of the bill that require the Board to create and administer a financial model dedicated to public safety communication and technology.
- Removes provisions of the bill that provide funding from the Board for state agencies that operate 911 centers but retains Board authority to provide guidance and direction to such agencies for purposes of achieving interoperability.
- Specifies that four members of the Board must be county 911 coordinators and provides for current 911 coordinators on the Board to complete their terms.
- Requires DMS to administer monthly disbursements and provide a monthly report of such disbursements to the Board.
- Restores existing law related to the creation of the Prepaid Wireless Public Safety Emergency Communications Systems Fee.
- Modifies the list of eligible expenditures from 911 fees.
- Allows the board to withhold future distribution of grant funds or request a return of funds based on the findings of a financial audit.
- Specifies matters that must be addressed in a plan developed by DMS to upgrade PSAPs to allow interjurisdictional transfers of emergency calls.
- Makes technical and conforming changes.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 365.172, Florida Statutes, is amended to read:

365.172 Emergency communications. ~~number "E911."~~

(1) SHORT TITLE.—This section may be cited as the "Emergency Communications ~~Number E911~~ Act."

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to:

(a) Establish and implement a comprehensive statewide emergency communications and response capability using modern technologies and methods. ~~telecommunications number system that will provide users of voice communications services within the~~

~~state rapid direct access to public safety agencies by accessing the telephone number "911."~~

(b) Provide funds to counties to pay certain costs associated with their public safety emergency response capabilities and costs incurred to purchase, upgrade, and maintain 911 systems, computer aided dispatch, and systems to create interoperable radio communications systems ~~E911 or 911 systems, to contract for E911 services, and to reimburse wireless telephone service providers for costs incurred to provide 911 or E911 services~~.

(c) Levy a reasonable fee on users of voice communications services, unless otherwise provided in this section, to accomplish these purposes.

(d) Provide for an Emergency Communications Board ~~E911 board~~ to administer the fee, with oversight by the office, in a manner that is competitively and technologically neutral as to all ~~voice~~ communications services providers.

(e) Ensure that the fee established for emergency communications systems is used exclusively ~~for recovery by wireless providers and~~ by counties for costs associated with developing and maintaining emergency communications ~~E911~~ systems and networks in a manner that is competitively and technologically neutral as to all ~~voice~~ communications services providers.

It is further the intent of the Legislature that the fee authorized or imposed by this section not necessarily provide the total funding required for establishing or providing emergency communications systems and services ~~E911 service~~.

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, 365.174, and 365.177, the term:

(a) "Authorized expenditures" means expenditures of the fee, as specified in subsection (10).

(b) "Automatic location identification" means the capability of the E911 service which enables the automatic display of information that defines the approximate geographic location of the wireless telephone, or the location of the address of the wireline telephone, used to place a 911 call.

(c) "Automatic number identification" means the capability of the E911 service which enables the automatic display of the service number used to place a 911 call.

(d) "Board" or "Emergency Communications Board" ~~"E911 Board"~~ means the board ~~of directors of the E911 Board~~ established in subsection (5).

(e) "Building permit review" means a review for compliance with building construction standards adopted by the local government under chapter 553 and does not include a review for compliance with land development regulations.

(f) "Colocation ~~Collocation~~" means the situation when a second or subsequent wireless provider uses an existing

structure to locate a second or subsequent antennae. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antennae.

(g) "Computer Aided Dispatch" or "CAD" means a computerized system within a public safety answering point for entering, tracking, dispatching, and resolving requests for public safety services.

(h) ~~(g)~~ "Designed service" means the configuration and manner of deployment of service the wireless provider has designed for an area as part of its network.

(i) ~~(h)~~ "Enhanced 911" or "E911" means an enhanced 911 system or enhanced 911 service that is an emergency telephone system or service that provides a subscriber with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the state plan under s. 365.171, and that provides for automatic number identification and automatic location-identification features. The 911 ~~E911~~ service provided by a wireless provider means E911 as defined in the order.

(j) ~~(i)~~ "Existing structure" means a structure that exists at the time an application for permission to place antennae on a structure is filed with a local government. The term includes

any structure that can structurally support the attachment of antennae in compliance with applicable codes.

(k) ~~(j)~~ "Fee" or "public safety emergency communications systems fee" means the ~~E911~~ fee authorized and imposed under subsections (8) and (9).

(l) ~~(k)~~ "Fund" means the Emergency Communications ~~Number E911 System~~ Trust Fund established in s. 365.173 and maintained under this section for the purpose of recovering the costs associated with providing emergency communications ~~911 service or E911 service~~, including the costs of implementing the order. The fund shall be segregated into wireless, prepaid wireless, and nonwireless categories.

(m) ~~(l)~~ "Historic building, structure, site, object, or district" means any building, structure, site, object, or district that has been officially designated as a historic building, historic structure, historic site, historic object, or historic district through a federal, state, or local designation program.

(n) ~~(m)~~ "Land development regulations" means any ordinance enacted by a local government for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, the local government's comprehensive plan, or any other ordinance concerning any aspect of the development of land. The term does

not include any building construction standard adopted under and in compliance with chapter 553.

(o) ~~(n)~~ "Local exchange carrier" means a "competitive local exchange telecommunications company" or a "local exchange telecommunications company" as defined in s. 364.02.

(p) ~~(o)~~ "Local government" means any municipality, county, or political subdivision or agency of a municipality, county, or political subdivision.

(q) ~~(p)~~ "Medium county" means any county that has a population of 75,000 or more but less than 750,000.

(r) ~~(q)~~ "Mobile telephone number" or "MTN" means the telephone number assigned to a wireless telephone at the time of initial activation.

(s) "Next Generation 911" or "NG911" means an Internet Protocol(IP)-based system comprised of managed Emergency Services IP networks (ESInets), functional elements (applications), and databases that replicate traditional E911 features and functions and provides additional capabilities. The NG911 system is designed to provide access to emergency services from all connected communications sources and provide multimedia data capabilities for public safety answering points and other emergency service organizations.

(t) ~~(r)~~ "Nonwireless category" means the revenues to the fund received from voice communications services providers other than wireless providers.

(u) ~~(s)~~ "Office" means the Division of Telecommunications within the Department of Management Services, as designated by the secretary of the department.

(v) ~~(t)~~ "Order" means:

1. The following orders and rules of the Federal Communications Commission issued in FCC Docket No. 94-102:

a. Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s. 20.03 and the creation of s. 20.18 of Title 47 of the Code of Federal Regulations adopted by the Federal Communications Commission pursuant to such order.

b. Memorandum and Order No. FCC 97-402 adopted on December 23, 1997.

c. Order No. FCC DA 98-2323 adopted on November 13, 1998.

d. Order No. FCC 98-345 adopted December 31, 1998.

2. Orders and rules subsequently adopted by the Federal Communications Commission relating to the provision of 911 services, including Order Number FCC-05-116, adopted May 19, 2005.

(w) ~~(u)~~ "Prepaid wireless category" means all revenues in the fund received through the Department of Revenue from the fee authorized and imposed under subsection (9).

(x) ~~(v)~~ "Prepaid wireless service" means a right to access wireless service that allows a caller to contact and interact with 911 to access the 911 system, which service must be paid

for in advance and is sold in predetermined units or dollars, which units or dollars expire on a predetermined schedule or are decremented on a predetermined basis in exchange for the right to access wireless service.

(y) ~~(w)~~ "Public agency" means the state and any municipality, county, municipal corporation, or other governmental entity, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(z) ~~(x)~~ "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(aa) ~~(y)~~ "Public safety answering point," "PSAP," or "answering point" means the public safety agency that receives incoming 911 requests for assistance and dispatches appropriate public safety agencies to respond to the requests in accordance with the state E911 plan.

(bb) ~~(z)~~ "Rural county" means any county that has a population of fewer than 75,000.

(cc) ~~(aa)~~ "Service identifier" means the service number, access line, or other unique identifier assigned to a subscriber and established by the Federal Communications Commission for purposes of routing calls whereby the subscriber has access to the E911 system.

(dd) ~~(bb)~~ "Tower" means any structure designed primarily to support a wireless provider's antennae.

(ee) ~~(cc)~~ "Voice communications services" means two-way voice service, through the use of any technology, which actually provides access to 911 ~~E911~~ services, and includes communications services, as defined in s. 202.11, which actually provide access to 911 ~~E911~~ services and which are required to be included in the provision of 911 ~~E911~~ services pursuant to orders and rules adopted by the Federal Communications Commission. The term includes voice-over-Internet-protocol service. For the purposes of this section, the term "voice-over-Internet-protocol service" or "VoIP service" means interconnected VoIP services having the following characteristics:

1. The service enables real-time, two-way voice communications;

2. The service requires a broadband connection from the user's locations;

3. The service requires IP-compatible customer premises equipment; and

4. The service offering allows users generally to receive calls that originate on the public switched telephone network and to terminate calls on the public switched telephone network.

(ff) ~~(dd)~~ "Voice communications services provider" or "provider" means any person or entity providing voice

communications services, except that the term does not include any person or entity that resells voice communications services and was assessed the fee authorized and imposed under subsection (8) by its resale supplier.

(gg) ~~(ee)~~ "Wireless 911 system" or "wireless 911 service" means an emergency telephone system or service that provides a subscriber with the ability to reach an answering point by accessing the digits 911.

(hh) ~~(ff)~~ "Wireless category" means the revenues to the fund received from a wireless provider from the fee authorized and imposed under subsection (8).

(ii) ~~(gg)~~ "Wireless communications facility" means any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility.

(jj) ~~(hh)~~ "Wireless provider" means a person who provides wireless service and:

1. Is subject to the requirements of the order; or

2. Elects to provide wireless 911 service, ~~or~~ E911 service, or NG911 service in this state.

(kk) ~~(ii)~~ "Wireless service" means "commercial mobile radio service" as provided under ss. 3(27) and 332(d) of the Federal

Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term includes service provided by any wireless real-time two-way wire communication device, including radio-telephone communications used in cellular telephone service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.

(4) POWERS AND DUTIES OF THE OFFICE.—The office shall oversee the administration of the fee authorized and imposed under subsections (8) and (9).

(5) THE EMERGENCY COMMUNICATIONS ~~E911~~ BOARD.—

(a) The Emergency Communications ~~E911~~ Board is established ~~to administer~~, with oversight by the office, to:

1. Promote interoperability between public safety answering points by providing guidance and direction to counties and state agencies that operate 911 centers for the deployment of emergency communications infrastructure and the handling of emergency communications information, such as voice, text, data,

and images, from receipt at a PSAP to dispatching to responders; and

2. Establish and administer allocations from the fund dedicated to investing in public safety communications and technology for 911; and

3. Provide technical assistance and guidance to rural counties as needed.

(b) Public safety funding under paragraph (a) must focus on, but not be limited to:

1. Next Generation 911.

2. Emergency Services IP Network (ESInet).

3. Computer Aided Dispatch (CAD).

4. PSAP technology to interface with:

a. Land Mobile Radio (LMR).

b. Smart city technology data.

c. In-Building Coverage.

5. Emergency Communications Broadband Networks.

6. Cybersecurity.

~~, with oversight by the office, the fee imposed under subsections (8) and (9), including receiving revenues derived from the fee; distributing portions of the revenues to wireless providers, counties, and the office; accounting for receipts, distributions, and income derived by the funds maintained in the fund; and providing annual reports to the Governor and the Legislature for submission by the office on amounts collected~~

~~and expended, the purposes for which expenditures have been made, and the status of E911 service in this state.~~ In order to advise and assist the office in implementing the purposes of this section, the board, which has the power of a body corporate, has the powers enumerated in subsection (6).

(c)~~(b)~~ The board shall consist of nine ~~11~~ members, one of whom must be the system director designated under s. 365.171(5), or his or her designee, who shall serve as the chair of the board. The remaining eight ~~10~~ members of the board shall be appointed by the Governor. All members shall be Florida residents. The board must be comprised of four county 911 coordinators with consideration given to rural, medium, and large counties, and four members from fields including, but not limited to: law enforcement, fire response, emergency medical services, public safety dispatch, and telecommunications. ~~and must be composed of 5 county 911 coordinators, consisting of a representative from a rural county, a representative from a medium county, a representative from a large county, and 2 at-large representatives recommended by the Florida Association of Counties in consultation with the county 911 coordinators; 3 local exchange carrier member representatives, one of whom must be a representative of the local exchange carrier having the greatest number of access lines in the state and one of whom must be a representative of a certificated competitive local exchange telecommunications company; and 2 member~~

~~representatives from the wireless telecommunications industry, with consideration given to wireless providers that are not affiliated with local exchange carriers. Not more than one member may be appointed to represent any single provider on the board~~.

(d)~~(c)~~ The system director, designated under s. 365.171(5), or his or her designee, must be a permanent member of the board. Each of the remaining eight ~~10~~ members of the board shall be appointed to a 4-year term and may not be appointed to more than two successive terms. However, for the purpose of staggering terms, three ~~two~~ of the original board members shall be appointed to terms of 4 years, three ~~two~~ shall be appointed to terms of 3 years, and two ~~four~~ shall be appointed to terms of 2 years, as designated by the Governor. A vacancy on the board shall be filled in the same manner as the original appointment. Current 911 coordinators serving on the board will complete their terms while other positions will be filled immediately.

(e) The board shall advocate and develop policy recommendations for ensuring interoperability of and connectivity between public safety communication systems within the state, including, but not limited to, recommendations related to the following:

1. Call routing accuracy and timeliness of response.

2. Improved interagency communication and situational awareness.

3. Improved interagency system connectivity.

4. Improved response times.

5. Maximized use of emerging technologies.

6. Improved lifecycle management of the systems, equipment, and services that enable responders and public safety officials to share information securely.

7. Governance, policy, and procedure across public safety agencies.

8. Establishment of resilient and secure emergency communication systems to reduce cybersecurity threats and vulnerabilities.

(f) The board shall administer the fee imposed under subsections (8) and (9), including receiving revenues derived from the fee; distributing portions of the revenues to counties and the office; accounting for receipts, distributions, and income derived by the funds maintained in the fund; and providing annual reports for review and submission to the Governor and the Legislature on amounts collected and expended, the purposes for which expenditures have been made, and the status of emergency communication services in this state.

(g) The board may create subcommittees to advise the board, as needed.

(6) AUTHORITY OF THE BOARD; ANNUAL REPORT.—

(a) The board shall:

1. Administer the public safety emergency communications systems ~~E911~~ fee.

2. Implement, maintain, and oversee the fund.

3. Review and oversee the disbursement of the revenues deposited into the fund as provided in s. 365.173.

a. The board may establish a schedule for implementing wireless NG911 systems, public safety radio communications systems, and other public safety communications improvements ~~E911 service by service area,~~ and prioritize disbursements of revenues from the fund to ~~providers and~~ rural counties as provided in s. 365.173(2)(f) ~~s. 365.173(2)(e) and (g)~~ pursuant to the schedule, in order to implement 911 ~~E911~~ services in the most efficient and cost-effective manner.

b. For grants made available under s. 365.173(2)(g), the board shall provide 90 days' written notice to all counties and publish electronically an approved application process. Applications shall be prioritized based on the availability of grant funds, current system life expectancy, and system replacement needs. The board shall take all actions within its authority to ensure that county recipients of such funds use these funds only for the purpose under which they have been provided and may take any actions within its authority to secure county repayment of revenues upon a determination that the funds

were not used for the purpose for which the funds were disbursed.

~~b. Revenues in the fund which have not been disbursed because sworn invoices as required by s. 365.173(2)(c) have not been submitted to the board may be used by the board as needed to provide grants to counties for the purpose of upgrading E911 systems. The counties must use the funds only for capital expenditures or remotely provided hosted 911 answering point call-taking equipment and network services directly attributable to establishing and provisioning E911 services, which may include next-generation deployment. Prior to the distribution of grants, the board shall provide 90 days' written notice to all counties and publish electronically an approved application process. County grant applications shall be prioritized based on the availability of funds, current system life expectancy, system replacement needs, and Phase II compliance per the Federal Communications Commission. No grants will be available to any county for next-generation deployment until all counties are Phase II complete. The board shall take all actions within its authority to ensure that county recipients of such grants use these funds only for the purpose under which they have been provided and may take any actions within its authority to secure county repayment of grant revenues upon determination that the funds were not used for the purpose under which they were provided.~~

~~c. When determining the funding provided in a state 911 grant application request, the board shall take into account information on the amount of carryforward funds retained by the counties. The information will be based on the amount of county carryforward funds reported in the financial audit required in s. 365.173(2)(d). E911 State Grant Program funding requests will be limited by any county carryforward funds in excess of the allowable 30 percent amount of fee revenue calculated on a 2-year basis.~~

~~d. The board shall reimburse all costs of a wireless provider in accordance with s. 365.173(2)(c) before taking any action to transfer additional funds.~~

~~e. After taking the action required in sub-subparagraphs a.-d., the board may review and, with all members participating in the vote, adjust the percentage allocations or adjust the amount of the fee as provided under paragraph (8)(g), and, if the board determines that the revenues in the wireless category exceed the amount needed to reimburse wireless providers for the cost to implement E911 services, the board may transfer revenue to the counties from the existing funds within the wireless category. The board shall disburse the funds equitably to all counties using a timeframe and distribution methodology established by the board.~~

4. Review documentation submitted by wireless providers which reflects current and projected funds derived from the fee.

~~, and the expenses incurred and expected to be incurred in order to comply with the E911 service requirements contained in the order for the purposes of:~~

~~a. Ensuring that wireless providers receive fair and equitable distributions of funds from the fund.~~

~~b. Ensuring that wireless providers are not provided disbursements from the fund which exceed the costs of providing E911 service, including the costs of complying with the order.~~

~~c. Ascertaining the projected costs of compliance with the requirements of the order and projected collections of the fee.~~

~~d. Implementing changes to the allocation percentages or adjusting the fee under paragraph (8)(h).~~

5. Implement changes to the allocation percentages or adjust the fee pursuant to s. 365.173.

6.~~5.~~ Meet ~~monthly~~ in the most efficient and cost-effective manner, including telephonically when practical, for ~~the~~ business to be conducted. The office will administer the disbursement of funds to counties and provide a monthly report of such disbursements to the Board. ~~approve or reject, in whole or in part, applications submitted by wireless providers for recovery of moneys deposited into the wireless category, and to authorize the transfer of, and distribute, the fee allocation to the counties~~.

7.~~6.~~ Hire and retain employees, which may include an independent executive director who shall possess experience in

the area of telecommunications and emergency 911 issues, for the purposes of performing the technical and administrative functions for the board.

8.~~7.~~ Make and enter into contracts, pursuant to chapter 287, and execute other instruments necessary or convenient for the exercise of the powers and functions of the board.

9.~~8.~~ Sue and be sued, and appear and defend in all actions and proceedings, in its corporate name to the same extent as a natural person.

10.~~9.~~ Adopt, use, and alter a common corporate seal.

11.~~10.~~ Elect or appoint the officers and agents that are required by the affairs of the board.

12.~~11.~~ The board may adopt rules under ss. 120.536(1) and 120.54 to implement this section and ss. 365.173 and 365.174.

13.~~12.~~ Provide coordination, support, and technical assistance to counties to promote the deployment of advanced public safety emergency communications ~~911 and E911~~ systems in the state.

14.~~13.~~ Provide coordination and support for educational opportunities related to 911 ~~E911~~ issues for the public safety emergency communications ~~E911~~ community in this state.

15.~~14.~~ Act as an advocate for issues related to public safety emergency communications ~~E911~~ system functions, features, and operations to improve the delivery of public safety

emergency communications ~~E911~~ services to the residents of and visitors to this state.

16.~~15.~~ Coordinate input from this state at national forums and associations, to ensure that policies related to public safety emergency communications ~~E911~~ systems and services are consistent with the policies of the public safety emergency communications ~~E911~~ community in this state.

17.~~16.~~ Work cooperatively with the system director established in s. 365.171(5) to enhance the state of public safety emergency communications ~~E911~~ services in this state and to provide unified leadership for all public safety emergency communications ~~E911~~ issues through planning and coordination.

18.~~17.~~ Do all acts and things necessary or convenient to carry out the powers granted in this section in a manner that is competitively and technologically neutral as to all voice communications services providers, including, but not limited to, consideration of emerging technology and related cost savings, while taking into account embedded costs in current systems.

19.~~18.~~ Have the authority to secure the services of an independent, private attorney via invitation to bid, request for proposals, invitation to negotiate, or professional contracts for legal services already established at the Division of Purchasing of the Department of Management Services.

(b) Board members shall serve without compensation; however, members are entitled to per diem and travel expenses as provided in s. 112.061.

(c) By February 28 of each year, the board shall prepare a report for submission by the office to the Governor, the President of the Senate, and the Speaker of the House of Representatives which addresses for the immediately preceding state fiscal year and county fiscal year:

1. The annual receipts, including the total amount of fee revenues collected by each provider, the total disbursements of money in the fund, ~~including the amount of fund-reimbursed expenses incurred by each wireless provider to comply with the order,~~ and the amount of moneys on deposit in the fund.

2. Whether the amount of the fee and the allocation percentages set forth in s. 365.173 have been or should be adjusted to comply with the ~~requirements of the order or other~~ provisions of this chapter, and the reasons for making or not making a recommended adjustment to the fee.

3. Any other issues related to providing emergency communications ~~E911~~ services.

4. The status of public safety emergency communications ~~E911~~ services in this state.

(7) REQUEST FOR PROPOSALS FOR INDEPENDENT ACCOUNTING FIRM.—

(a) The board shall issue a request for proposals as provided in chapter 287 for the purpose of retaining an independent accounting firm. The independent accounting firm shall perform all material administrative and accounting tasks and functions required for administering the fee. The request for proposals must include, but need not be limited to:

1. A description of the scope and general requirements of the services requested.

2. A description of the specific accounting and reporting services required for administering the fund, including processing checks and distributing funds as directed by the board under s. 365.173.

3. A description of information to be provided by the proposer, including the proposer's background and qualifications and the proposed cost of the services to be provided.

(b) The board shall establish a committee to review requests for proposals which must include the statewide emergency communications systems ~~E911 system~~ director designated under s. 365.171(5), or his or her designee, and two members of the board~~, one of whom is a county 911 coordinator and one of whom represents a voice communications services provider~~. The review committee shall review the proposals received by the board and recommend an independent accounting firm to the board for final selection. By agreeing to serve on the review committee, each member of the review committee shall verify that

he or she does not have any interest or employment, directly or indirectly, with potential proposers which conflicts in any manner or degree with his or her performance on the committee.

(c) The board may secure the services of an independent accounting firm via invitation to bid, request for proposals, invitation to negotiate, or professional contracts already established at the Division of Purchasing, Department of Management Services, for certified public accounting firms, or the board may hire and retain professional accounting staff to accomplish these functions.

(8) PUBLIC SAFETY EMERGENCY COMMUNICATIONS SYSTEMS ~~E911~~ FEE.—

(a) Each voice communications services provider shall collect the fee described in this subsection, except that the fee for prepaid wireless service shall be collected in the manner set forth in subsection (9). Each provider, as part of its monthly billing process, shall bill the fee as follows. The fee shall not be assessed on any pay telephone in the state.

1. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber based on the number of access lines having access to the 911 ~~E911~~ system, on a service-identifier basis, up to a maximum of 25 access lines per account bill rendered.

2. Each voice communications service provider other than a wireless provider shall bill the fee to a subscriber on a basis

of five service-identified access lines for each digital transmission link, including primary rate interface service or equivalent Digital-Signal-1-level service, which can be channelized and split into 23 or 24 voice-grade or data-grade channels for communications, up to a maximum of 25 access lines per account bill rendered.

3. Except in the case of prepaid wireless service, each wireless provider shall bill the fee to a subscriber on a per-service-identifier basis for service identifiers whose primary place of use is within this state. The fee may ~~shall~~ not be assessed on or collected from a provider with respect to an end user's service if that end user's service is a prepaid wireless service sold before January 1, 2015.

4. Except in the case of prepaid wireless service, each voice communications services provider not addressed under subparagraphs 1., 2., and 3. shall bill the fee on a per-service-identifier basis for service identifiers whose primary place of use is within the state up to a maximum of 25 service identifiers for each account bill rendered.

The provider may list the fee as a separate entry on each bill, in which case the fee must be identified as a fee for 911 ~~E911~~ services. A provider shall remit the fee to the board only if the fee is paid by the subscriber. If a provider receives a partial payment for a monthly bill from a subscriber, the amount

received shall first be applied to the payment due the provider for providing voice communications service.

(b) A provider is not obligated to take any legal action to enforce collection of the fees for which any subscriber is billed. A county subscribing to 911 service remains liable to the provider delivering the 911 service or equipment for any 911 service, equipment, operation, or maintenance charge owed by the county to the provider.

(c) For purposes of this subsection, the state and local governments are not subscribers.

(d) Each provider may retain 1 percent of the amount of the fees collected as reimbursement for the administrative costs incurred by the provider to bill, collect, and remit the fee. The remainder shall be delivered to the board and deposited by the board into the fund. The board shall distribute the remainder pursuant to s. 365.173.

(e) Voice communications services providers billing the fee to subscribers shall deliver revenues from the fee to the board within 60 days after the end of the month in which the fee was billed, together with a monthly report of the number of service identifiers in each county. Each wireless provider and other applicable provider identified in subparagraph (a)4. shall report the number of service identifiers for subscribers whose place of primary use is in each county. All provider subscriber information provided to the board is subject to s. 365.174. If a

provider chooses to remit any fee amounts to the board before they are paid by the subscribers, a provider may apply to the board for a refund of, or may take a credit for, any such fees remitted to the board which are not collected by the provider within 6 months following the month in which the fees are charged off for federal income tax purposes as bad debt.

(f) The rate of the fee may not exceed 50 cents per month for each service identifier. Effective January 1, 2015, the fee shall be 40 cents per month for each service identifier. The fee shall apply uniformly and be imposed throughout the state~~, except for those counties that, before July 1, 2007, had adopted an ordinance or resolution establishing a fee less than 50 cents per month per access line. In those counties the fee established by ordinance may be changed only to the uniform statewide rate no sooner than 30 days after notification is made by the county's board of county commissioners to the board~~.

(g) The board may adjust the allocation percentages for distribution of the fund as provided in s. 365.173. ~~No sooner than June 1, 2015, the board may adjust the rate of the fee under paragraph (f) based on the criteria in this paragraph and paragraph (h).~~ Any adjustment in the rate must be approved by a two-thirds vote of the total number of ~~E911~~ board members. When setting the percentages or contemplating any adjustments to the fee, the board shall consider the following:

~~1. The revenues currently allocated for wireless service provider costs for implementing E911 service and projected costs for implementing E911 service, including recurring costs for Phase I and Phase II and the effect of new technologies;~~

1.~~2.~~ The appropriate level of funding needed to fund the rural grant program provided for in s. 365.173(2)(f) ~~s. 365.173(2)(g)~~; and

2.~~3.~~ The need to fund statewide, regional, and county grants in accordance with sub-subparagraph (6)(a)3.b. and s. 365.173(2)(g) ~~s. 365.173(2)(h)~~.

(h) The board may adjust the allocation percentages or adjust the amount of the fee as provided in paragraph (g) if necessary to ensure full cost recovery or prevent over recovery ~~overrecovery~~ of costs incurred in the provision of 911 ~~E911~~ service, including costs incurred or projected to be incurred ~~to comply with the order~~. Any new allocation percentages or reduced or increased fee may not be adjusted for 1 year. In no event shall the fee exceed 50 cents per month for each service identifier. The fee, and any board adjustment of the fee, shall be uniform throughout the state~~, except for the counties identified in paragraph (f)~~. No less than 90 days before the effective date of any adjustment to the fee, the board shall provide written notice of the adjusted fee amount and effective date to each voice communications services provider from which the board is then receiving the fee.

(i) It is the intent of the Legislature that all revenue from the fee be used as specified in s. 365.173(2)(a)-(h) ~~s. 365.173(2)(a)-(i)~~.

(j) State and local taxes do not apply to the fee. The amount of the ~~E911~~ fee collected by a provider may not be included in the base for imposition of any tax, fee, surcharge, or other charge imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(k) A local government may not levy the fee or any additional fee on providers or subscribers for the provision of 911 ~~E911~~ service.

(l) For purposes of this section, the definitions contained in s. 202.11 and the provisions of s. 202.155 apply in the same manner and to the same extent as the definitions and provisions apply to the taxes levied under chapter 202 on mobile communications services.

(9) PREPAID WIRELESS PUBLIC SAFETY EMERGENCY COMMUNICATIONS ~~E911~~ FEE.—

(a) Effective January 1, 2015, a prepaid wireless E911 fee is imposed per retail transaction at the rate established in paragraph (8)(f). In order to allow sellers of all sizes and technological capabilities adequate time to comply with this subsection, a seller of prepaid wireless service operating in this state before the prepaid wireless E911 fee is imposed shall

retain 100 percent of the fee collected under this paragraph for the first 2 months to offset the cost of setup.

(a) ~~(b)~~ Effective March 1, 2015, the prepaid wireless ~~E911~~ fee ~~imposed under paragraph (a)~~ shall be subject to remittance in accordance with paragraph (f) ~~(g)~~. In no event shall the fee exceed 50 cents for each retail transaction. At least 90 days before the effective date of any adjustment to the fee under paragraph (8)(g), the Department of Revenue shall provide written notice of the adjusted fee amount and its effective date to each seller from which the department is then receiving the fee. At least 120 days before the effective date of any adjustment to the fee imposed under this subsection, the board shall provide notice to the Department of Revenue of the adjusted fee amount and effective date of the adjustment.

(b) ~~(c)~~ The prepaid wireless ~~E911~~ fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless ~~E911~~ fee shall be separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer.

(c) ~~(d)~~ For purposes of paragraph (b) ~~(c)~~, a retail transaction that takes place in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Such transaction is deemed to have occurred in the county of the

business location. When a retail transaction does not take place at the seller's business location, the transaction shall be treated as taking place at the consumer's shipping address or, if no item is shipped, at the consumer's address or the location associated with the consumer's mobile telephone number. Such transaction is deemed to have occurred in the county of the consumer's shipping address when items are shipped to the consumer or, when no items are shipped, the county of the consumer's address or the location associated with the consumer's mobile telephone number. A transaction for which the specific Florida county cannot be determined shall be treated as nonspecific.

(d) ~~(e)~~ If a prepaid wireless device is sold for a single, nonitemized price with a prepaid wireless service of 10 minutes or less or $5 or less, the seller may elect not to apply the prepaid wireless ~~E911~~ fee to the transaction.

(e) ~~(f)~~ The amount of the prepaid wireless ~~E911~~ fee that is collected by a seller from a consumer and that is separately stated on an invoice, receipt, or similar document provided to the consumer by the seller, may not be included in the base for imposition of any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(f) ~~(g)~~ Beginning April 1, 2015, each seller shall file a return and remit the prepaid wireless ~~E911~~ fees collected in the

previous month to the Department of Revenue on or before the 20th day of the month. If the 20th day falls on a Saturday, Sunday, or legal holiday, payments accompanied by returns are due on the next succeeding day that is not a Saturday, Sunday, or legal holiday observed by federal or state agencies as defined in chapter 683 and s. 7503 of the Internal Revenue Code of 1986, as amended. A seller may remit the prepaid wireless ~~E911~~ fee by electronic funds transfer and file a fee return with the Department of Revenue that is initiated through an electronic data interchange.

1. When a seller is authorized by the Department of Revenue pursuant to s. 212.11(1)(c) or (d) to file a sales and use tax return on a quarterly, semiannual, or annual reporting basis, the seller may file a return and remit the prepaid wireless ~~E911~~ fees on or before the 20th day of the month following the authorized reporting period for sales and use tax.

2. A seller collecting less than $50 per month of prepaid wireless ~~E911~~ fees may file a quarterly return for the calendar quarters ending in March, June, September, and December. The seller must file a return and remit the prepaid wireless ~~E911~~ fees collected during each calendar quarter on or before the 20th day of the month following that calendar quarter.

3. A seller must provide the following information on each prepaid wireless ~~E911~~ fee return filed with the Department of Revenue:

a. The seller's name, federal identification number, taxpayer identification number issued by the Department of Revenue, business location address and mailing address, and county of the business location in accordance with paragraph (c) ~~(d)~~;

b. The reporting period;

c. The number of prepaid wireless services sold during the reporting period;

d. The amount of prepaid wireless ~~E911~~ fees collected and the amount of any adjustments to the fees collected;

e. The amount of any retailer collection allowance deducted from the amount of prepaid wireless ~~E911~~ fees collected; and

f. The amount to be remitted to the Department of Revenue.

4. A seller who operates two or more business locations for which returns are required to be filed with the Department of Revenue may file a consolidated return reporting and remitting the prepaid wireless ~~E911~~ fee for all business locations. Such sellers must report the prepaid wireless E911 fees collected in each county, in accordance with paragraph (c) ~~(d)~~, on a reporting schedule filed with the fee return.

5. A return is not required for a reporting period when no prepaid wireless ~~E911~~ fee is to be remitted for that period.

6. Except as provided in this section, the Department of Revenue shall administer, collect, and enforce the fee under

this subsection pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212. The provisions of chapter 212 regarding authority to audit and make assessments, keeping of books and records, and interest and penalties on delinquent fees shall apply. The provisions of estimated tax liability in s. 212.11(1)(a) do not apply to the prepaid wireless ~~E911~~ fee.

(g) ~~(h)~~ A seller of prepaid wireless services in this state must register with the Department of Revenue for each place of business as required by s. 212.18(3) and the Department of Revenue's administrative rule regarding registration as a sales and use tax dealer. A separate application is required for each place of business. A valid certificate of registration issued by the Department of Revenue to a seller for sales and use tax purposes is sufficient for purposes of the registration requirement of this subsection. There is no fee for registration for remittance of the prepaid wireless ~~E911~~ fee.

(h) ~~(i)~~ The Department of Revenue shall deposit the funds remitted under this subsection into the Audit and Warrant Clearing Trust Fund established in s. 215.199 and retain up to 3.2 percent of the funds remitted under this subsection to reimburse its direct costs of administering the collection and remittance of prepaid wireless ~~E911~~ fees. Thereafter, the Department of Revenue shall transfer all remaining funds remitted under this subsection to the Emergency Communications

~~Number E911 System~~ Trust Fund monthly for use as provided in s. 365.173.

(i)~~(j)~~ Beginning March 1, 2015, a seller may retain 5 percent of the prepaid wireless ~~E911~~ fees that are collected by the seller from consumers as a retailer collection allowance.

(j)~~(k)~~ A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing or failing to provide emergency communications and 911 ~~or E911~~ service or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access emergency communications and 911 ~~or E911~~ service.

(k)~~(l)~~ A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing any lawful assistance to any investigative or law enforcement officer of the United States, any state, or any political subdivision of any state in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.

(l)~~(m)~~ The limitations of liability under this subsection for providers and sellers are in addition to any other limitation of liability provided for under this section.

(m) ~~(n)~~ A local government may not levy the fee or any additional fee on providers or sellers of prepaid wireless service for the provision of 911 ~~E911~~ service.

(n) ~~(o)~~ For purposes of this section, the state and local governments are not consumers.

(o) ~~(p)~~ For purposes of this subsection, the term:

1. "Consumer" means a person who purchases prepaid wireless service in a retail sale.

2. "Prepaid wireless ~~E911~~ fee" means the fee that is required to be collected by a seller from a consumer as provided in this subsection.

3. "Provider" means a person that provides prepaid wireless service pursuant to a license issued by the Federal Communications Commission.

4. "Retail transaction" means the purchase by a consumer from a seller of prepaid wireless service that may be applied to a single service identifier for use by the consumer. If a consumer makes a purchase of multiple prepaid wireless services in a single transaction, each individual prepaid wireless service shall be considered a separate retail transaction for purposes of calculating the prepaid wireless ~~E911~~ fee.

5. "Seller" means a person who makes retail sales of prepaid wireless services to a consumer.

(10) AUTHORIZED EXPENDITURES OF PUBLIC SAFETY EMERGENCY COMMUNICATIONS SYSTEMS ~~E911~~ FEE.—

(a) For purposes of this section, emergency communications and 911 ~~E911~~ service includes the functions relating to the receipt and transfer of requests for emergency assistance, ~~of~~ database management, call taking, and location verification~~, and call transfer~~. Department of Health certification and recertification and training costs for ~~911~~ public safety telecommunications, including dispatching, are functions of public safety emergency telecommunications ~~911~~ services.

(b) All costs directly attributable to the establishment or provision of emergency communications equipment ~~E911 service~~ and ~~contracting for E911~~ services related to a primary or secondary public safety answering point are eligible for expenditure of moneys derived from imposition of the fee authorized by subsections (8) and (9). These costs include the acquisition, implementation, and maintenance of PSAP ~~Public Safety Answering Point (PSAP)~~ equipment and 911 ~~E911~~ service features, as defined in the providers' published schedules or the acquisition, installation, and maintenance of other ~~E911~~ equipment, including: circuits; call answering equipment; call transfer equipment; ANI or ALI controllers; ANI or ALI displays; station instruments; NG911 ~~E911~~ telecommunications systems; Emergency Services IP Network ESInet; visual call information and storage devices; recording equipment; telephone devices and other equipment for the hearing impaired used in the E911 system; PSAP backup power systems; consoles; automatic call

distributors; ~~, and~~ interfaces, including hardware and software, for computer-aided dispatch (CAD) systems, public safety land mobile radio systems (LMR) and radio consoles that provide two-way radio communication with responders, and in-building coverage~~; integrated CAD systems for that portion of the systems used for E911 call taking~~; GIS system and software equipment and information displays; network clocks; cybersecurity, including hardware, software, and services; salary and associated expenses for 911 ~~E911~~ call takers and emergency dispatchers ~~for that portion of their time spent taking and transferring E911 calls~~, salary, and associated expenses for a county to employ a full-time equivalent 911 ~~E911~~ coordinator position and a full-time equivalent mapping or geographical data position, and technical system maintenance, database, and administration personnel for the portion of their time spent administrating the emergency communications ~~E911~~ system; emergency medical, fire, and law enforcement prearrival instruction software; charts and training costs; training costs for PSAP call takers, dispatchers, supervisors, and managers in the proper methods and techniques used in taking and transferring 911 ~~E911~~ calls; costs to train and educate PSAP employees and the public regarding 911 and radio ~~E911~~ service or NG911 ~~E911~~ equipment, including fees collected by the Department of Health for the certification and recertification of 911 public safety telecommunicators as required under s. 401.465; and expenses required to develop and

maintain all information, including ALI and ANI databases, call taker access to ~~and other information source repositories, necessary to properly inform call takers as to location address, type of emergency,~~ smart city technology data, emergency communications broadband network information, and other information directly relevant to the processing of a request for emergency assistance ~~E911 call-taking and transferring function. Moneys derived from the fee may also be used for next-generation E911 network services, next-generation E911 database services, next-generation E911 equipment, and wireless E911 routing systems~~.

(c) The moneys may not be used to pay for any item not listed in this subsection, including, but not limited to, any capital or operational costs related to responders dispatched to the emergency, and ~~costs for emergency responses which occur after the call transfer to the responding public safety entity and the~~ costs for utilities, constructing, leasing, maintaining, or renovating buildings, except for those building modifications necessary to maintain the security and environmental integrity of the PSAP and emergency communications ~~E911~~ equipment rooms.

(11) LIABILITY OF COUNTIES.—A county subscribing to 911 service remains liable to the local exchange carrier for any 911 service, equipment, operation, or maintenance charge owed by the county to the local exchange carrier. As used in this subsection, the term "local exchange carrier" means a local

exchange telecommunications service provider of 911 service or equipment to any county within its certificated area.

(12) INDEMNIFICATION AND LIMITATION OF LIABILITY.—A local government may indemnify local exchange carriers against liability in accordance with the published schedules of the company. Notwithstanding an indemnification agreement, a local exchange carrier, voice communications services provider, or other service provider that provides 911, ~~or~~ E911, or NG911 service on a retail or wholesale basis is not liable for damages resulting from or in connection with 911, ~~or~~ E911, or NG911 service, or for identification of the telephone number, or address, or name associated with any person accessing 911, ~~or~~ E911, or NG911 service, unless the carrier or provider acted with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of a person when providing such services. A carrier or provider is not liable for damages to any person resulting from or in connection with the carrier's or provider's provision of any lawful assistance to any investigative or law enforcement officer of the United States, this state, or a political subdivision thereof, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer. For purposes of this subsection, the term "911, ~~or~~ E911, or NG911 service" means a telecommunications service, voice or nonvoice

communications service, or other wireline or wireless service, including, but not limited to, a service using Internet protocol, which provides, in whole or in part, any of the following functions: providing members of the public with the ability to reach an answering point by using the digits 9-1-1; directing 911 calls to answering points by selective routing; providing for automatic number identification and automatic location-identification features; or providing wireless E911 services as defined in the order.

(13) FACILITATING EMERGENCY COMMUNICATIONS ~~E911~~ SERVICE IMPLEMENTATION.—To balance the public need for reliable emergency communications ~~E911~~ services through reliable wireless systems and the public interest served by governmental zoning and land development regulations and notwithstanding any other law or local ordinance to the contrary, the following standards shall apply to a local government's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility. This subsection shall not, however, be construed to waive or alter the provisions of s. 286.011 or s. 286.0115. For the purposes of this subsection only, "local government" shall mean any municipality or county and any agency of a municipality or county only. The term "local government" does not, however, include any airport, as defined by s. 330.27(2), even if it is owned or controlled by or through a municipality, county, or

agency of a municipality or county. Further, notwithstanding anything in this section to the contrary, this subsection does not apply to or control a local government's actions as a property or structure owner in the use of any property or structure owned by such entity for the placement, construction, or modification of wireless communications facilities. In the use of property or structures owned by the local government, however, a local government may not use its regulatory authority so as to avoid compliance with, or in a manner that does not advance, the provisions of this subsection.

(a) Collocation among wireless providers is encouraged by the state.

1.a. Collocations on towers, including nonconforming towers, that meet the requirements in sub-sub-subparagraphs (I), (II), and (III), are subject to only building permit review, which may include a review for compliance with this subparagraph. Such collocations are not subject to any design or placement requirements of the local government's land development regulations in effect at the time of the collocation that are more restrictive than those in effect at the time of the initial antennae placement approval, to any other portion of the land development regulations, or to public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.

(I) The collocation does not increase the height of the tower to which the antennae are to be attached, measured to the highest point of any part of the tower or any existing antenna attached to the tower;

(II) The collocation does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment enclosures and ancillary facilities; and

(III) The collocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennae placed on the tower and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the tower supporting the antennae. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the local government's land development regulations in effect at the time the initial antennae placement was approved.

b. Except for a historic building, structure, site, object, or district, or a tower included in sub-subparagraph a., collocations on all other existing structures that meet the requirements in sub-sub-subparagraphs (I)-(IV) shall be subject to no more than building permit review, and an administrative review for compliance with this subparagraph. Such collocations

are not subject to any portion of the local government's land development regulations not addressed herein, or to public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.

(I) The collocation does not increase the height of the existing structure to which the antennae are to be attached, measured to the highest point of any part of the structure or any existing antenna attached to the structure;

(II) The collocation does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;

(III) The collocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional collocations on the existing structure or procedural requirements, other than those authorized by this section, of the local government's land development regulations in effect at the time of the collocation application; and

(IV) The collocation consists of antennae, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with sub-sub-

subparagraph (III) and were applied to the initial antennae placed on the structure and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the antennae.

c. Regulations, restrictions, conditions, or permits of the local government, acting in its regulatory capacity, that limit the number of collocations or require review processes inconsistent with this subsection shall not apply to collocations addressed in this subparagraph.

d. If only a portion of the collocation does not meet the requirements of this subparagraph, such as an increase in the height of the proposed antennae over the existing structure height or a proposal to expand the ground space approved in the site plan for the equipment enclosure, where all other portions of the collocation meet the requirements of this subparagraph, that portion of the collocation only may be reviewed under the local government's regulations applicable to an initial placement of that portion of the facility, including, but not limited to, its land development regulations, and within the review timeframes of subparagraph (d)2., and the rest of the collocation shall be reviewed in accordance with this subparagraph. A collocation proposal under this subparagraph that increases the ground space area, otherwise known as the compound, approved in the original site plan for equipment enclosures and ancillary facilities by no more than a cumulative

amount of 400 square feet or 50 percent of the original compound size, whichever is greater, shall, however, require no more than administrative review for compliance with the local government's regulations, including, but not limited to, land development regulations review, and building permit review, with no public hearing review. This sub-subparagraph shall not preclude a public hearing for any appeal of the decision on the collocation application.

2. If a collocation does not meet the requirements of subparagraph 1., the local government may review the application under the local government's regulations, including, but not limited to, land development regulations, applicable to the placement of initial antennae and their accompanying equipment enclosure and ancillary facilities.

3. If a collocation meets the requirements of subparagraph 1., the collocation shall not be considered a modification to an existing structure or an impermissible modification of a nonconforming structure.

4. The owner of the existing tower on which the proposed antennae are to be collocated shall remain responsible for compliance with any applicable condition or requirement of a permit or agreement, or any applicable condition or requirement of the land development regulations to which the existing tower had to comply at the time the tower was permitted, including any

aesthetic requirements, provided the condition or requirement is not inconsistent with this paragraph.

5. An existing tower, including a nonconforming tower, may be structurally modified in order to permit collocation or may be replaced through no more than administrative review and building permit review, and is not subject to public hearing review, if the overall height of the tower is not increased and, if a replacement, the replacement tower is a monopole tower or, if the existing tower is a camouflaged tower, the replacement tower is a like-camouflaged tower. This subparagraph shall not preclude a public hearing for any appeal of the decision on the application.

(b)1. A local government's land development and construction regulations for wireless communications facilities and the local government's review of an application for the placement, construction, or modification of a wireless communications facility shall only address land development or zoning issues. In such local government regulations or review, the local government may not require information on or evaluate a wireless provider's business decisions about its service, customer demand for its service, or quality of its service to or from a particular area or site, unless the wireless provider voluntarily offers this information to the local government. In such local government regulations or review, a local government may not require information on or evaluate the wireless

provider's designed service unless the information or materials are directly related to an identified land development or zoning issue or unless the wireless provider voluntarily offers the information. Information or materials directly related to an identified land development or zoning issue may include, but are not limited to, evidence that no existing structure can reasonably be used for the antennae placement instead of the construction of a new tower, that residential areas cannot be served from outside the residential area, as addressed in subparagraph 3., or that the proposed height of a new tower or initial antennae placement or a proposed height increase of a modified tower, replacement tower, or collocation is necessary to provide the provider's designed service. Nothing in this paragraph shall limit the local government from reviewing any applicable land development or zoning issue addressed in its adopted regulations that does not conflict with this section, including, but not limited to, aesthetics, landscaping, land use-based ~~land use based~~ location priorities, structural design, and setbacks.

2. Any setback or distance separation required of a tower may not exceed the minimum distance necessary, as determined by the local government, to satisfy the structural safety or aesthetic concerns that are to be protected by the setback or distance separation.

3. A local government may exclude the placement of wireless communications facilities in a residential area or residential zoning district but only in a manner that does not constitute an actual or effective prohibition of the provider's service in that residential area or zoning district. If a wireless provider demonstrates to the satisfaction of the local government that the provider cannot reasonably provide its service to the residential area or zone from outside the residential area or zone, the municipality or county and provider shall cooperate to determine an appropriate location for a wireless communications facility of an appropriate design within the residential area or zone. The local government may require that the wireless provider reimburse the reasonable costs incurred by the local government for this cooperative determination. An application for such cooperative determination shall not be considered an application under paragraph (d).

4. A local government may impose a reasonable fee on applications to place, construct, or modify a wireless communications facility only if a similar fee is imposed on applicants seeking other similar types of zoning, land use, or building permit review. A local government may impose fees for the review of applications for wireless communications facilities by consultants or experts who conduct code compliance review for the local government but any fee is limited to specifically identified reasonable expenses incurred in the

review. A local government may impose reasonable surety requirements to ensure the removal of wireless communications facilities that are no longer being used.

5. A local government may impose design requirements, such as requirements for designing towers to support collocation or aesthetic requirements, except as otherwise limited in this section, but shall not impose or require information on compliance with building code type standards for the construction or modification of wireless communications facilities beyond those adopted by the local government under chapter 553 and that apply to all similar types of construction.

(c) Local governments may not require wireless providers to provide evidence of a wireless communications facility's compliance with federal regulations, except evidence of compliance with applicable Federal Aviation Administration requirements under 14 C.F.R. part 77, as amended, and evidence of proper Federal Communications Commission licensure, or other evidence of Federal Communications Commission authorized spectrum use, but may request the Federal Communications Commission to provide information as to a wireless provider's compliance with federal regulations, as authorized by federal law.

(d)1. A local government shall grant or deny each properly completed application for a collocation under subparagraph (a)1. based on the application's compliance with the local

government's applicable regulations, as provided for in subparagraph (a)1. and consistent with this subsection, and within the normal timeframe for a similar building permit review but in no case later than 45 business days after the date the application is determined to be properly completed in accordance with this paragraph.

2. A local government shall grant or deny each properly completed application for any other wireless communications facility based on the application's compliance with the local government's applicable regulations, including but not limited to land development regulations, consistent with this subsection and within the normal timeframe for a similar type review but in no case later than 90 business days after the date the application is determined to be properly completed in accordance with this paragraph.

3.a. An application is deemed submitted or resubmitted on the date the application is received by the local government. If the local government does not notify the applicant in writing that the application is not completed in compliance with the local government's regulations within 20 business days after the date the application is initially submitted or additional information resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination shall not be deemed as an approval of the application. If the application is

not completed in compliance with the local government's regulations, the local government shall so notify the applicant in writing and the notification must indicate with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the local government shall notify the applicant, in writing, within the normal timeframes of review, but in no case longer than 20 business days after the additional information is submitted, of any remaining deficiencies that must be cured. Deficiencies in document type or content not specified by the local government do not make the application incomplete. Notwithstanding this sub-subparagraph, if a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the local government may continue to request the information until such time as the specified deficiency is cured. The local government may establish reasonable timeframes within which the required information to cure the application deficiency is to be provided or the application will be considered withdrawn or closed.

b. If the local government fails to grant or deny a properly completed application for a wireless communications facility within the timeframes set forth in this paragraph, the application shall be deemed automatically approved and the

applicant may proceed with placement of the facilities without interference or penalty. The timeframes specified in subparagraph 2. may be extended only to the extent that the application has not been granted or denied because the local government's procedures generally applicable to all other similar types of applications require action by the governing body and such action has not taken place within the timeframes specified in subparagraph 2. Under such circumstances, the local government must act to either grant or deny the application at its next regularly scheduled meeting or, otherwise, the application is deemed to be automatically approved.

c. To be effective, a waiver of the timeframes set forth in this paragraph must be voluntarily agreed to by the applicant and the local government. A local government may request, but not require, a waiver of the timeframes by the applicant, except that, with respect to a specific application, a one-time waiver may be required in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government.

(e) The replacement of or modification to a wireless communications facility, except a tower, that results in a wireless communications facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding

properties, all as reasonably determined by the local government, are subject to no more than applicable building permit review.

(f) Any other law to the contrary notwithstanding, the Department of Management Services shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to state government-owned property not acquired for transportation purposes, and the Department of Transportation shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to property acquired for state rights-of-way. On property acquired for transportation purposes, leases shall be granted in accordance with s. 337.251. On other state government-owned property, leases shall be granted on a space available, first-come, first-served basis. Payments required by state government under a lease must be reasonable and must reflect the market rate for the use of the state government-owned property. The Department of Management Services and the Department of Transportation are authorized to adopt rules for the terms and conditions and granting of any such leases.

(g) If any person adversely affected by any action, or failure to act, or regulation, or requirement of a local government in the review or regulation of the wireless communication facilities files an appeal or brings an appropriate action in a court or venue of competent

jurisdiction, following the exhaustion of all administrative remedies, the matter shall be considered on an expedited basis.

(14) MISUSE OF 911, ~~OR~~ E911, OR NG911 SYSTEM; PENALTY.—911, ~~and~~ E911, and NG911 service must be used solely for emergency communications by the public. Any person who accesses the number 911 for the purpose of making a false alarm or complaint or reporting false information that could result in the emergency response of any public safety agency; any person who knowingly uses or attempts to use such service for a purpose other than obtaining public safety assistance; or any person who knowingly uses or attempts to use such service in an effort to avoid any charge for service, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. After being convicted of unauthorized use of such service four times, a person who continues to engage in such unauthorized use commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, if the value of the service or the service charge obtained in a manner prohibited by this subsection exceeds $100, the person committing the offense commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(15) TEXT-TO-911 SERVICE.—Each county shall develop a countywide implementation plan addressing text-to-911 services and, by January 1, 2022, enact a system to allow text-to-911 services.

(16) STATE LAW NOT PREEMPTED.—This section and ss. 365.173 and 365.174 do not alter any state law that otherwise regulates voice communications services providers.

Section 2. Section 365.173, Florida Statutes, is amended to read:

365.173 Emergency Communications ~~Number E911 System~~ Trust Fund.—

(1) REVENUES.—

(a) Revenues derived from the fee levied on subscribers under s. 365.172(8) must be paid by the board into the State Treasury on or before the 15th day of each month. Such moneys must be accounted for in a special fund to be designated as the Emergency Communications ~~Number E911 System~~ Trust Fund, a fund created in the Division of Telecommunications, or other office as designated by the Secretary of Management Services.

(b) Revenues derived from the fee levied on prepaid wireless service under s. 365.172(9), less the costs of administering collection of the fee, must be transferred by the Department of Revenue to the Emergency Communications ~~Number E911 System~~ Trust Fund on or before the 25th day of each month following the month of receipt.

(c) For accounting purposes, the Emergency Communications ~~Number E911 System~~ Trust Fund must be segregated into three separate categories:

1. The wireless category;

2. The nonwireless category; and

3. The prepaid wireless category.

(d) All moneys must be invested by the Chief Financial Officer pursuant to s. 17.61. All moneys in such fund are to be expended by the office for the purposes provided in this section and s. 365.172. These funds are not subject to s. 215.20.

(2) DISTRIBUTION AND USE OF FUNDS.—As determined by the board pursuant to s. 365.172(8)(f) ~~s. 365.172(8)(g)~~, and subject to any modifications approved by the board pursuant to s. 365.172(6)(a)3. or (8)(g) ~~s. 365.172(6)(a)3. or (8)(h)~~, the moneys in the fund shall be distributed and used only as follows:

(a) Ninety-five ~~Seventy-six~~ percent of the moneys in the wireless category shall be distributed each month to counties, based on the total number of service identifiers in each county, to ~~and shall~~ be used exclusively for payment of~~:~~

~~1.~~ authorized expenditures, as specified in s. 365.172(10).

~~2. Costs to comply with the requirements for E911 service contained in the order and any future rules related to the order.~~

(b) Ninety-six percent of the moneys in the nonwireless category shall be distributed each month to counties based on the total number of service identifiers in each county and shall

be used exclusively for payment of authorized expenditures, as specified in s. 365.172(10).

(c) Sixty-one percent of the moneys in the prepaid wireless category shall be distributed each month to counties based on the total amount of fees reported and paid in each county and shall be used exclusively for payment of authorized expenditures, as specified in s. 365.172(10). The moneys from prepaid wireless ~~E911~~ fees identified as nonspecific in accordance with s. 365.172(9) shall be distributed as determined by the Emergency Communications ~~E911~~ Board.

(d) Any county that receives funds under paragraphs (a), (b), and (c) shall establish a fund to be used exclusively for the receipt and expenditure of the revenues collected under paragraphs (a), (b), and (c). All fees placed in the fund and any interest accrued shall be used solely for costs described in subparagraphs (a)1. and 2. and may not be reduced, withheld, or allocated for other purposes. The money collected and interest earned in this fund shall be appropriated for these purposes by the county commissioners and incorporated into the annual county budget. The fund shall be included within the financial audit performed in accordance with s. 218.39. The financial audit shall assure that all emergency communications ~~E911~~ fee revenues, interest, and emergency communications ~~E911~~ grant funding are used for payment of authorized expenditures, as specified in s. 365.172(10) and as specified in the Emergency

Communications ~~E911~~ Board grant and special disbursement programs. The board may, in accordance with board rules, withhold future distribution of grant funds or request a return of all or a portion of funds previously awarded based on findings from the financial audit. The county is responsible for all expenditures of revenues distributed from the county emergency communications ~~E911~~ fund and shall submit the financial audit reports to the board for review. A county may carry forward up to 30 percent of the total funds disbursed to the county by the board during a county fiscal year for expenditures for capital outlay, capital improvements, equipment replacement, or implementation of a hosted system if such expenditures are made for the purposes specified in subparagraphs (a)1. and 2.; however, the 30-percent limitation does not apply to funds disbursed to a county under s. 365.172(6)(a)3., and a county may carry forward any percentage of the funds, except that any grant provided shall continue to be subject to any condition imposed by the board. In order to prevent an excess recovery of costs incurred in providing emergency communication ~~E911~~ service, a county that receives funds greater than the permissible emergency communication ~~E911~~ costs described in s. 365.172(10), including the 30-percent carryforward allowance, must return the excess funds to the ~~E911~~ board to be allocated under s. 365.172(6)(a).

~~(c) Twenty percent of the moneys in the wireless category shall be distributed to wireless providers in response to sworn invoices submitted to the board by wireless providers to reimburse such wireless providers for the actual costs incurred to provide 911 or E911 service, including the costs of complying with the order. Such costs include costs and expenses incurred by wireless providers to design, purchase, lease, program, install, test, upgrade, operate, and maintain all necessary data, hardware, and software required to provide E911 service. Each wireless provider shall submit to the board, by August 1 of each year, a detailed estimate of the capital and operating expenses for which it anticipates that it will seek reimbursement under this paragraph during the ensuing state fiscal year. In order to be eligible for recovery during any ensuing state fiscal year, a wireless provider must submit all sworn invoices for allowable purchases made within the previous calendar year no later than March 31 of the fiscal year. By September 15 of each year, the board shall submit to the Legislature its legislative budget request for funds to be allocated to wireless providers under this paragraph during the ensuing state fiscal year. The budget request shall be based on the information submitted by the wireless providers and estimated surcharge revenues. Distributions of moneys in the fund by the board to wireless providers must be fair and nondiscriminatory. If the total amount of moneys requested by~~

~~wireless providers pursuant to invoices submitted to the board and approved for payment exceeds the amount in the fund in any month, wireless providers that have invoices approved for payment shall receive a pro rata share of moneys in the fund and the balance of the payments shall be carried over to the following month or months until all of the approved payments are made. The board may adopt rules necessary to address the manner in which pro rata distributions are made when the total amount of funds requested by wireless providers pursuant to invoices submitted to the board exceeds the total amount of moneys on deposit in the fund.~~

(e)~~(f)~~ One percent of the moneys in each category of the fund shall be retained by the board to be applied to costs and expenses incurred for the purposes of managing, administering, and overseeing the receipts and disbursements from the fund and other activities as defined in s. 365.172(6). Any funds retained for such purposes in a calendar year which are not applied to such costs and expenses by March 31 of the following year shall be redistributed as determined by the board.

(f)~~(g)~~ Three percent of the moneys in each category of the fund and an additional 1 percent of the moneys collected in the wireless category shall be used to make monthly distributions to rural counties for the purpose of providing facilities and network and service enhancements and assistance for the emergency communications ~~911 or E911~~ systems operated by rural

counties and for the provision of grants by the office to rural counties for upgrading and replacing emergency communications ~~E911~~ systems.

(g)~~(h)~~ Thirty-five percent of the moneys in the prepaid wireless category shall be retained by the board to provide state emergency communications ~~E911~~ grants to be awarded in accordance with the following order of priority:

1. For all large, medium, and rural counties to upgrade or replace emergency communications ~~E911~~ systems.

2. For all large, medium, and rural counties to develop and maintain statewide 911 routing, geographic, and management information systems.

3. For all large, medium, and rural counties to develop and maintain next-generation 911 services and equipment.

(h)~~(i)~~ If the wireless category has funds remaining in it on December 31 after disbursements have been made during the calendar year immediately prior to December 31, the board may disburse the excess funds in the wireless category in accordance with s. 365.172(6)(a)3.b.

(3) The Legislature recognizes that the fee authorized under s. 365.172 may not necessarily provide the total funding required for establishing or providing the emergency communications ~~E911~~ service. It is the intent of the Legislature that all revenue from the fee be used as specified in subsection (2).

Section 3. Subsection (1) of section 365.177, Florida Statutes, is amended to read:

365.177 Transfer of E911 calls between systems.—

(1) The office shall develop a plan by December 30, 2023 ~~February 1, 2020~~, to upgrade all 911 public safety answering points within the state to allow the transfer of an emergency call from one local, multijurisdictional, or regional E911 system to another local, multijurisdictional, or regional E911 system in the state no later than December 30, 2033. Such transfer should include voice, text message, image, video, caller identification information, location information, and additional standards-based 911 call information. The plan shall prioritize the upgrade of PSAPs based on the population served by each PSAP, the capability of a jurisdiction or region to modernize PSAPs beyond legacy 911 infrastructure, and the ability of a jurisdiction or region to address interoperability between PSAPs. The plan must identify and address the projected costs of providing these transfer capabilities and project the ability of each county to meet operational costs based on disbursement of funds under s. 365.173(2)(a), (b), and (c).

Section 4. Subsection (10) of section 212.05965, Florida Statutes, is amended to read:

212.05965 Taxation of marketplace sales.—

(10) Notwithstanding any other law, the marketplace provider is also responsible for collecting and remitting any

prepaid wireless public safety emergency communications systems ~~E911~~ fee under s. 365.172, waste tire fee under s. 403.718, and lead-acid battery fee under s. 403.7185 at the time of sale for taxable retail sales made through its marketplace.

Section 5. Section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications ~~number E911~~ state plan.—

(1) SHORT TITLE.—This section may be cited as the "Florida Emergency Communications ~~Number E911~~ State Plan Act."

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature that the communications number "911" be the designated emergency communications number. A public safety agency may not advertise or otherwise promote the use of any communications number for emergency response services other than "911." It is further the intent of the Legislature to implement and continually update a cohesive statewide emergency communications ~~number "E911"~~ plan for enhanced 911 services which will provide citizens with rapid direct access to public safety agencies by accessing "911" with the objective of reducing the response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services.

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

(a) "Office" means the Division of Telecommunications within the Department of Management Services, as designated by the secretary of the department.

(b) "Local government" means any city, county, or political subdivision of the state and its agencies.

(c) "Public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

(d) "Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

(4) STATE PLAN.—The office shall develop, maintain, and implement appropriate modifications for a statewide emergency communications ~~E911 system~~ plan. The plan shall provide for:

(a) The public agency emergency communications requirements for each entity of local government in the state.

(b) A system to meet specific local government requirements. Such system shall include law enforcement, firefighting, and emergency medical services and may include other emergency services such as poison control, suicide prevention, and emergency management services.

(c) Identification of the mutual aid agreements necessary to obtain an effective emergency communications systems ~~E911 system~~.

(d) A funding provision that identifies the cost necessary to implement the emergency communications ~~E911~~ system.

The office shall be responsible for the implementation and coordination of such plan. The office shall adopt any necessary rules and schedules related to public agencies for implementing and coordinating the plan, pursuant to chapter 120.

(5) SYSTEM DIRECTOR.—The secretary of the department or his or her designee is designated as the director of the statewide emergency communications ~~number E911~~ system and, for the purpose of carrying out the provisions of this section, is authorized to coordinate the activities of the system with state, county, local, and private agencies. The director in implementing the system shall consult, cooperate, and coordinate with local law enforcement agencies.

(6) REGIONAL SYSTEMS.—This section does not prohibit or discourage the formation of multijurisdictional or regional systems; and any system established pursuant to this section may include the jurisdiction, or any portion thereof, of more than one public agency. It is the intent of the Legislature that emergency communications services ~~E911 service~~ be available throughout the state. Expenditure by counties of the ~~E911~~ fee

authorized and imposed under s. 365.172 should support this intent to the greatest extent feasible within the context of local service needs and fiscal capability. This section does not prohibit two or more counties from establishing a combined emergency ~~E911~~ communications service by an interlocal agreement and using the fees authorized and imposed by s. 365.172 for such combined ~~E911~~ service.

(7) TELECOMMUNICATIONS INDUSTRY COORDINATION.—The office shall coordinate with the Florida Public Service Commission which shall encourage the Florida telecommunications industry to activate facility modification plans for timely emergency communications services ~~E911~~ implementation.

(8) COIN TELEPHONES.—The Florida Public Service Commission shall establish rules to be followed by the telecommunications companies in this state designed toward encouraging the provision of coin-free dialing of "911" calls wherever economically practicable and in the public interest.

(9) SYSTEM APPROVAL.—No emergency communications number E911 system shall be established and no present system shall be expanded without prior approval of the office.

(10) COMPLIANCE.—All public agencies shall assist the office in their efforts to carry out the intent of this section, and such agencies shall comply with the developed plan.

(11) FEDERAL ASSISTANCE.—The secretary of the department or his or her designee may apply for and accept federal funding

assistance in the development and implementation of a statewide emergency communications ~~number E911~~ system.

(12) CONFIDENTIALITY OF RECORDS.—

(a) Any record, recording, or information, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications ~~E911~~ system is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that such record or information may be disclosed to a public safety agency. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. A telecommunications company or commercial mobile radio service provider shall not be liable for damages to any person resulting from or in connection with such telephone company's or commercial mobile radio service provider's provision of any lawful assistance to any investigative or law enforcement officer of the State of Florida or political subdivisions thereof, of the United States, or of any other

state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer unless the telecommunications company or commercial mobile radio service provider acted in a wanton and willful manner.

(b) Notwithstanding paragraph (a), a 911 public safety telecommunicator, as defined in s. 401.465, may contact any private person or entity that owns an automated external defibrillator who has notified the local emergency medical services medical director or public safety answering point of such ownership if a confirmed coronary emergency call is taking place and the location of the coronary emergency is within a reasonable distance from the location of the defibrillator, and may provide the location of the coronary emergency to that person or entity.

Section 6. Paragraph (b) of subsection (2) of section 365.174, Florida Statutes, is amended to read:

365.174 Proprietary confidential business information.—

(2)

(b) The Department of Revenue may provide information relative to s. 365.172(9) to the Secretary of Management Services, or his or her authorized agent, or to the Emergency Communications ~~E911~~ Board established in s. 365.172(5) for use in the conduct of the official business of the Department of Management Services or the Emergency Communications ~~E911~~ Board.

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

Remove everything before the enacting clause and insert:

An act relating to emergency communications; amending s. 365.172, F.S.; revising short title; revising legislative intent; revising and providing definitions; renaming the E911 Board as the Emergency Communications Board; providing the purpose of the board; revising the composition of the board; establishing board responsibilities; requiring the board to administer fees; authorizing the board to create subcommittees; authorizing the board to establish schedules for implementing certain wireless NG911 systems and improvements; establishing notice and publication requirements before distribution of grant funds; providing for priority of county applications for such funds; requiring board oversight of such funds; eliminating certain authority of the board; providing for the board's authority to implement changes to the allocation percentages or to adjust the fee; revising the frequency of board meetings; specifying that the Division of Telecommunications within the Department of Management Services must disburse funds to counties and provide a monthly report of such disbursements; revising the composition of a committee that reviews requests for proposals from the board regarding independent accounting

firm selection; revising provisions relating to the public safety emergency communications systems fee; requiring uniform application and imposition of the fee; revising the factors that the board considers when setting percentages or contemplating adjustments to the fee; updating provisions relating to the prepaid wireless public safety emergency communications systems fee; revising emergency communications and 911 service functions; revising the types of emergency communications equipment and services that are eligible for expenditure of moneys derived from the fee; amending s. 365.173, F.S.; renaming the Communications Number E911 System Fund as the Emergency Communications Trust Fund; revising the percent distribution of the fund to be used exclusively for payment of certain authorized expenditures; removing the percent distribution to wireless providers; authorizing the board, pursuant to rule, to withhold certain distributions of grant funds or request a return of all or a portion of such funds based on a financial audit; adding a specified percent distribution to rural counties; amending s. 365.177, F.S.; extending the date by which the Division of Telecommunications within the Department of Management Services must develop a plan to upgrade 911 public safety answering points; specifying components of the required plan; amending ss. 212.05965, 365.171, and 365.174, F.S.; conforming provisions to changes made by the act; providing an effective date.

1749

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 761 Telephone Solicitation
SPONSOR(S): Civil Justice Subcommittee, Fabricio
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 0 N	Thompson	Anstead
2) Civil Justice Subcommittee	12 Y, 3 N, As CS	Mathews	Jones
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Chapter 501, part IV, of the Florida Telemarketing Act (FTA), regulates telemarketers and requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services (DACS) before operating in Florida. Florida law also prohibits telephonic sales calls that use an automated system for the selection or dialing of telephone numbers or the playing of recorded messages (robocall) without the prior express written consent of the called party, with some exceptions. Unsolicited telephonic sales calls and text messages from telemarketers are prohibited. Residents who do not wish to receive such calls may have their residential, mobile, or paging device telephone number included on Florida's Do Not Call List.

The bill amends s. 501.059, F.S., to:

- Revise the prohibition on telephonic sales calls that use an automated system to specifically include unsolicited calls using certain automatic telephone dialing systems.
- Clarify what constitutes consent and clear and conspicuous disclosure.
- Clarify that a "signature" includes an affirmative act that demonstrates express consent, such as the checking of a box indicating consent.
- Provide a safe harbor period of thirty days from the date a consumer withdraws consent to receive communications or notifies the telephone solicitor that he or she does not want to receive communications.

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

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Telemarketing Act

Chapter 501, part IV, the Florida Telemarketing Act (FTA), requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services (DACS) before operating in Florida. Certain exempt entities must have a valid affidavit of exemption on file prior to operating in Florida. There are approximately 28 exemptions, including: soliciting for religious, charitable, political or educational purposes; research companies; newspapers; book and video clubs; cable television; and persons or companies with whom the consumer has a prior business relationship.[1]

The FTA generally requires businesses that solicit the sale of consumer goods or services to:

- Be licensed;[2]
- Post a form of security;[3]
- License all of their salespeople;[4] and
- Provide DACS with a list of all telephone numbers used to make sales calls.[5]

An application for licensure as a telemarketer must include several pieces of information, including the applicant's identifying information, prior experience in the field, criminal and administrative history (especially relating to fraud, theft, or unfair and deceptive trade practices), phone numbers from which the telemarketer will make sales calls, and any parent or affiliate entities under which it will transact business, if applicable.[6]

Additionally, an applicant for licensure as a telemarketer must submit:

- A script that will be used by its salespersons during calls, or other related literature;
- The identity, address, date of birth, and alias of each of the applicant's principal officers, directors, trustees, shareholders, owners, partners, office managers, and salespersons who are employed by or affiliated with the applicant; and
- A $1,500 licensing fee.[7]

In Florida, it is unlawful for telemarketers to:[8]

- Make calls before 8 a.m. or after 8 p.m. local time at the called person's time zone.
- Fail to provide the call recipient with their name and telephone number.
- Accept novelty payments.[9]
- Employ or be affiliated with an unlicensed salesperson.
- Be employed by or affiliated with an unlicensed commercial telephone seller.
- Operate without a license.

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[1] S. 501.604, F.S.
[2] S. 501.605, F.S.
[3] S. 501.611, F.S., requires a $50,000 bond, irrevocable letter of credit issued for the applicant, or a certificate of deposit in favor of the Department for payment on findings of fraud, misrepresentation, breach of contract, or other violation by the applicant.
[4] S. 501.607, F.S.
[5] S. 501.605, F.S.
[6] S. 501.605(2), F.S.
[7] S. 501.605(5)(b), F.S.
[8] S. 501.616, F.S.
[9] S. 501.603(8), F.S., defines a "novelty payment" as a payment method that does not have systematic monitoring and includes remotely created checks, remotely created payment orders, cash-to-cash money transfers (such as Western Union) and cash reload mechanisms (such as MoneyPak or ReloadIt). Novelty payment methods are not systematically monitored, have little to no consumer protection in the case of fraud or theft, and are used frequently in scams and other fraudulent activity.

Florida Telemarketing Act - Violations

Violations of the FTA are punishable by a civil fine of up to $10,000 per violation,[10] the imposition of criminal penalties, including conviction of a felony offense.[11] DACS and the office of the state attorney have investigative authority, including the power to subpoena witnesses if a violation occurs.[12] Reasonable attorney fees and costs may be awarded to the prevailing party in a civil action as part of a judgment or administrative order.[13]

Do Not Call

Section 501.059, F.S., governs telephone solicitations. The law includes the Florida Do Not Call Act, also known as the "Do Not Call" list (DNC list), which prohibits unsolicited telephonic sales calls and text messages from telemarketers.[14] Residents who do not wish to receive unsolicited telephonic sales calls may have their residential, mobile, or paging device telephone number included on the DNC list. DACS maintains the DNC list, it is free to register, and a registered number remains on the DNC list indefinitely.[15]

An "unsolicited telephonic sales call" does not include calls made:

- In response to an express request of the person called;
- Primarily in connection with an existing debt or contract, if payment or performance of such debt or contract has not been completed at the time of such call;
- To a person with whom the telephone solicitor has a prior or existing business relationship; or
- By a newspaper publisher or his or her agent or employee in connection with his or her business.[16]

Telephone solicitors[17] are prohibited from making telephonic sales calls[18] to consumers who register for the DNC list. A "telephonic sales call" means a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.[19]

In addition to those consumers who are registered for the DNC list, a telephone solicitor may not call or text a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted. Businesses and non-profit organizations are required to maintain a list of consumers who have made a do-not-call registration request. It is a violation of the Florida Do Not Call Act to call a consumer who has requested placement on the company's do-not-call list.[20]

When a telephone number is made available through a caller ID service during a telephonic sales call, the solicitor must ensure that the number is capable of receiving phone calls, and that the dialing of the

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[10] S. 501.619, F.S.
[11] S. 501.623, F.S.
[12] S. 501.617, F.S.
[13] S. 501.621, F.S.
[14] *See* s. 501.059, F.S.
[15] Dept. of Ag. and Consumer Services, *Florida Do Not Call*, https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call (last visited Mar. 21, 2023).
[16] S. 501.059(1)(k), F.S.
[17] S. 501.059(1)(i), F.S., defines "telephone solicitor" as "a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices."
[18] S. 501.059(1)(j), F.S., defines "telephonic sales call" as a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.
[19] S. 501.059(1)(j), F.S.
[20] S. 501.059(5), F.S.

number will connect the call recipient with the telephone solicitor or the seller on behalf of which the phone call was placed.[21]

Anyone who receives an unsolicited sales call can report the call to DACS using the online Do Not Call Complaint Form.[22]

Do Not Call - Consent

The law governing telephone solicitations also prohibits automated telephonic sales calls without the prior express written consent of the called party. Specifically, the law provides that:

> A person may not make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.[23]

"Prior express written consent" is defined as a written agreement that:

- Bears the signature of the called party;
- Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail; and
- Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered.[24]

Prior express written consent must include a clear and conspicuous disclosure informing the called party that:

- By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and
- He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.[25]

There is a rebuttable presumption that a telephonic sales call made to any Florida area code is a call made to a Florida resident or to a person in Florida at the time of the call.[26]

Do Not Call - Violations

A telephone solicitor who violates the DNC provisions is subject to an injunction and a civil penalty[27] with a maximum fine of $10,000 per violation, or an administrative fine[28] of up to $1,000 per violation. Additionally, a telephone solicitor may be held responsible for the consumer's attorney fees and costs.[29]

A party who was called in violation of the Do Not Call Act may bring an action for an injunction and actual damages or $500, whichever is greater.[30] Courts that find that a defendant willfully or knowingly

[21] S. 501.059(8)(b), F.S.
[22] DACS, *Florida Do Not Call*, https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call (last visited Mar. 21, 2023).
[23] S. 501.059(8)(a), F.S.
[24] S. 501.059(1)(g), F.S.
[25] S. 501.059(1)(g)4., F.S.
[26] S. 501.059(8)(d), F.S.
[27] S. 501.059(9)(a), F.S.
[28] S. 501.059(9)(b), F.S.
[29] S. 501.059(11), F.S.
[30] S. 501.059(10)(a), F.S.

violated these provisions are authorized to increase the amount of the award to not more than three times the amount of damages.[31]

Federal Telephone Consumer Protection Act (TCPA) History

In an effort to address a growing number of telephone marketing calls, Congress enacted the Telephone Consumer Protection Act (TCPA) in 1991. The TCPA restricts the making of telemarketing calls and the use of automatic telephone dialing systems and artificial or prerecorded voice messages. The rules apply to common carriers as well as to other marketers. In 1992, the Commission adopted rules to implement the TCPA, including the requirement that entities making telephone solicitations institute procedures for maintaining company-specific do-not-call lists.[32]

In July 2015, the Federal Communications Commission (FCC) established rules indicating that telephone carriers can block unwanted calls at the request of consumers.[33] Currently there are a number of call-blocking applications that provide some relief from unwanted calls and spam calls.[34]

On November 16, 2017, the FCC adopted new rules to allow voice service providers to proactively block certain types of robocalls that are likely to be fraudulent because they come from certain types of phone numbers, including those that do not or cannot make outgoing calls.[35] For example, perpetrators have used IRS phone numbers that do not dial out to impersonate the tax agency, informing the people who answer that they are calling to collect money owed to the U.S. government. Such calls appear legitimate to the person who receives them and may often result in fraud or identity theft. Service providers can now block such calls, as well as calls from invalid or illegitimate numbers.[36]

The FCC requires telemarketers to transmit caller identification information, including the number and name of the caller. The telephone number provided must permit any individual to make a do-not-call request during regular business hours. Moreover, any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information. However, tax-exempt nonprofit organizations are exempt from compliance with these rules.[37]

With regard to telephone carriers, the FCC allows carriers to offer their customers external call-blocking applications on their landlines and allows carriers to directly block certain illegal robocalls. In December 2019, Congress enacted the "TRACED Act" to aid enforcement efforts between law enforcement agencies and the private sector on traceback issues, and required the FCC to issue rules "for the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls."[38] In July of 2020, the FCC designated the US Telecom-led Industry Traceback Group (ITG) as the Official Consortium for coordinating industry-led efforts to trace back the origin of suspected unlawful robocalls.[39]

According to the ITG's first annual report, over 100 companies participated in over 1,000 ITG traceback investigations in 2019, identifying more than 10 million illegal robocalls and resulting in more than 20 subpoenas and/or civil investigative demands from federal and state enforcement agencies.[40]

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[31] S. 501.059(10)(b), F.S.
[32] Federal Communications Commission, *FCC Actions on Robocalls, Telemarketing*, https://www.fcc.gov/general/telemarketing-and-robocalls (last visited Mar. 21, 2023).
[33] Declaratory Ruling and Order, In the Matter of Rules and Regulations Implementing the Telecommunications Consumer Protection Act of 1991, 30 FCC Rcd. 7961 (July 10, 2015).
[34] CTIA, *The Wireless Association, How to Stop Robocalls*, https://www.ctia.org/consumer-tips/robocalls (last visited Mar. 21, 2023).
[35] 32 FCC Rcd 9706 (11).
[36] Federal Communications Commission, *Stop Unwanted Calls and Texts*, https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited Mar. 21, 2023).
[37] 47 C.F.R. s. 64.1601.
[38] Pallone-Thune Telephone Robocall Abuse *Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019)*.
[39] USTelecom The Broadband Association, *FCC Names USTelecom's Industry Traceback Group as Official Robocall Traceback Consortium*, https://www.ustelecom.org/fcc-names-ustelecoms-industry-traceback-group-as-official-robocall-traceback-consortium/ (last visited Mar. 21, 2023).
[40] InsideArm, *The Latest Developments in the World of Call Delivery*, https://www.insidearm.com/news/00047073-latest-developments-world-call-delivery/ (last visited Mar. 21, 2022).

The ITG reported in a letter to the FCC on November 13, 2020, that about 100 providers had failed to cooperate with the ITG, including approximately 30 based in the United States.[41] The ITG encouraged the FCC to bring aggressive enforcement against robocallers and voice service providers that routinely refuse to participate in the traceback process.[42]

In its Fourth Report and Order on Advanced Methods to Target and Eliminate Unlawful Robocalls released on December 30, 2020, the FCC required "all voice service providers to respond to traceback requests from the FCC, civil and criminal law enforcement and the Consortium."[43]

The TRACED Act requires the FCC to issue an annual public notice seeking applicants to serve as the registered consortium.[44] On August 22, 2022, the FCC selected the Industry Traceback Group (ITG) to continue to serve as the registered consortium.[45]

On September 12, 2022, the FCC announced the signing of an updated Memorandum of Understanding (MOU) with the Body of European Regulators for Electronic Communications (BEREC) that expands their current partnership, with a new focus on combatting unwanted robocalls and the promotion of 5G, 6G and beyond. One of the major topics of mutual interest includes robocall and other automated calls' mitigation and prevention.[46]

National Do Not Call Registry

Although individual states addressed consumers' requests to stop unwanted telemarketing calls before the federal government did,[47] the federal government soon followed with a National Do Not Call Registry in 2003.[48] In July 2003, the federal government issued a report and order establishing the National Do Not Call registry. The national registry covers all telemarketers (with the exception of certain nonprofit organizations), and applies to both interstate and intrastate calls. The registry is administered by the FTC. To reduce the number of hang-up and dead air calls consumers experience, the Commission's telemarketing rules also contain restrictions on the use of autodialers and requirements for transmitting caller ID information.

As the National Do Not Call Registry has gained popularity, some states have decided to forgo the expense of maintaining their own DNC lists. Currently, only 12 states maintain their own Do Not Call lists: Colorado, Florida, Indiana, Louisiana, Massachusetts, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Texas and Wyoming.[49]

Constitutionality of Do Not Call Registries

Do Not Call registries have been subject to numerous state and federal lawsuits challenging their constitutionality. Such lawsuits have been unsuccessful. The courts have found the Do Not Call Registry is a reasonable restriction on commercial speech and that the FTC is authorized to promulgate rules for the registry. The Tenth Circuit Court of Appeals stated that "the do-not-call registry prohibits

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[41] USTelecom, Enforcement Bureau Requests Information on the Status of Private-Led Traceback Efforts of Suspected Unlawful Robocalls, EB Docket No. 20-195, Nov. 13, 2020, https://docs.fcc.gov/public/attachments/DOC-368957A2.pdf (last visited Mar. 21, 2023).

[42] InsideArm, *The Latest Developments in the World of Call Delivery*, https://www.insidearm.com/news/00047073-latest-developments-world-call-delivery/ (last visited Mar. 21, 2022).

[43] Federal Communications Commission, *Report and Order (*Aug. 22, 2022) https://tcpaworld.com/wp-content/uploads/2022/08/RENEWAL-OF-UST-TRACEBACK-GROUP.pdf (last visited Mar. 21, 2023).

[44] TRACED Act, s. 13(d)(2).

[45] Federal Communications Commission, *Report and Order DA 21-1047* (Aug. 25, 2021) https://www.fcc.gov/document/fcc-retains-industry-traceback-group-robocall-consortium (last visited Mar. 21, 2022).

[46] Federal Communications Commission, Press Release, *FCC RENEWS AND EXPANDS PARTNERSHIP WITH EUROPEAN COUNTERPARTS*, Sep. 12, 2022).

[47] At least 28 states, starting with Florida in 1987, have implemented Do Not Call registries.

[48] Federal Trade Commission, *National Do Not Call Registry*, https://www.donotcall.gov/ (last visited Mar. 21, 2023).

[49] Contact Compliance Center Corporation, *State Do Not Call Lists*, https://www.dnc.com/faq/state-do-not-call-lists?page=1 (last visited Mar. 21, 2022).

only telemarketing calls aimed at consumers who have affirmatively indicated that they do not want to receive such calls and for whom such calls would constitute an invasion of privacy." Thus, the government has a role in restricting the ability of a telemarketer to reach a household via telephone, and because the government has left the ultimate decision of whether or not to be placed on the registry up to the individual, the government has not restricted the First Amendment rights of the solicitor.[50]

Claims of preemption have also been unsuccessful. The TCPA's non-preemption clause,[51] often referred to as the savings clause, has been relied upon by courts to uphold states' Do Not Call Registries. The clause states that "[n]othing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulation." The clause indicates specific types of actions that a state may prohibit or place more restrictive regulations on, such as sending unsolicited advertisements via fax, using of automatic dialing systems and prerecorded messages, and making telephone solicitations.[52]

The TPCA is silent on a state's ability to place stricter regulations than the TCPA requires for interstate calls.[53] However, at least one federal court of appeals has held that state regulations and prohibitions of telemarketing that cross state boundaries are valid.[54]

Caller ID and "Spoofing"

"Spoofing" is the practice of altering or manipulating the caller ID information that is received in conjunction with an incoming telephone call. In the past, caller ID services were not common and spoofing required special equipment or a relatively high degree of technical sophistication. However, advances in technology, such as the proliferation of cellular phones, cell phone applications, and the widespread availability of Voice over Internet Protocol (VoIP) allows anyone to inexpensively spoof his or her caller ID using the services of a third-party spoofing provider.[55] For example, one such spoofing provider allows a consumer to download an app on his or her smartphone, purchase credits towards call time, and simply input the number that he or she wants displayed on the receiving end in order to place an untraceable, spoofed call.[56]

In response to the growing practice of spoofing, Congress amended the TCPA to add the Truth in Caller ID Act of 2009. Under the Act and FCC rules, a person or entity is prohibited from transmitting false or misleading caller ID information "with the intent to defraud, cause harm, or wrongly obtain anything of value," with a penalty of up to $10,000 for each violation.[57] However, spoofing is not illegal when no harm is intended or caused, or if the caller has legitimate reasons to hide his or her information. Examples may include law enforcement agencies working on a case, a victim of domestic abuse, or a doctor who wishes to discuss private medical matters with a patient.[58]

In 2008, Florida passed its own anti-spoofing legislation, The Florida Caller ID Anti-Spoofing Act (2008).[59] The Act prohibits **any person** from:

- Making a call with knowledge that false information was entered into a telephone caller ID system with the intent to deceive, defraud, or mislead the call's recipient; and

[50] *Mainstream Marketing Services Inc v. Federal Trade Commission*, 358 F.3d 1228 (10th Cir. 2004).
[51] 47 U.S.C. s. 227(f)(1).
[52] National Association of Attorneys General, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, NAGTRI Journal, Vol. 1 No. 4.
[53] 47 U.S.C. s. 227 (f)(1).
[54] *See Patriotic Veterans, Inc. v. Indiana*, 736 F.3d 1041 at 1044-45 (7th Cir. 2013) and *Patriotic Veterans, Inc. v. State of Indiana*, No. 16-2059 (7th Cir. 2017)("Preventing automated messages to persons who don't want their peace and quiet disturbed is a valid time, place, and manner restriction.").
[55] *See* FCC 11-100, *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, (June 22, 2011), at 9116, https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-100A1_Rcd.pdf (last visited Mar. 21, 2023).
[56] Business Insider, *It's Surprisingly Easy for a Hacker to Call Anyone From Your Personal Phone Number* (March 1, 2016), http://www.businessinsider.com/phone-number-spoofing-2016-2 (last visited Mar. 21, 2023).
[57] 47 U.S.C. s. 227(e).
[58] FCC, *Caller ID Spoofing*, https://www.fcc.gov/consumers/guides/spoofing-and-caller-id (last visited Mar. 21, 2023).
[59] S. 817.487, F.S. (2008).

- Entering false information into a telephone caller ID system "with the intent to deceive, defraud, or mislead" the call's recipient.

However, a U.S. District Court in Miami found that Florida's Caller ID Anti-Spoofing Act (2008) violated the Commerce Clause of the United State Constitution because it had the effect of controlling spoofing practices that took place entirely outside the state.[60] Similarly, in 2011, a federal court in Mississippi struck down Mississippi's anti-spoofing law, which was substantially similar to Florida's.[61]

Spam Robocalls

US consumers received over 50.3 billion robocalls in 2022, only slightly less than the 50.5 billion total robocalls received in 2021 despite widespread enforcement efforts by government regulators and state officials.[62]

Scammers often use caller ID spoofing to mask their true location and make it appear the call is from a legitimate or local number to raise the odds of getting an answer. What follows is a robotic voice on the other end claiming to represent a utility, a name-brand company, or a government agency (such as the Social Security Administration or the Internal Revenue Service). It might offer a free cruise, inexpensive health insurance, or a low-interest loan. Answering or engaging with the call may lead to a live scammer, who realizes he or she has found a "live" number, and thus may call repeatedly.[63]

Many robocalls are legal. The FCC allows such robocalls for informational or noncommercial purposes, such as polling, political campaigning and outreach by nonprofit groups.

Advances in technology have magnified fundamental flaws in the American phone system, enabling unrelenting robocalls from untraceable origins. As a result, it is incredibly profitable to use spam calls to drive business regardless of whether the caller is perpetuating a scam or is a legitimate business using telemarketing to increase sales.[64]

Consent and Revocation

The TCPA prohibits a telemarketer from using an automatic telephone dialing system (ATDS) to place a call or send a text message to a cell phone without the recipient's "**prior express consent**."[65] The type of consent depends on the nature of the call or text. Consent generally can be revoked by any reasonable method. However, some courts recently have considered whether revocation may be restricted in circumstances where the consent is included on a bilateral agreement.[66]

There are two types of prior consent provided for under the TCPA:

- Prior express consent is required to place autodialed, non-solicitation calls or texts to a cell phone.
- Prior express written consent is a heightened form of consent, must be evidenced by a written agreement signed by the call recipient, and is required to place autodialed telemarketing or

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[60] *TelTech Systems, Inc. v. McCollum*, No. 08-61664-CIV-MARTINEZ-BROWN (S.D. Fla. Filed Oct. 16, 2008).

[61] *TelTech Systems, Inc. v. Barbour*, 866 F. Supp. 2d 571 (S.D. Miss. 2011), *aff'd sub nom Teltech Systems, Inc. v. Bryant*, 702 F.2d 232 (5th Cir. 2012).

[62] PR Newswire, Robocalls Top 50.3 Billion in 2022, Matching 2021 Call Volumes Despite Enforcement Efforts, https://www.prnewswire.com/news-releases/robocalls-top-50-3-billion-in-2022--matching-2021-call-volumes-despite-enforcement-efforts-301714297.html#:~:text=IRVINE%2C%20Calif.%2C%20Jan.,government%20regulators%20and%20state%20officials (last visited Mar. 21, 2023).

[63] AARP, *Robocalls*, https://www.aarp.org/money/scams-fraud/info-2019/robocalls.html?CMP=KNC-DSO-Adobe-Google-FRD-Ongoing-Robocalls-NonBrand-Exact-Robocalls&gclid=EAIaIQobChMIlvmq_4Sr7wIVFYvICh2RAwjqEAAYAiAAEgJD4vD_BwE&gclsrc=aw.ds (last visited Mar. 21, 2022).

[64] AARP, *supra* note 63.

[65] 47 U.S.C. s. 227(b)(1)(A)(iii).

[66] The National Law Review, *Consent and Revocation Under the TCPA*, https://www.natlawreview.com/print/article/consent-and-revocation-under-tcpa (last visited Mar. 21, 2023).

advertising calls or texts to a cell phone. The written agreement must include a clear and conspicuous disclosure informing the consumer signing that:

- By signing the agreement, the consumer is authorizing autodialed telemarketing or advertising calls or texts; and
- The consumer is not required to sign the agreement as a condition of purchasing any property, goods, or services.[67]

Prior express consent can be written or verbal. Voluntarily providing one's cellular number also constitutes prior express consent where:

- The individual gives "prior express consent" to be called or texted at the number provided;
- The individual has provided his or her number to the party calling or texting; and
- There is some relation between the communications and the reason for which an individual provided his or her number.[68]

Prior express written consent is required for calls or texts to cell phones that introduce an advertisement,[69] or constitute "telemarketing"[70] and are sent using an ATDS. The TCPA's advertising prong merely requires introducing, at the most basic level, the commercial availability of a service. In similar fashion, telemarketing occurs when the context of a text or call indicates that it was initiated and transmitted to a person for promoting property, goods, or services. Neither the TCPA nor its implementing regulations requires an explicit mention of a good, product, or service where the implication of an improper purpose is clear from the context.[71]

Revocation of consent is controlled by the consenting party, and may be communicated orally or in writing by any reasonable means. However, where consent is contractually provided, as is the case in credit agreements, the parties can bargain to require mutuality or particular revocation methods. Recently, a number of courts have addressed whether a consumer may unilaterally revoke consent when it is a term in a bargained-for contract.[72]

In 2017, the federal Second Circuit Court of Appeals held that a consumer may not unilaterally revoke consent in a bargained-for, bilateral contract.[73] The court based its decision on "black-letter" contract law, referring to a fundamental aspect of contractual relationships that one party may not alter or revoke a term of a bilateral agreement without the other party's consent. The court found that a consumer, having consented to be contacted via an auto-dialer, could not unilaterally revoke consent without the caller's permission. Notably, the court distinguished case law from the Third and Eleventh Circuit Courts of Appeals, where consumers retained their ability to revoke consent because it was given in credit applications, rather than as part of a bilateral contract.[74]

In 2018, a United States District Court in Florida also held that consent provided by contract cannot be unilaterally revoked.[75] The court noted that no provision in the TCPA indicates that contractually-granted consent can be unilaterally revoked where it would contradict black-letter contract law. The court held that a consumer who has consented to auto-dialed communication in a contract for services cannot later revoke such consent.[76]

However, other courts have disagreed, rejecting the argument that consent is irrevocable. In 2018, a United States District Court in Tennessee adopted the general rule that consumer consent may be

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[67] *Id*.
[68] Federal Communications Commission, Rules & Regulations Implementing the TCP Act of 1991 et al., 30 FCC Rcd at 7991–92.
[69] 47 C.F.R. s. 64.1200(f)(1), defines an "advertisement" as "any material advertising the commercial availability or quality of any property, goods, or services," and "telemarketing" is defined as "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person."
[70] 47 C.F.R. s. 64.1200(f)(12).
[71] The National Law Review, *supra* note 66.
[72] *Id*.
[73] *Reyes v. Lincoln Auto. Fin. Servs*., 861 F.3d 51, 53 (2d Cir. 2017).
[74] The National Law Review, *supra* note 67.
[75] *Medley v. Dish Network, LLC*, Case No. 8:16-cv-2534-T-36TBM, 2018 WL 4092120, at *10 (M.D. Fla. Aug. 27, 2018).
[76] The National Law Review, *supra* note 67.

revoked at any time by "any reasonable means."[77] The court held that consumers retain the ability to revoke their prior consent despite having a bilateral agreement with the caller. Other courts have also allowed for revocation of consent by any means in the absence of a contractual restriction on the means by which a consumer may revoke consent.[78]

In December 2020, the U.S. Supreme Court heard oral arguments in a landmark case regarding whether consumers can sue a company for using an ATDS to text or call the consumers at a phone number saved in the company's system. At issue was the meaning of the TCPA's prohibition on using an ATDS to transmit communications to cell phones. The question before the Supreme Court was "whether the definition of ATDS in the TCPA encompasses any device that can 'store' and 'automatically dial' telephone numbers, even if the device does not use a random or sequential number generator."[79]

On April 1, 2021, the Court ruled that to qualify as an ATDS under the TCPA, a device must have the capacity to either store a telephone number using a random or sequential number generator or produce a telephone number using a random or sequential number generator. The Court concluded that merely having the capacity to store numbers and dial them automatically is not enough to make a device qualify as an ATDS.[80]

Specifically, related to consent, the TCPA rules require telemarketers to:

- Obtain prior express written consent from consumers before robocalling them;
- No longer be able to use an "established business relationship" to bypass the consent requirement; and
- Require an automated, interactive "opt-out" mechanism to be used during each robocall so consumers can immediately tell the telemarketer to stop calling.[81]

The TCPA includes a private right of action.[82] A caller who places a call to a cell phone without consent using an ATDS is subject to $500 in damages per call. The damages amount is $1,500 per call if the court finds that the defendant willfully or knowingly committed the violation.[83]

Specifically, related to consent, the Florida telephone solicitation law:[84]

- Prohibits robocalls without the prior express written consent of the called party.
- When the called party has given such consent, only allows robocalls in certain circumstances through the use of an "automated system for the selection **or** dialing of telephone numbers or the playing of a recorded message" when a connection is completed to a number called.

Effect of Proposed Changes

The bill amends s. 501.059, F.S., to clarify restrictions on unwanted telephone solicitation practices. The bill prohibits unsolicited telephonic sales calls using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.

The bill also:

- Clarifies notice requirements prior to obtaining consent for telephone calls, text messages, or the transmission of prerecorded voicemails.
- Revises the definition of "prior express written consent" with respect to automated systems and replaces references to the term "signatory" with the term "called party."

[77] *Ammons v. Ally Fin., Inc*., Case No. 3:17-cv-00505, 2018 WL 3134619, at *15 (M.D. Tenn. June 27, 2018).
[78] *Few v. Receivables Performance Mgmt*., Case No. 1:17-CV-2038-KOB, 2018 WL 5923765 at *1 (N.D. Ala. Nov. 13, 2018).
[79] *Facebook, Inc., Petitioner vs. Noah Duguid*, et al., U.S., No. 19-511.
[80] *Id*.
[81] FCC, *supra* note 32.
[82] 47 U.S.C. s. 227(b)(3).
[83] *Id*. at s. 227(b)(3)(B)-(C).
[84] S. 501.059(8), F.S.

- Revises what qualifies as a "signature" for purposes of consenting to communications to include an act that demonstrates express consent, such as checking a box indicating consent or responding affirmatively to receiving text messages, to an advertising campaign, or to an e-mail solicitation.

The bill creates a 30-day safe harbor period after a consumer withdraws a previously given valid consent or communicates, orally or by text message, that he or she does not wish to receive communications.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 501.059, F.S., relating to telephone solicitation.
Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on legitimate telemarketers to the extent they do not currently engage in business practices consistent with the requirements in the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2023, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removed a definition for "automatic telephone dialing system" and clarified what constitutes an automated system for purposes of the bill.
- Clarified that a "signature" includes an affirmative act that demonstrates express consent, such as checking a box.
- Provided a safe harbor period of thirty days from the date a consumer withdraws consent to receive communications or notifies the telephone solicitor that he or she does not want to receive any communications.
- Changed the effective date of the bill to upon becoming a law and removed a provision purporting to apply the bill's provisions retroactively.

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

A bill to be entitled

An act relating to telephone solicitation; amending s. 501.059, F.S.; revising definitions; prohibiting certain telephonic sales calls; providing conditions under which civil actions may not be brought for specified violations; providing an effective date.

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

Section 1. Paragraphs (g) and (h) of subsection (1) and paragraph (a) of subsection (8) of section 501.059, Florida Statutes, are amended, and paragraph (c) is added to subsection (10) of that section, to read:

501.059 Telephone solicitation.—

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

(g) "Prior express written consent" means a written agreement that:

1. Bears the signature of the called party;

2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a

prerecorded voicemail;

3. Includes the telephone number to which the called party ~~signatory~~ authorizes a telephonic sales call to be delivered; and

4. Includes a clear and conspicuous disclosure informing the called party that:

a. By executing the agreement, the called party authorizes the person making or allowing ~~the placement of~~ a telephonic sales call to be made by telephone call, text message, or voicemail transmission to deliver or cause to be delivered ~~a telephonic sales call~~ to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone numbers, if applicable, ~~or~~ the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail; and

b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

(h) "Signature" includes:

1. An electronic or digital signature if~~, to~~ the ~~extent that such~~ form of signature is recognized as a valid signature under applicable federal law or state contract law; and

2. An act that demonstrates express consent, including, but not limited to, checking a box indicating consent or

responding affirmatively to receiving text messages, to an advertising campaign, or to an e-mail solicitation.

(8)(a) A person may not make or knowingly allow to be made an unsolicited ~~a~~ telephonic sales call ~~to be made~~ if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.

(10)

(c) Notwithstanding any other provision of this section, no action shall lie for a violation of subsection (8) for any communication made within 30 days of:

1. The called party or consumer communicating with a telephone solicitor or other person, orally or by text message, that such called party or consumer does not wish to receive any communications from that telephone solicitor or person or the seller or organization represented by that telephone solicitor or person.

2. The called party or consumer effectively withdrawing a previously given valid consent.

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

COMMERCE COMMITTEE

CS/HB 761 by Rep. Fabricio
Telephone Solicitation

AMENDMENT SUMMARY
April 10, 2023

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

- Revises what constitutes a consumer's "signature" for purposes of giving prior express written consent to include either an electronic or digital signature **or** an "act demonstrating consent," which may include a simple affirmative response. The bill currently specifies the signature must include both an electronic or digital signature **and** an act demonstrating consent.
- Clarifies what constitutes an automated system for purposes of the bill. Such system must be for the selection **and** dialing of telephone numbers or playing of a recorded message.
- Allows certain telephone calls and text messages related to emergency or health purposes without prior express written consent of the called party.
- Allows telephone solicitors a 30-day period after receiving a notice from a consumer to stop text message solicitations.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (g) and (h) of subsection (1) and paragraph (a) of subsection (8) of section 501.059, Florida Statutes, are amended, paragraph (e) is added to subsection (8), and paragraph (c) is added to subsection (10) of that section, to read:

501.059 Telephone solicitation.—

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

(g) "Prior express written consent" means a written agreement that:

1. Bears the signature of the called party;

2. Clearly authorizes the person making or allowing the

placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;

3. Includes the telephone number to which the called party ~~signatory~~ authorizes a telephonic sales call to be delivered; and

4. Includes a clear and conspicuous disclosure informing the called party that:

a. By executing the agreement, the called party authorizes the person making or allowing ~~the placement of~~ a telephonic sales call to be made by telephone call, text message, or voicemail transmission to deliver or cause to be delivered ~~a telephonic sales call~~ to the called party a telephonic sales call using an automated system for the selection and ~~or~~ dialing of telephone numbers, if applicable, ~~or~~ the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail; and

b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

(h) "Signature" includes:

1. An electronic or digital signature if~~, to~~ the ~~extent that such~~ form of signature is recognized as a valid signature under applicable federal law or state contract law; or

2. An act that demonstrates express consent, including, but not limited to, checking a box indicating consent or responding affirmatively to receiving text messages, to an advertising campaign, or to an e-mail solicitation.

(8)(a) A person may not make or knowingly allow to be made an unsolicited ~~a~~ telephonic sales call ~~to be made~~ if such call involves an automated system for the selection and ~~or~~ dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.

(e) It is not a violation of this section to initiate a telephone call or text message using an automatic telephone dialing system to deliver a message without the prior express written consent of the called party if the telephone call or text message is initiated for emergency purposes or health purposes. As used in this paragraph, the term:

1. "Emergency purposes" means a telephone call or text message made that is necessary in any situation affecting the safety and health of consumers.

2. "Health purposes" means a telephone call or text message that delivers a message regarding healthcare from an

entity or a business associate of the entity covered under the Health Insurance Portability and Accountability Act which concerns:

a. A product or service that has a healthcare treatment purpose;

b. A patient with whom the entity or business associate of the entity has an established healthcare relationship; or

c. The individual healthcare needs of a patient.

(10)

(c) Before the commencement of any action for damages under this section for text message solicitations, the called party must notify the telephone solicitor that the called party does not wish to receive text messages from the telephone solicitor by replying "STOP" to the number from which the called party received text messages from the telephone solicitor. Within 30 days after receipt of such notice, the telephone solicitor shall cease sending text message solicitations to the called party and may not send text messages to the called party thereafter, except that the telephone solicitor may send the called party a text message to confirm receipt of the notice. The called party may bring an action under this section only if the called party does not consent to receive text messages from the telephone solicitor and the telephone solicitor continues to send text messages to the called party 30 days after the called party provided notice to the telephone solicitor to cease such

text messages.

Section 2. The amendments made by this act to s. 501.059, Florida Statutes, apply to any suit filed on or after the effective date of this act and to any putative class action not certified on or before the effective date of this act.

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

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to telephone solicitation; amending s. 501.059, F.S.; revising definitions; prohibiting certain telephonic sales calls; providing exceptions; providing conditions under which civil actions may be brought for text message solicitations; providing applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 793 Collateral Protection Insurance on Real Property
SPONSOR(S): Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N	Fortenberry	Lloyd
2) State Administration & Technology Appropriations Subcommittee	12 Y, 0 N	Perez	Topp
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

In general, mortgages require borrowers to maintain adequate homeowners' insurance on their property. Borrowers may fail to maintain the required insurance coverage for a variety of reasons, including cancellation or withdrawal of an insurer from the market. If the policy lapses and the borrower does not secure a replacement policy, most mortgages allow the lender to obtain insurance for the borrower and "force-place" it.

A lender-placed, or force-placed, insurance policy is an insurance policy placed by a bank or mortgage servicer on a home when the homeowners' property insurance has lapsed or is deemed insufficient by the bank or mortgage servicer. In recent years, there has been significant media attention on the rates charged for lender-placed insurance policies and whether insurers and lenders are making excess profits on this line of business. Lender-placed insurance typically is more expensive than the insurance a borrower purchases on his or her own and provides limited coverage. Concerns have also been raised about "reverse competition" stemming from the use of lender-place insurance because the lender chooses the coverage provider and amount, but the borrower must pay for the coverage.

In order to address some of these concerns, the National Association of Insurance Commissioners (NAIC) issued a Real Property Lender-Placed Insurance Model Act that can be adopted by member states. Florida law does not use the term lender-placed insurance. Instead, it refers to collateral protection insurance (CPI). The bill creates a new part (Part XXII) of ch. 627, F.S., for the purposes of:

- Regulating CPI on real property;
- Establishing a legal framework for the writing of CPI on real property in Florida;
- Maintaining separation between lenders or servicers, and insurers or insurance agents; and
- Minimizing the possibilities of unfair practices in the sale, placement, or solicitation, and negotiation of CPI.

Part XXII applies to insurers and insurance agents engaged in transactions of CPI on real property. All CPI policies for mortgaged real property, including manufactured and mobile homes are subject to Part XXII, with certain exceptions. The bill contains statutory definitions of CPI and several related terms. CPI is defined as commercial property insurance under which a creditor is the primary beneficiary and policyholder, and which protects or covers the creditor's interest arising out of a credit transaction secured by the real property. CPI is triggered by the mortgagor's failure to maintain insurance coverage required by the mortgage or other lending document. The bill provides the Office of Insurance Regulation with authority to develop rules related to the regulation of Part XXII.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mortgages on Real Property

A mortgage is an agreement between a borrower and a lender that gives the lender the right to take the property if the borrower fails to pay the loan plus interest.[1] A mortgage is generally secured by a mortgage note, which is a note evidencing a loan for which real property has been offered as security.[2] All mortgages require borrowers to maintain adequate homeowners' insurance on their property.[3] Borrowers may fail to maintain the required insurance coverage for a variety of reasons, including cancellation or withdrawal of an insurer from the market.[4] If the policy lapses and the borrower does not secure a replacement policy, most mortgages allow the lender to obtain insurance for the borrower and "force-place" it.[5]

Lender-placed Insurance/Collateral Protection Insurance (CPI)

A lender-placed insurance policy[6] is an insurance policy placed by a bank or mortgage servicer on a home when the homeowners' property insurance has lapsed or is deemed insufficient by the bank or mortgage servicer.[7] In recent years, there has been significant media attention on the rates charged for lender-placed insurance policies and whether insurers and lenders are making excess profits on this line of business.[8] Lender-placed insurance typically is more expensive than the insurance a borrower purchases on his or her own and provides more limited coverage.[9] Concerns have also been raised about "reverse competition" stemming from the use of lender-placed insurance because the lender chooses the coverage provider and amount, but the borrower must pay for the coverage.[10]

In order to address some of these concerns, the National Association of Insurance Commissioners (NAIC) issued a Real Property Lender-Placed Insurance Model Act (Model Act) that can be adopted by member states.[11] Its state purpose includes creating a legal framework within which lender-placed insurance on real property may be written in a particular state.[12] However, Florida law does not use the term lender-placed insurance. Instead, it refers to collateral protection insurance, which is defined as:

> [C]ommercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as

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[1] Consumer Financial Protection Bureau, *What is a mortgage?*, What is a mortgage? | Consumer Financial Protection Bureau (consumerfinance.gov) (last visited Mar. 12, 2023). The borrower and the lender are also referred to as the mortgagor and mortgagee, respectively.
[2] Black's Law Dictionary (11th ed. 2019).
[3] NAIC, *Lender-Placed Insurance*, https://content.naic.org/cipr-topics/lender-placed-insurance (last visited Mar. 12, 2023)
[4] *Id.*
[5] *Id.*
[6] Lender-placed insurance is also known as creditor-placed or force-placed insurance.
[7] NAIC, *supra* note 3.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.* Some of these concerns regarding price and coverage have been raised regarding the lender-place insurers issuing policies in Florida. However, the largest two insurers issuing these policies are already bound by consent orders with the Office of Insurance Regulation (OIR) with conditions very similar to those contained in the Model Act. A copy of these consent orders has been requested from OIR, but has not been received as of the publication of this analysis.
[12] *Id.*

required by the mortgage or other lending document. Collateral protection insurance is not residential coverage.[13]

Review of Insurance Policy Forms and Rates

In general, an insurer may not use forms to issue insurance policies in the state unless the forms have been filed with, and approved by, the Office of Insurance Regulation (OIR).[14] Once filed, OIR has 30 days to review insurance forms.[15] At the end of the 30-day period, forms will be deemed approved unless they have been affirmatively approved or disapproved by OIR.[16]

Insurers must also file a copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes to these documents, for approval by OIR.[17] OIR must review insurers' rate filings to determine whether rates are excessive, inadequate, or unfairly discriminatory.[18] In doing so, OIR must consider factors including, but not limited to, the following:

- Past and prospective loss experience in and out of Florida.
- Past and prospective expenses.
- Degree of competition among insurers for particular risk to be insured.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits allowed or returns to policyholders, members or subscribers in Florida.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors.
- Conflagration and catastrophe hazards, if applicable.
- Projected hurricane losses.
- Projected flood losses.
- Reasonable margin for underwriting profit and contingencies.

Insurers may make rate filings with OIR on a file and use, or use and file basis. If a filing is made on a file and use basis, OIR has 90 days to review and approve the filing before an insurer may use the filed rate.[19] In contrast, a use and file rate may be used before filing, but must be filed within 30 days of the effective date.[20] A use and file rate is still subject to review and disapproval by OIR.[21]

Effect of the Bill

The bill creates a new part of ch. 627, F.S. (Part XXII),[22] for the purposes of:

- Regulating CPI on real property;
- Establishing a legal framework for the writing of CPI on real property in Florida;
- Maintaining separation between lenders or services, and insurers or insurance agents; and
- Minimizing the possibilities of unfair practices in the sale, placement, or solicitation, and negotiation of CPI.

[13] S. 627.6085, F.S.
[14] S. 627.410(1), F.S.
[15] S. 627.410(2), F.S.
[16] *Id.*
[17] S. 627.062(2)(a), F.S.
[18] S. 627.062(1), F.S.
[19] S. 627.062(2)(a)1., F.S.
[20] S. 627.062(2)(a)2., F.S.
[21] *Id.*
[22] The new statutory chapter part will be part XXII of chapter 627, F.S., and will contain ss. 627.9901-627.9913, F.S. It is similar to the NAIC Model Act, but is drafted in a way that will fit appropriately within the Florida Insurance Code. Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the Florida Insurance Code. S. 624.01, F.S.

Part XXII applies to insurers and insurance agents engaged in transactions of CPI on real property. All CPI policies for mortgaged real property, including manufactured and mobile homes is subject to Part XXII, except:

- Transactions involving extensions of credit primarily for business, commercial, or agricultural purposes.
- Insurance offered by a lender or servicer and elected by the mortgagor at the mortgagor's option.
- Insurance purchased by a lender or servicer on real-estate owned property.[23]
- Insurance for which no specific charge is made to the mortgagor or mortgagor's account.

The bill contains statutory definitions of CPI and several related terms. CPI is defined as commercial property insurance under which a creditor is the primary beneficiary and policyholder, and which protects or covers the creditor's interest arising out of a credit transaction secured by the real property.[24] CPI is triggered by the mortgagor's failure to maintain insurance coverage required by the mortgage or other lending document. CPI under Part XXII applies only to mortgaged real property, not personal property.

Individual CPI is defined in the bill as coverage for individual real property evidenced by a certificate of coverage under a master CPI policy or a CPI policy for individual real property. A master CPI policy is a group policy issued to a lender or servicer providing coverage for all loans in the lender's or servicer's loan portfolio, as needed.

Pursuant to the bill, CPI becomes effective no earlier than the date of lapse of insurance on mortgaged real property. Individual CPI terminates on the earliest of the following dates:

- The date on which insurance acceptable under the mortgage agreement becomes effective.
- The date on which the applicable real property no longer serves as collateral for a mortgage loan.
- Such other date specified by the individual policy or certificate of insurance.
- Such other date as specified by the lender or servicers
- The termination date of the policy.

According to the bill, CPI coverage, and the calculation of the related premium, should be based on the replacement cost value of the real property serving as collateral, as best determined by the last known coverage amount. The last known coverage amount is the dwelling coverage amount specified in the most recent evidence of insurance coverage provided by the mortgagee. The bill requires that an insurer or insurance agent ask the insured, at least once, for the last known coverage amount. If the insurer or insurance agent cannot obtain the last known coverage amount from the insured or by another means, the CPI coverage and the calculation of the related premium may be based on the:

- Replacement cost value of the real property serving as collateral as calculated by the insurer; or
- Unpaid principal balance of the mortgage loan.

Part XXII prohibits the following practices by insurers or insurance agents related to CPI:

- Issuing CPI on a mortgaged real property if the insurer or insurance agent or an affiliate of the insurer or insurance agent owns the real property or performs the servicing for, or owns the servicing rights to, the real property.
- Compensating a lender, insurer, investor, or servicer, including through the payment of commissions, on CPI policies issued by the insurer.
- Sharing CPI premium or risk with the lender, investor, or servicer that obtained the CPI.
- Offering contingent commissions, profit-sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with CPI.
- Providing free or below-cost outsourced services to a lender, investor, or servicer and outsourcing its own functions to a lender, investor, or servicer at a rate above cost.

[23] Real-estate owned property is often referred to as bank-owned property, and may be property that failed to sell during a foreclosure.

[24] This definition is similar to the definition of collateral protection insurance in s. 624.6085, F.S., discussed above, except that definition also includes coverage secured by personal property.

- Making any payments, including, but not limited to, the payment of expenses to a lender, insurer, investor, or servicer to secure CPI business or related outsourced services.

The bill requires that proof of CPI is provided in an individual policy or certificate of insurance, which must be delivered to the mortgagor either by mail, in person, or electronically.[25] The individual policy or certificate of insurance must include all of the following information:

- Address and identification of the insured real property.
- Coverage amount, or amounts if multiple coverages are provided.
- Effective date of coverage.
- Term of coverage.
- Premium charged for the coverage.
- Contact information for filing a claim.
- Complete description of the coverage provided.

The policy forms and certificates of insurance for CPI, and related premium rates, must be reviewed and approved by OIR. As part of the rate review, OIR must also evaluate whether expenses included by the insurer in the rates are appropriate. The bill requires that insurers subject to Part XXII refile CPI insurance rates at least once every four years. All insurers writing CPI must have separate rates for CPI and voluntary insurance obtained by a mortgage servicer on real-estate owned property.

By April 1 each year, each insurer with at least $100,000 in direct written premium for CPI in Florida during the prior calendar year must report the following information to OIR for the prior calendar year:

- Actual loss ratio.[26]
- Earned premiums.
- Any aggregate schedule rating debit or credit to earned premium.
- Itemized expenses.
- Paid losses.
- Loss reserves, including case reserves and reserves for incurred but not reported losses.[27]

The bill provides OIR with the rights and powers to enforce Part XXII, and all proceedings brought pursuant to Part XXII will be conducted under the Florida Administrative Procedures Act.[28] It also provides OIR with rulemaking authority so that it may, after notice and hearing, adopt reasonable rules and regulations to implement and administer Part XXII. Finally, the bill contains a severability clause so that if any portion of Part XXII is held invalid, the remainder of the Part is not affected.

B. SECTION DIRECTORY:

Section 1. Creates part XXII of chapter 627, F.S., relating to real property collateral protection insurance.

Section 2. 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:

[25] The Uniform Electronic Transaction Act, s. 668.50, F.S., provides the requirements for electronic delivery.
[26] Loss ratio is an insurer's actual claims paid plus loss adjustment expenses divided by total earned premiums.
[27] Incurred but not reported losses are estimated liabilities from losses that have taken place and not yet but reported to insurers as claims.
[28] The Florida Administrative Procedures Act is ch. 120, F.S.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the requirements of Part XXII result in lower CPI premiums for mortgagors, the bill may have a positive direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill has no fiscal impact on state or local government revenues or expenditures.[29]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides OIR with rulemaking authority so that it may, after notice and hearing, adopt reasonable rules and regulations to implement and administer Part XXII.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[29] Office of Insurance Regulation, Agency Analysis of 2023 House Bill 793, p. 4.

A bill to be entitled

An act relating to collateral protection insurance on real property; creating part XXII of ch. 627, F.S., titled "Real Property Collateral Protection Insurance"; creating s. 627.9901, F.S.; providing purpose; creating s. 627.9902, F.S.; providing scope; creating s. 627.9903, F.S.; providing definitions; creating s. 627.9904, F.S.; providing the effective date of collateral protection insurance on mortgaged real property; providing the termination date of individual collateral protection insurance; prohibiting insurance charges under certain circumstances; creating s. 627.9905, F.S.; providing calculations of coverages and premiums; creating s. 627.9906, F.S.; prohibiting collateral protection insurers and insurance agents from engaging in certain practices; creating s. 627.9907, F.S.; providing construction; creating s. 627.9908, F.S.; providing requirements for proof of collateral protection insurance; creating s. 627.9909, F.S.; providing requirements for policy forms, certificates of insurance, and rate filings; providing reporting requirements for certain insurers; creating s. 627.9911, F.S.; providing rights and powers of the Office of Insurance Regulation for enforcement

purposes; providing requirements for proceedings; providing penalties; creating s. 627.9912, F.S.; providing rulemaking authority; creating s. 627.9913, F.S.; providing severability; providing an effective date.

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

Section 1. Part XXII of chapter 627, Florida Statutes, consisting of sections 627.9901, 627.9902, 627.9903, 627.9904, 627.9905, 627.9906, 627.9907, 627.9908, 627.9909, 627.9911, 627.9912, and 627.9913, Florida Statutes, is created to read:

PART XXII

REAL PROPERTY COLLATERAL PROTECTION INSURANCE

627.9901 Purpose.—The purpose of this part is to:

(1) Promote the public welfare by regulating collateral protection insurance on real property.

(2) Create a legal framework within which collateral protection insurance on real property may be written in the state.

(3) Help maintain the separation between lenders or servicers, and insurers or insurance agents.

(4) Minimize the possibilities of unfair competitive practices in the sale, placement, solicitation, and negotiation of collateral protection insurance.

627.9902 Scope.—This part applies to insurers and insurance agents engaged in any transaction involving collateral protection insurance on real property. All collateral protection insurance written in connection with mortgaged real property, including manufactured and mobile homes, is subject to the provisions of this part, except:

(1) Transactions involving extensions of credit primarily for business, commercial, or agricultural purposes.

(2) Insurance offered by the lender or servicer and elected by the mortgagor at the mortgagor's option.

(3) Insurance purchased by a lender or servicer on real-estate owned property.

(4) Insurance for which no specific charge is made to the mortgagor or the mortgagor's account.

627.9903 Definitions.—As used in this part, the term:

(1) "Collateral protection insurance" means commercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. For purposes of this part, collateral protection insurance applies only to mortgaged real property, not personal property.

(2) "Individual collateral protection insurance" means

coverage for individual real property evidenced by a certificate of coverage under a master collateral protection insurance policy or a collateral protection insurance policy for individual real property.

(3) "Insurer" means an insurer authorized to issue collateral protection insurance on mortgaged real property in the state.

(4) "Investor" means a person or an entity, and affiliates of the person or entity, holding a beneficial interest in loans secured by real property.

(5) "Lapse" means the moment in time in which a mortgagor has failed to secure or maintain valid or sufficient insurance upon a mortgaged real property as required by a mortgage agreement.

(6) "Last known coverage amount" means a dwelling coverage amount specified in the most recent evidence of insurance coverage provided by the mortgagee.

(7) "Lender" means a person or entity, and affiliates of the person or entity, making loans secured by an interest in real property.

(8) "Loss ratio" means the ratio of incurred losses to earned premium.

(9) "Master collateral protection insurance policy" means a group policy issued to a lender or servicer providing coverage for all loans in the lender's or servicer's loan portfolio as

needed.

(10) "Mortgage agreement" means a written document that specifies an obligation or a liability of any kind secured by a lien on a real property and due from, and owing or incurred by, a mortgagor to a lender on account of a mortgage loan, including the security agreement, deed of trust, any other document of similar effect, and any other document incorporated by reference.

(11) "Mortgage loan" means a loan, an advance, a guarantee, or other extension of credit from a lender to a mortgagor.

(12) "Mortgagee" means a person or an entity that holds a mortgaged real property, or, as applicable, a lien on mortgaged real property, as security for repayment of a mortgage agreement.

(13) "Mortgagor" means a person who is obligated on a mortgage loan pursuant to a mortgage agreement.

(14) "Real-estate owned property" means a real property owned or held by a lender or servicer following foreclosure under the related mortgage agreement or the acceptance of a deed in lieu of foreclosure.

(15) "Replacement cost value" is the estimated cost to replace a covered real property at the time of loss or damage without deduction for depreciation. Replacement cost value is not market value, but the cost to replace the covered real

property to its condition before the loss or damage.

(17) "Servicer" means a person or an entity, and affiliates of the person or entity, contractually obligated to service one or more mortgage loans for a lender or investor. The term includes persons or entities involved in subservicing arrangements.

627.9904 Terms of policies.—

(1) Collateral protection insurance shall become effective no earlier than the date of lapse of insurance upon mortgaged real property subject to the terms of a mortgage agreement or any other state or federal law requiring the same.

(2) Individual collateral protection insurance shall terminate on the earliest of the following dates:

(a) The date on which insurance that is acceptable under the mortgage agreement becomes effective, subject to the mortgagor providing sufficient evidence of such acceptable insurance.

(b) The date on which the applicable real property no longer serves as collateral for a mortgage loan pursuant to a mortgage agreement.

(c) Such other date as specified by the individual policy or certificate of insurance.

(d) Such other date as specified by the lender or servicer.

(e) The termination date of the policy.

(3) An insurance charge may not be made to a mortgagor for collateral protection insurance for a term longer than the scheduled term of the collateral protection insurance, and an insurance charge may not be made to the mortgagor for collateral protection insurance before the effective date of the collateral protection insurance.

627.9905 Calculations of coverages and premiums.—

(1)(a) Any collateral protection insurance coverage and subsequent calculation of premium should be based upon the replacement cost value of the real property serving as collateral as best determined by the last known coverage amount, if known to the lender or servicer.

(b) An insurer or insurance agent shall inquire of the insured, at least once, as to the last known coverage amount and, if the insurer or insurance agent cannot obtain the last known coverage amount from the insured or in another manner, the collateral protection insurance coverage and subsequent calculation of premium may be based upon:

1. The replacement cost value of the real property serving as collateral as calculated by the insurer, if the use of replacement cost value for this purpose is not prohibited by other state or federal law; or

2 The unpaid principal balance of the mortgage loan, if the use of replacement cost value for this purpose is prohibited by other state or federal law or if the replacement cost value

is not available.

(c) In the event of a covered loss, any replacement cost value coverage provided by an insurer in excess of the unpaid principal balance of the mortgage loan shall be paid to the mortgagor.

(2) An insurer may not write collateral protection insurance for which the premium rate differs from that determined by the schedules of the insurer on file with the office as of the effective date of such policy.

627.9906 Prohibited practices.—An insurer or insurance agent may not:

(1) Issue collateral protection insurance on a mortgaged real property if the insurer or insurance agent or an affiliate of the insurer or insurance agent owns the real property or performs the servicing for, or owns the servicing rights to, the real property;

(2) Compensate a lender, insurer, investor, or servicer, including through the payment of commissions, on collateral protection property insurance policies issued by the insurer;

(3) Share collateral protection insurance premium or risk with the lender, investor, or servicer that obtained the collateral protection insurance;

(4) Offer contingent commissions, profit-sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with

collateral protection insurance;

(5) Provide free or below-cost outsourced services to a lender, investor, or servicer and may not outsource its own functions to a lender, investor, or servicer on an above-cost basis; or

(6) Make any payments, including, but not limited to, the payment of expenses to a lender, insurer, investor, or servicer for the purpose of securing collateral protection insurance business or related outsourced services.

627.9907 Noncircumvention.—This part may not be construed to allow an insurance agent or insurer underwriting collateral protection insurance solely to circumvent the requirements specified in this part. Any such requirement, limitation, or exclusion provided in this part applies to all insurers or insurance agents involved in collateral protection insurance.

627.9908 Evidence of coverage.—Proof of collateral protection insurance must be provided in an individual policy or a certificate of insurance. A copy of the individual policy, certificate of insurance, or other evidence of insurance coverage shall be mailed by first-class mail or delivered in person to the last known address of the mortgagor or delivered in accordance with s. 668.50, the Uniform Electronic Transaction Act. Notwithstanding any other general law to the contrary, the individual policy or certificate of insurance coverage must include the following information:

(1) The address and identification of the insured real property.

(2) The coverage amount or, if multiple coverages are provided, amounts.

(3) The effective date of the coverage.

(4) The term of coverage.

(5) The premium charge for the coverage.

(6) Contact information for filing a claim.

(7) A complete description of the coverage provided.

627.9909 Policy forms and certificates of insurance; rate filings.—

(1) Except as otherwise provided in this part, all policy forms and certificates of insurance to be delivered or issued for delivery in the state are subject to the applicable provisions of s. 627.410, and the schedules of premium rates pertaining thereto are subject to the applicable provisions of s. 627.062.

(2) With respect to an analysis of rates in accordance with s. 627.062(1), the analysis must also include a determination as to whether expenses included by the insurer in the rates are appropriate.

(3) Notwithstanding s. 627.0645, insurers subject to this part shall refile collateral protection property insurance rates at least once every 4 years.

(4) All insurers writing collateral protection insurance

must have separate rates for collateral protection insurance and voluntary insurance obtained by a mortgage servicer on real-estate owned property.

(5) Upon the introduction of a new collateral protection insurance program, the insurer shall reference its experience in existing programs in the associated filings. This part does not limit an insurer's discretion, as actuarially appropriate, to distinguish different terms, conditions, exclusions, eligibility criteria, or other unique or different characteristics. Moreover, an insurer may, if actuarially acceptable, rely upon models or, in the case of flood filings if applicable experience is not credible, on the Federal Emergency Management Agency's National Flood Insurance Program data.

(6)(a) By April 1 of each year, each insurer with at least $100,000 in direct written premium for collateral protection insurance in the state during the prior calendar year shall report to the office the following information for the prior calendar year:

1. Actual loss ratio.

2. Earned premiums.

3. Any aggregate schedule rating debit or credit to earned premium.

4. Itemized expenses.

5. Paid losses.

6. Loss reserves, including case reserves and reserves for

incurred but not reported losses.

(b) The report shall be separately produced for each collateral protection insurance program and presented on both an individual-jurisdiction and countrywide basis.

(7) Except in the case of collateral protection insurance covering the peril of flood, to which this subsection does not apply, if an insurer experiences an annual loss ratio of less than 35 percent in any collateral protection insurance program for 2 consecutive years, the insurer shall submit a rate filing, either adjusting its rates or supporting the continuance of its rates, to the office no more than 90 days after the submission of the data required in paragraph (6)(a).

(8) Except as provided in this section, rate and form filing requirements are subject to the Florida Insurance Code.

627.9911 Enforcement and judicial review.—The office shall have all rights and powers to enforce the provisions of this part, as provided in s. 624.307. All proceedings, including judicial review, shall be conducted in accordance with the administrative procedures prescribed in chapter 120. Penalties for any violation of this part shall be assessed in accordance with s. 624.4211.

627.9912 Rulemaking authority.—The office may, after notice and hearing, adopt reasonable rules and regulations to implement and administer this part.

627.9913 Severability provisions.—If any provision of this

part or the application of the provision to any person or circumstance is held invalid, the remainder of this part and the application of such provision to other persons or circumstances are not affected thereby.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 861 Residential Loan Alternative Agreements
SPONSOR(S): Judiciary Committee, Regulatory Reform & Economic Development Subcommittee, Robinson, W.
TIED BILLS: **IDEN./SIM. BILLS:** SB 770

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Larkin	Anstead
2) Judiciary Committee	22 Y, 0 N, As CS	Mawn	Kramer
3) Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

A listing agreement is a contract in which a property owner gives a real estate broker or sales associate the authority to find a buyer for his or her property; the terms of such an agreement can generally be negotiated, but the duration of the agreement, the property's price and sales terms, and the amount of any fee or commission must be defined in the contract. Recently, some Florida real estate brokerage firms have been offering homeowners monetary payments, advertised as an "alternative loan," in exchange for the exclusive right to list a homeowner's property whenever the homeowner decides to put it up for sale; such right comes with the right to collect a commission on the property's eventual sale. Where the property owner goes on to try to sell his or her home with a different listing agent, even where the agreement was entered into years before, the brokerage firm may file a lien on the homeowner's property, which lien generally must be paid before the sale can proceed.

The bill:

- Defines "residential real property" as improved residential property of four units or fewer or unimproved residential real property intended for four units or fewer.
- Defines "residential loan alternative agreement" as a signed writing between a person and a seller or owner of residential real property that:
  - Grants an exclusive right to a person to act as a broker for the property's disposition;
  - Has an effective duration, inclusive of renewals, of more than two years; and
  - Requires the person to pay monetary compensation to the seller or owner.
- Defines "disposition" as a transfer or voluntary conveyance of the title or other ownership interest in residential real estate.
- Prohibits a residential loan alternative agreement from authorizing a person to place a lien on or otherwise encumber any residential real property.
- Prohibits a residential loan alternative agreement from constituting a lien, encumbrance, or security interest in the residential real property.
- Prohibits a court from enforcing a residential alternative loan alternative agreement by a lien or constructive trust in the residential real property or upon the proceeds of the property's disposition.
- Prohibits assignment of a residential loan alternative agreement.
- Provides that a residential loan alternative agreement is void if listing services do not begin within 90 days after the agreement's execution by both parties, and unenforceable in law or equity, as a matter of public policy, if it does not meet the requirements established by the bill.
- Prohibits the clerk of the court from recording a residential loan alternative agreement.
- Makes a residential loan alternative agreement violation an unfair or deceptive trade practice.

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

Real Estate Agents and Brokers

The Florida Real Estate Commission (FREC), within the Division of Real Estate (Division), at the Department of Business and Professional Regulation (Department), administers and enforces real estate licensing laws applicable to real estate brokers[1] and sales associates[2] (colloquially known as "real estate agents").[3] The FREC is also empowered to adopt rules that enable it to implement its statutorily authorized duties and responsibilities.[4]

A person who operates as a broker or sales associate in Florida without having a valid, current, and active license commits a felony of the third degree.[5] FREC may also discipline licensed real estate brokers and sales associates if FREC finds that the broker or sales associate violated the practice act, which violations may include:[6]

- Engaging in dishonest, fraudulent transactions;
- Advertising property or services in a manner which is fraudulent, false, deceptive, or misleading in form or content;
- Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession;
- Failing to include in any written listing agreement a definite expiration date, description of the property, price and terms, fee or commission, and a proper signature of the principal; or
- Failing to perform any statutory or legal obligation placed upon a licensee.

Further, a real estate broker or sales associate may be convicted of a second degree misdemeanor for recording a contract or other writing which purports to affect the title of, or encumber, any real property if the same is known to her or him to be false, void, or not authorized to be placed of record, for the purpose of collecting a commission, or to coerce the payment of money to the broker or sales associate or other person.[7] This does not prohibit a broker or sales associate from recording a judgment rendered by a court or placing a lien on a property where expressly permitted by contractual agreement or otherwise allowed by law.[8]

Real Estate Listing Agreements

A listing agreement is a contract in which a property owner gives a real estate broker or sales associate the authority to find a buyer for his or her property; the terms of such an agreement can generally be negotiated, but the duration of the agreement, the property's price and sales terms, and the amount of any fee or commission must be defined in the contract.[9]

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[1] "Broker" means, in pertinent part, a person who, for another, and for compensation or valuable consideration directly or indirectly paid or promised, expressly or implied, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents any real property or an interest in or concerning the same; or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in such business. S. 475.01(1)(a), F.S.
[2] "Sales associate" means a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person. S. 475.01(1)(j), F.S.
[3] Ch. 475, Part I, F.S.
[4] These rules are contained in ch. 61J2, F.A.C.
[5] S. 475.42(1)(a), F.S.
[6] Ss. 475.25 and s. 455.227, F.S.
[7] S. 475.42(1)(i) and (2), F.S.
[8] S. 475.42(1)(i), F.S.
[9] S. 475.25(1)(r), F.S.; Jean Folger, *What is a Listing Agreement? Definition, Types, and How they Work*, https://www.investopedia.com/terms/l/listing-agreement.asp (last visited March 23, 2023).

There are three types of listing agreements, as shown in the following chart:[10]

Types of Listing Agreements	Description
Exclusive Right-to-Sell Agreement	• Broker acts as agent. • Broker receives commission when the property is sold, regardless of who finds the buyer.
Exclusive Agency Listing Agreement	• Broker acts as agent. • Broker receives commission if the property is sold through the broker's efforts but not if the property is sold through the seller's efforts.
Open Listing Agreement	• Broker acts as agent. • Seller reserves the right to employ any number of brokers as agents. • Broker whose effort results in the property's sale receives commission.

However, Florida courts have held that, even where there is no listing agreement or other special contract, a broker is entitled to a commission when that person is the procuring cause of a sale.[11] Thus, where a broker engaged to find a buyer for property brings a prospective buyer and the property owner together, and where sale negotiations between the buyer and property owner begin but only conclude after the listing agreement expires, the broker is still entitled to a commission.

Liens on Real Property

A lien is a claim against property which evidences a debt, obligation, or duty.[12] Under Florida law, a real estate broker or sales associate may place a lien on real property where expressly authorized to do so by contractual agreement or by law.[13] This is accomplished by recording the lien in the official records of the county in which the property lies, thereby putting all persons on notice of the lien's existence and the lienholder's rights to make a claim against the property to satisfy the lien. As county recorder, each of Florida's 67 clerks of the circuit court must record certain legal instruments presented to them, including liens, upon payment of applicable fees or charges.[14]

Recent Events

Recently, some Florida real estate brokerage firms have been offering homeowners monetary payments, advertised as an "alternative loan," in exchange for the exclusive right to list a homeowner's property whenever the homeowner decides to put it up for sale; such right comes with the right to collect a commission on the property's eventual sale. Some homeowners enter into these "alternative loan" agreements without realizing that they can last upwards of 40 years; in other words, should the homeowner decide to sell his or her home at any time within the time period specified in the agreement, even where that time period extends 40 years into the future, the homeowner must use as his or her listing agent a broker or sales associate from the brokerage firm with which the homeowner had the agreement.

However, some homeowners who entered into such agreements have gone on to try to sell their homes years later, and not realizing their agreements are still in effect, have listed the property with a different brokerage firm. The original brokerage firm may then, under the terms of the agreement, file a lien against the property for the value of the commission and any other fees specified in the agreement,

[10] National Association of Realtors, *Handbook on Multiple Listing Policy Section 3: Definitions of Various Types of Listing Agreements*, https://www.nar.realtor/handbook-on-multiple-listing-policy/section-3-definitions-of-various-types-of-listing-agreements (last visited March 23, 2023)
[11] *Esslinger-Wooten-Maxwell, Inc. v. Lones Family Ltd. P'ship*, 298 So. 3d 1176, 1180 (Fla. 3d DCA 2020).
[12] Fla. Jur. 2d Liens s. 37:1.
[13] S. 475.42(1)(i), F.S.
[14] S. 28.222(3), F.S.

even though the brokerage firm never performed the listing services.[15] The property owner would then have to either pay the lien to clear the cloud on his or title so that the property could be sold, or else find a buyer willing to take title subject to the lien, which may be impossible.

One brokerage firm currently utilizing this strategy is MV Realty, which operates in 33 states, including Florida; according to MV Realty, more than 30,000 people have signed such "alternative loan" agreements with the firm.[16] Recently, the Florida[17], Massachusetts[18], Pennsylvania[19], and Ohio, Attorneys General[20] sued MV Realty for using misleading contractual terms in these types of agreements.

Florida Deceptive and Unfair Trade Practices Act (FDUTPA or Act)

The Florida Deceptive and Unfair Trade Practices Act ("FDUTPA" or "Act") declares unlawful any unfair or deceptive acts or practices committed in the conduct of any trade or commerce.[21] The Act is a separate cause of action intended to be an additional remedy to other civil remedies at law, and it is aimed toward making consumers whole for losses caused by harmful business practices, including unfair methods of competition and unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

Effect of the Bill

The bill:

- Defines:
  - "Residential real property" as improved residential property of four units or fewer or unimproved residential real property intended for four units or fewer.
  - "Residential loan alternative agreement" as a signed writing between a person and a seller or owner of residential real property that:
    - Grants an exclusive right to a person to act as a broker for the property's disposition;
    - Has an effective duration, inclusive of renewals, of more than two years; and
    - Requires the person to pay compensation to the seller or owner.
  - "Disposition" as a transfer or voluntary conveyance of the title or other ownership interest in residential real estate.
- Prohibits a residential loan alternative agreement from authorizing a person to place a lien on or otherwise encumber any residential real property.
- Prohibits a residential loan alternative agreement from constituting a lien, encumbrance, or security interest in the residential real property.

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[15] Rebecca Liebson, *Florida Company Pays Quick Cash to List Your Home. the Catch? A 40-Year Contract*, Tampa Bay Times (Sept. 6, 2022), https://www.tampabay.com/news/real-estate/2022/09/06/florida-company-pays-quick-cash-to-list-your-home-the-catch-a-40-year-contract/ (last visited March 23, 2023).

[16] Angie Moreschi, *MV Realty Facing Congressional Scrutiny Following Channel 11 Investigation* (Dec. 21, 2022), https://www.wpxi.com/news/local/mv-realty-facing-congressional-scrutiny-following-channel-11-investigation/Y4HNN2X24NEQRFMTNVLB2QNHNQ/ (last visited March 23, 2023).

[17] Office of the Attorney General, *Attorney General Moody Takes Legal Action against MV Realty for Swindling Florida Homeowners*, (Nov. 29,2022), http://www.myfloridalegal.com/newsrel.nsf/newsreleases/E9E4A2F7281415CE8 5258909007259EC. (last visited March 23, 2023).

[18] Cheryl Fiandaca, *Massachusetts Attorney General Sues MV Realty Company after I-Team Investigation* (December 14, 2022), https://www.cbsnews.com/boston/news/mv-realty-attorney-general-lawsuit-massachusetts-iteam-investigation/ (last visited March 23, 2023).

[19] Pennsylvania Office of Attorney General , *AG Shapiro Sues Real Estate Brokerage Firm MV Realty over Misleading Homeowner Benefit Program* (Dec. 14, 2022), https://www.attorneygeneral.gov/taking-action/ag-shapiro-sues-real-estate-brokerage-firm-mv-realty-over-misleading-homeowner-benefit-program/#:~:text=Homeowner%20Benefit%20Program-,AG%20Shapiro%20Sues%20Real%20Estate%20Brokerage%20Firm,Over%20Misleading%20Homeowner%20Benefit%20Program&text=HARRISBURG%20%E2%80%94%20Attorney%20General%20Josh%20Shapiro,and%20its%20founder%2C%20Amanda%20Zachman (last visited March 23, 2023).

[20] Ohio Attorney General, "*AG Yost Sues MV Realty, Founder and Broker for Illegal Practices* (Feb. 15, 2023), https://www.ohioattorneygeneral.gov/Media/News-Releases/February-2023/AG-Yost-Sues-MV-Realty-Founder-and-Broker-for-Ille (last visited March 23, 2023).

[21] ss. 501.201-213, F.S.

- Prohibits courts from enforcing a residential alternative loan alternative agreement by a lien or constructive trust in the residential real property or upon the proceeds of the residential real property's disposition.
- Prohibits the assignment of a residential loan alternative agreement.
- Provides that a residential loan alternative agreement is void if listing services do not begin within 90 days after the agreement's execution by both parties.
- Specifies that, as a matter of public policy, a residential loan alternative agreement that does not meet the requirements established by the bill is unenforceable in law or equity.
- Prohibits the clerk of the court from recording a residential loan alternative agreement.
- Makes a violation an unfair or deceptive trade practice within the meaning of FDUTPA.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 475.279, F.S.; relating to residential loan alternative agreements for the disposition of residential real property.
Section 2: 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 may have a positive economic impact on property owners in the state to the extent that it eliminates the use of long-term loan alterative agreements and the practice of filing liens to enforce such agreements. However, the bill may have a negative economic impact on brokerage firms that rely on such a business model.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 16, 2023, the Regulatory Reform & Economic Development Subcommittee adopted a proposed committee substitute ("PCS") and reported the bill favorably as a committee substitute. The PCS:

- Defined "residential loan alternative agreement" and replaced the phrase "option to enter into a listing agreement" with "residential loan alternative agreement" throughout the bill.
- Replaced the phrase "broker" with "person" throughout most of the bill.
- Prohibited the renewal of a residential loan alternative agreement.
- Prohibited a residential loan alternative agreement from authorizing a broker to place a lien on or otherwise encumber any residential real property.
- Provided that a residential loan alternative agreement that does not meet certain requirements is unenforceable.

On March 23, 2023, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Modified the definition of "residential loan alternative agreement" to specify that the effective duration is inclusive of renewals.
- Deleted a provision requiring that a residential loan agreement require notice to and written consent of the seller or owner before the person may assign the agreement to another person.
- Prohibited the assignment of a residential loan alternative agreement.
- Deleted a provision capping the term of a residential loan alternative agreement at six months and prohibiting renewals.
- Specified that a residential loan alternative agreement is void if listing services do not begin within 90 days after the agreement's execution by both parties.

The analysis is drafted to the committee substitute as passed by the Judiciary Committee.

A bill to be entitled

An act relating to residential loan alternative agreements; creating s. 475.279, F.S.; providing definitions; prohibiting a residential loan alternative agreement from authorizing a person to place a lien or other encumbrance on residential real property or from constituting a lien, encumbrance, or security interest in such property; prohibiting a court from enforcing a residential loan alternative agreement by a lien or constructive trust in the residential real property or upon the proceeds of the disposition of such property; prohibiting the assignment of a residential loan alternative agreement; providing that a residential loan alternative agreement is void if listing services do not begin within a specified timeframe; providing that a residential loan alternative agreement that does not meet specified requirements is void and unenforceable; prohibiting the clerk of the circuit court from recording a residential loan alternative agreement; providing that a violation is a deceptive or unfair trade practice; providing penalties; providing an effective date.

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

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

Section 1. Section 475.279, Florida Statutes, is created to read:

475.279 Residential loan alternative agreements for the disposition of residential real property.—

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

(a) "Disposition" means a transfer or voluntary conveyance of the title or other ownership interest in residential real estate.

(b) "Residential loan alternative agreement" means a signed writing between a person and a seller or owner of residential real property that:

1. Grants an exclusive right to a person to act as a broker for the disposition of the property;

2. Has an effective duration, inclusive of renewals, of more than 2 years; and

3. Requires the person to pay monetary compensation to the seller or owner.

(c) "Residential real property" means improved residential property of four or fewer units or unimproved residential real property intended for four or fewer units.

(2) A residential loan alternative agreement may not authorize a person to place a lien or otherwise encumber any residential real property. A residential loan alternative agreement may not constitute a lien, an encumbrance, or a

security interest in the residential real property. A court may not enforce a residential loan alternative agreement by a lien or constructive trust in the residential real property or upon the proceeds of the disposition of the residential real property.

(3) A residential loan alternative agreement may not be assigned.

(4) A residential loan alternative agreement is void if listing services do not begin within 90 days after the execution of the agreement by both parties.

(5) As a matter of public policy, a residential loan alternative agreement that does not meet the requirements of this section is unenforceable in law or equity. In addition, a residential loan alternative agreement may not be recorded by the clerk of the circuit court.

(6) A violation of this section is deemed an unfair or deceptive trade practice within the meaning of part II of chapter 501, and a person who violates this section is subject to the penalties and remedies provided therein.

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

COMMERCE COMMITTEE

CS/CS/HB 861 by Rep. Robinson, W.
Residential Loan Alternative Agreements

AMENDMENT SUMMARY
April 10, 2023

Amendment 1 by Rep. Robinson, W. (strike-all):

- Clarifies that an affected homeowner may file a FDUTPA action against a broker.
- Makes clarifying and technical changes.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee
Representative Robinson, W. offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. Section 475.279, Florida Statutes, is created to read:

475.279 Residential loan alternative agreements for the disposition of residential real property.—

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

(a) "Disposition" means a transfer or voluntary conveyance of the title or other ownership interest in residential real estate.

(b) "Residential loan alternative agreement" means a signed writing or a signed and written legal instrument or

contract between a person and a seller or owner of residential real property that:

1. Grants an exclusive right to a person to act as a broker for the disposition of the property;

2. Has an effective duration, inclusive of renewals, of more than 2 years; and

3. Requires the person to pay monetary compensation to the seller or owner.

(c) "Residential real property" means improved residential property of four or fewer residential dwelling units or unimproved residential real property on which four or fewer residential dwelling units may be built.

(2) A residential loan alternative agreement may not authorize a person to place a lien on or otherwise encumber any residential real property. A residential loan alternative agreement may not constitute a lien, an encumbrance, or a security interest in the residential real property. A court may not enforce a residential loan alternative agreement by a lien or constructive trust in the residential real property or upon the proceeds of the disposition of the residential real property.

(3) A residential loan alternative agreement may not be assigned.

(4) A residential loan alternative agreement is void if listing services do not begin within 90 days after the execution of the agreement by both parties.

(5) A residential loan alternative agreement may not be recorded by the clerk of the circuit court.

(6) A residential loan alternative agreement must meet all of the requirements of this section or it is unenforceable in law or equity.

(7) Notwithstanding s. 501.212, a violation of this section is deemed an unfair or deceptive trade practice within the meaning of part II of chapter 501, and a person who violates this section is subject to the penalties and remedies provided therein.

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

CS/HB 895

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 895 Labor Pool Act
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Basabe
TIED BILLS: **IDEN./SIM. BILLS:** SB 1154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Wright	Anstead
2) Civil Justice Subcommittee	16 Y, 0 N	Mawn	Jones
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The Labor Pool Act ("Act") was enacted in 1995 to protect the health, safety, and well-being of day laborers throughout the state by outlining uniform standards of conduct and practice for labor pools. The Act requires a labor pool that operates a labor hall to supply workers with drinking water, sufficient seating, and restroom facilities. Labor pools must also comply with certain requirements related to payment and safety equipment.

When a worker is affected by a violation of the Act, the worker may seek legal remedies as specified in the Act, or any other available legal remedy.

The bill provides that a labor pool satisfies the statutory requirements for providing restroom facilities and drinking water if its labor hall facilities comply with all minimum requirements for public restrooms and drinking fountains in the Florida Building Code. The bill also provides that a labor pool may provide drinking water through a water cooler dispenser, by offering bottled water, or by any other similar means.

The bill requires that a worker affected by a violation of the Act must provide written notice of the alleged violation to the labor pool and give the labor pool 60 days to cure the alleged violation before bringing a lawsuit against the labor pool. Such a lawsuit must be commenced within one year after the date that the affected worker serves the written notice.

The bill provides that the remedies specified in the Act for a worker affected by a violation of the Act are the only remedies available to the worker, and therefore the worker may not pursue any other legal remedy.

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:

Florida Labor Pool Act – Current Situation

Part II of ch. 448, F.S., also known as the Labor Pool Act ("Act"),[1] was enacted in 1995 to protect the health, safety, and well-being of day laborers throughout the state and to outline uniform standards of conduct and practice for labor pools. The Act defines "labor pool" as a business entity that operates a labor hall[2] by one or more of the following methods:[3]

- Contracting with third-party users to supply day laborers on a temporary basis;
- Hiring, employing, recruiting, or contracting with workers to fulfill contracts for temporary labor; or
- Fulfilling any contracts for day labor in accordance with the Act, even if the entity also conducts other business.

The Act provides that a labor pool must not:

- Charge a day laborer:[4]
  - For safety equipment, clothing, accessories, or any other items required by the nature of the work;
  - More than a reasonable amount to transport a worker to or from the designated worksite; or
  - For directly or indirectly cashing a worker's check.[5]
- Request or require that any day laborer sign any document waiving statutory protections.[6]
- Charge more than the actual cost of providing lunch, if the labor pool provides lunch at the worksite.[7]
- Restrict a day laborer's right to accept a permanent position with a third-party user to whom the laborer is referred for temporary work, or to restrict the right of a third-party user to offer employment to an employee of the labor pool.[8]

The Act requires a labor pool to:

- If operating a labor hall, provide the following facilities for a worker waiting at the hall for a job assignment:[9]
  - Restroom facilities;
  - Drinking water; and
  - Sufficient seating.
- Select one of the following methods to pay a day laborer for work performed:[10]
  - Cash;
  - Commonly accepted negotiable instruments that are payable in cash, on demand at a financial institution, and without discount;
  - Payroll debit card; or

[1] Ch. 95-332, L.O.F.
[2] S. 448.22(3), F.S., defines a "labor hall" as a central location maintained by a labor pool where day laborers assemble and are dispatched to work for a third-party user.
[3] S. 448.22(1), F.S. The act also specifically excludes certain businesses from its provisions: businesses registered as farm labor contractors; employee leasing companies; temporary help services that solely provide white collar employees, secretarial employees, clerical employees, or skilled laborers; labor union hiring halls; or labor bureau or employment offices operated by a business entity for the sole purpose of employing an individual for its own use. *See* s. 448.23, F.S.
[4] "Day labor" means temporary labor or employment that is occasional or irregular for which the worker is employed for not longer than the time period required to complete the temporary assignment for which the individual worker was hired, although an individual may be eligible for additional temporary assignments when available. *See* s. 448.22(2), F.S.
[5] S. 448.24(1), F.S.
[6] S. 448.24(3), F.S.
[7] S. 448.24(4), F.S.
[8] S. 448.24(6), F.S.
[9] S. 448.24(5), F.S.
[10] S. 448.24(2), F.S.

    - Electronic fund transfer.
- Notify a day laborer of the payment method that the labor pool intends to use and the day laborer's options to elect a different payment method.[11]
- If selecting to pay a day laborer by payroll debit card:[12]
    - Offer the day laborer the option to elect payment by electronic fund transfer; and
    - Provide the day laborer with a list, including the address, of a nearby business that does not charge a fee to withdraw the debit card's contents.
- Compensate day laborers at or above the minimum wage.[13]
- Comply with the Workers' Compensation Law in ch. 440, F.S.[14]
- Insure any motor vehicle owned or operated by the labor pool and used for worker transportation.[15]
- Furnish each worker with a written itemized statement showing in detail each wage deduction.
- Give each worker an annual earnings statement summary.[16]

Remedies

Under the Act, any worker affected by a violation of the provisions relating to labor pool duties and obligations may file a lawsuit against the labor pool. In any such lawsuit, the worker may recover actual and consequential damages, or $1,000, whichever is greater, for each violation, and costs. This legal remedy is not exclusive and does not prohibit the worker from pursuing any other available legal remedy.[17]

Florida Building Code

In 1974, Florida enacted legislation requiring all local governments to adopt and enforce a building code. In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work and a study was commissioned to make recommendations for improving Florida's building standards. In 1998, the Florida Legislature adopted the study's recommendations for a single state building code and enhanced state oversight over local code enforcement. In 2000, the Florida Legislature authorized the implementation of the Florida Building Code ("Building Code"), and that first edition replaced all local codes on March 1, 2002.[18] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[19]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" ("FBCA"). The purpose and intent of the FBCA is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code and to ensure that the Building Code is applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. [20]

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, housed within the Department of Business and Professional Regulation, 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,[21] the National Electric Code, and other nationally adopted

[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] S. 448.25, F.S.
[18] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/2006_Legislature_Rpt_rev2.pdf (last visited March 27, 2023).
[19] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited March 27, 2023).
[20] S. 553.72(1), F.S.
[21] 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*, available at https://www.iccsafe.org/about/who-we-are/ (last visited Mar. 27, 2023).

model codes to determine if the Building Code needs to be updated; and adopts an updated Building Code every three years.[22]

However, the Building Code only provides minimum standards for construction in the state.[23] Thus, local governments may adopt and enforce amendments specific to their jurisdictions that are more stringent than the requirements imposed under the Building Code. Such amendments expire upon the adoption of the newest building code edition, and, thus, a local government must go through the amendment process every three years in order to maintain any such amendments.[24]

Water Closets and Drinking Fountains in the Florida Building Code

Section 403 of the Building Code sets standards for minimum plumbing facilities, including water closets (or, toilets) and drinking fountains, which standards vary based upon the actual use of the building or space. For a building or space with a "business" use classification, the water closet occupant load requirement is 1 water closet per 25 occupants for the first 50 occupants and 1 water closet per 50 occupants for the remainder exceeding 50, while the drinking fountain occupant load requirement is 1 drinking fountain per 100 occupants.[25] However, drinking fountains are not required for an occupant load of 15 or fewer.[26] Additional requirements also apply to both water closets and drinking fountains as set forth in the Building Code, including requirements for location, directional signage, and fixture materials and quality. There does not appear to be specific minimum seating requirements for general businesses in the Building Code.

Florida Labor Pool Act – Effect of the Bill

The bill amends the Act to provide that a labor pool satisfies the requirements for providing restroom facilities and drinking water if its labor hall facilities comply with all minimum requirements for public restrooms and drinking fountains in the Florida Building Code, and any applicable local amendments. The bill also provides that a labor pool may provide drinking water through a water cooler dispenser, by offering bottled water, or by any other similar means.

The bill provides that a worker affected by a violation of the Act and who seeks to bring a lawsuit, must first serve the labor pool in accordance with s. 48.081, F.S.,[27] with written notice of any alleged violation. The notice must include a statement that the labor pool's failure to cure the alleged violation within 60 days after receipt of the notice may result in a lawsuit being filed against it. A labor pool may cure a violation relating to its labor hall facilities by modifying the alleged violation to comply with statutory requirements.

A lawsuit filed under the Act must be filed within one year after the date the affected worker serves written notice of the alleged violation on the labor pool. The remedies provided under the Act are exclusive, and the affected worker may not pursue any other available legal remedy for violations of the Act.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 448.24, F.S.; relating to labor pool standards and requirements.
Section 2: Amends s. 448.25, F.S.; relating to remedies.
Section 3: Provides an effective date.

[22] Ss. 553.73, and 553.74, F.S.
[23] S. 553.72(1), F.S.
[24] S. 553.73(4), F.S.
[25] 2020 Florida Building Code, Plumbing, 7th Edition, available at: https://codes.iccsafe.org/content/FLPC2020P1/chapter-4-fixtures-faucets-and-fixture-fittings#:~:text=403.3Required%20public%20toilet%20facilities,be%20provided%20with%20toilet%20facilities (last visited Mar. 27, 2023).
[26] 2020 Florida Building Code, Plumbing, 7th Edition, § 410.2.
[27] S. 48.081, F.S., specifies the procedures to be followed in serving process on a corporation.

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 litigation expenses for labor pools due to the mandatory cure period created by the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 16, 2023, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarified the application of minimum standards in the Florida Building Code to water fountains and restrooms.
- Clarified the limitation of remedies.

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

A bill to be entitled

An act relating to the Labor Pool Act; amending s. 448.24, F.S.; providing that a labor pool satisfies certain requirements if its facilities meet the minimum requirements in the Florida Building Code and any local amendments thereto; providing drinking water alternatives; amending s. 448.25, F.S.; requiring an aggrieved worker to provide specified notice to a labor pool before bringing a civil action; authorizing a labor pool to cure alleged violations in certain ways; requiring that a civil action be brought within a certain time period; providing exclusive remedies; providing an effective date.

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

Section 1. Subsection (5) of section 448.24, Florida Statutes, is amended to read:

448.24 Duties and rights.—

(5) A labor pool that operates a labor hall must provide facilities for a worker waiting at the labor hall for a job assignment that include~~:~~

~~(a)~~ restroom facilities~~,~~ ~~.~~

~~(b)~~ drinking water, and~~.~~

~~(c)~~ sufficient seating. A labor pool satisfies

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

requirements for providing restroom facilities and drinking water if its labor hall facilities comply with all minimum requirements for public restrooms and drinking fountains in the Florida Building Code and any local amendments thereto. A labor pool may also provide drinking water through a water cooler dispenser, by offering bottled water, or by any other similar means.

Section 2. Section 448.25, Florida Statutes, is amended to read:

448.25 Remedies; damages; costs.—

(1)(a) Any worker aggrieved by a violation of s. 448.24 has ~~shall have~~ the right to bring a civil action in a court of competent jurisdiction against the labor pool responsible for such violation.

(b) Before bringing a civil action pursuant to this section, an aggrieved worker must give the labor pool a reasonable opportunity to cure the alleged violation. The aggrieved worker must serve the labor pool in accordance with s. 48.081 with written notice of the alleged violation. Such notice must include a statement that failure by the labor pool to cure the alleged violation within 60 days after receipt of the notice may result in a civil action being filed against it in a court of competent jurisdiction. A labor pool may cure a violation relating to its labor hall facilities by modifying the alleged violation to comply with s. 448.24(5).

(c) In any action commenced pursuant to this section ~~part~~, the aggrieved worker is ~~shall be~~ entitled to recover actual and consequential damages, or $1,000, whichever is greater, for each violation of s. 448.24 ~~this part~~, and costs.

(2) A civil action brought under s. 448.24 must be filed within 1 year after the date the aggrieved worker serves written notice of the alleged violation on the labor pool.

(3)~~(2)~~ The remedies provided by this part for a violation of s. 448.24 are ~~not~~ exclusive and ~~shall not~~ preclude the aggrieved worker from pursuing any other remedy at law or equity which the worker may have.

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

CS/HB 1025

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1025 Government Vehicles
SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee, Caruso
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 284

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	17 Y, 0 N, As CS	Walsh	Keating
2) Commerce Committee		Walsh	Hamon

SUMMARY ANALYSIS

Current law requires state agencies that wish to procure commodities or contractual services in excess of $35,000 to use a competitive solicitation process. A competitive solicitation is the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process.

State agencies, in many circumstances, are required to take specified actions to promote energy efficiency and other environmental benefits when conducting public business. When procuring new vehicles, state agencies, state universities, community colleges, and local governments under a state purchasing plan must first define the intended purpose for the vehicle and determine which statutorily listed use class applies. Vehicles must be selected for the greatest fuel efficiency available for the determined class when fuel economy data is available.

Under the bill, any governmental entity that purchases under the state purchasing plan must select vehicles based on the lowest lifetime ownership costs, including costs for fuel, operations, and maintenance.

The bill strikes the requirement under current law that state agencies use ethanol and biodiesel fuel when available, and the bill removes the requirement that state agencies that administer central fueling operations for state-owned vehicles procure biofuels for fleet needs to the greatest extent practicable.

The bill requires DMS to make recommendations before July 1, 2024, to state agencies and local governments regarding the procurement of electric vehicles and natural gas fuel vehicles.

The bill has no impact state or local government revenues or expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Procurement of Commodities or Contractual Services

Current law specifies the procedures for procurement of commodities or contractual services.[1] The Department of Management Services (DMS) provides uniform commodity and contractual service procurement policies, rules, procedures, and forms for use by agencies and eligible users,[2] and establishes purchasing agreements and procures state term contracts for commodities and contractual services.[3]

DMS is required to consider the life-cycle cost of commodities purchased by the state, when applicable and feasible.[4] When calculating the life-cycle cost, the agency may consider the acquisition cost of the product; the energy consumption and the projected cost of energy over the useful life of the product; and the anticipated trade-in, resale, or salvage value of the product.[5] The agency is authorized to establish by rule energy-efficiency standards for major energy-consuming products.[6]

Florida law requires state agencies that wish to procure commodities or contractual services in excess of $35,000[7] to use a competitive solicitation process.[8] Competitive solicitation is the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of procurement method.[9]

Commodities or contractual services available only from a single source may be exempt from the competitive solicitation requirement.[10] Current law specifies the processes an agency must follow in this circumstance.[11]

Climate-friendly Public Business

Current law requires state agencies, in many circumstances, to take specified actions to promote energy efficiency and other environmental benefits when conducting public business.[12] These actions include:

- Consulting the Florida Climate-Friendly Preferred Products List[13] when procuring products from state term contracts[14] and procuring such products if the price is comparable;[15]
- Contracting for meeting and conference space only with facilities that have received a special designation from the Department of Environmental Protection for best practices in water,

[1] Ch. 287, F.S.
[2] S. 287.032, F.S.
[3] S. 287.042(2)(a), F.S.
[4] S. 287.083(1), F.S.
[5] S. 287.083(5), F.S.
[6] S. 287.083(3)(a), F.S.
[7] S. 287.017(2), F.S.
[8] S. 287.057(1), F.S.
[9] S. 287.012(6), F.S.
[10] S. 287.057(3)(c), F.S.
[11] *Id.*
[12] S. 286.29, F.S.
[13] The Florida Climate-Friendly Preferred Products List is developed by DMS, which works with the Department of Environmental Protection to continually assess the list. The list identifies specific products and vendors that offer energy efficiency or other environmental benefits over competing products. *See* s. 286.29(1), F.S.
[14] A state term contract is a contract for commodities or contractual services that is competitively procured by DMS and is used by agencies and other eligible users. *See* ss. 287.012(28), F.S. and 287.042(2)(a), F.S.
[15] S. 286.29(1), F.S.

energy, and waste efficiency standards, absent a determination from the agency head no other viable alternative exists;[16]
- Ensuring all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption and reporting compliance to DMS;[17] and
- Using ethanol and biodiesel blended fuels when available. State agencies administering central fueling operations for state-owned vehicles shall procure biofuels for fleet needs to the greatest extent practicable.[18]

Additionally, state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan must first define the intended purpose for the vehicle and determine which statutorily listed use class[19] the vehicle is being procured for.[20] These vehicles must be selected for the greatest fuel efficiency available for the determined use class when fuel economy data is available.[21] Exceptions may be made for emergency response vehicles in certain circumstances.[22]

Effect of the Bill

The bill requires any governmental entity that purchases under the state purchasing plan to select vehicles for each use class based on the lowest lifetime ownership costs, including costs for fuel, operations, and maintenance, rather than based on the greatest fuel efficiency.

The bill strikes the requirement under current law that state agencies use ethanol and biodiesel fuel when available. It also removes the requirement that state agencies that administer central fueling operations for state-owned vehicles procure biofuels for fleet needs to the greatest extent practicable.

The bill requires DMS to make recommendations before July 1, 2024, to state agencies, state colleges and universities, and local governments regarding the procurement of electric vehicles and natural gas fuel vehicles and the best practices for integrating those vehicles into existing fleets.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 286.29, F.S., relating to climate-friendly public business.

Section 2: Requires DMS to make specified recommendations.

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.

[16] S. 286.29(2), F.S.
[17] S. 286.29(3), F.S.
[18] S. 286.29(5), F.S.
[19] Listed vehicle use classes are the following: state business travel, designated operator; state business travel, pool operators; construction, agricultural, or maintenance work; conveyance of passengers; conveyance of building or maintenance materials and supplies; off-road vehicle, motorcycle, or all-terrain vehicle; emergency response; or other. *See* s. 286.29(4), F.S.
[20] S. 286.29(4), F.S.
[21] *Id.*
[22] *Id.*

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 21, 2023, the Energy, Communications & Cybersecurity Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed a provision providing a tax exemption for electric vehicle conversion components and labor and removed a provision that amends the definition of "single-trade inspection."

This analysis is drafted to the committee substitute as passed by the Energy, Communications & Cybersecurity Subcommittee.

A bill to be entitled

An act relating to government vehicles; amending s. 286.29, F.S.; revising the selection criteria for purchasing or leasing vehicles for state agencies, state universities, community colleges, and local governments under a state purchasing plan; removing a provision requiring the use and procurement of ethanol and biodiesel blended fuels; requiring the Department of Management Services, before a specified date, to make recommendations to state agencies, state universities, community colleges, and local governments relating to the procurement and integration of electric and natural gas fuel vehicles; providing an effective date.

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

Section 1. Subsections (4) and (5) of section 286.29, Florida Statutes, are amended to read:

286.29 Climate-friendly public business.—The Legislature recognizes the importance of leadership by state government in the area of energy efficiency and in reducing the greenhouse gas emissions of state government operations. The following shall pertain to all state agencies when conducting public business:

(4) When procuring new vehicles, all state agencies, state

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

universities, community colleges, and local governments that purchase vehicles under a state purchasing plan shall first define the intended purpose for the vehicle and determine which of the following use classes for which the vehicle is being procured:

(a) State business travel, designated operator;

(b) State business travel, pool operators;

(c) Construction, agricultural, or maintenance work;

(d) Conveyance of passengers;

(e) Conveyance of building or maintenance materials and supplies;

(f) Off-road vehicle, motorcycle, or all-terrain vehicle;

(g) Emergency response; or

(h) Other.

Vehicles described in paragraphs (a) through (h), when being processed for purchase or leasing agreements, must be selected based on the lowest lifetime ownership costs, including costs for fuel, operations, and maintenance, ~~for the greatest fuel efficiency available~~ for a given use class ~~when fuel economy data are available~~. Exceptions may be made for individual vehicles in paragraph (g) when accompanied, during the procurement process, by documentation indicating that the operator or operators will exclusively be emergency first responders or have special documented need for exceptional

vehicle performance characteristics. Any request for an exception must be approved by the purchasing agency head and any exceptional performance characteristics denoted as a part of the procurement process prior to purchase.

~~(5) All state agencies shall use ethanol and biodiesel blended fuels when available. State agencies administering central fueling operations for state-owned vehicles shall procure biofuels for fleet needs to the greatest extent practicable.~~

Section 2. Before July 1, 2024, the Department of Management Services shall make recommendations to state agencies, state universities, community colleges, and local governments regarding the procurement of electric and natural gas fuel vehicles and best practices for integrating such vehicles into existing fleets.

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

Commerce Committee
CS/HB 1025 by Rep. Caruso
Government Vehicles

AMENDMENT SUMMARY
April 10, 2023

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

- Clarifies that the evaluation of a vehicle's lowest lifetime ownership cost must include fuel costs only when fuel economy data is available.
- Inserts a provision requiring that state agencies purchase a vehicle that uses ethanol and biodiesel bended or natural gas fuels when purchasing a vehicle with an internal combustion engine.
- Adds vehicles powered by renewable energy as defined in law to the list of vehicle types about which the Department of Management Services must make procurement recommendations to specified government entities.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (4) and (5) of section 286.29, Florida Statutes, are amended to read:

286.29 Climate-friendly public business.—The Legislature recognizes the importance of leadership by state government in the area of energy efficiency and in reducing the greenhouse gas emissions of state government operations. The following shall pertain to all state agencies when conducting public business:

(4) When procuring new vehicles, all state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan shall first define the intended purpose for the vehicle and determine which

of the following use classes for which the vehicle is being procured:

(a) State business travel, designated operator;

(b) State business travel, pool operators;

(c) Construction, agricultural, or maintenance work;

(d) Conveyance of passengers;

(e) Conveyance of building or maintenance materials and supplies;

(f) Off-road vehicle, motorcycle, or all-terrain vehicle;

(g) Emergency response; or

(h) Other.

Vehicles described in paragraphs (a) through (h), when being processed for purchase or leasing agreements, must be selected <u>based on the lowest lifetime ownership costs, including costs for operations, maintenance, and fuel when fuel economy data is available,</u> ~~for the greatest fuel efficiency available~~ for a given use class ~~when fuel economy data are available~~. Exceptions may be made for individual vehicles in paragraph (g) when accompanied, during the procurement process, by documentation indicating that the operator or operators will exclusively be emergency first responders or have special documented need for exceptional vehicle performance characteristics. Any request for an exception must be approved by the purchasing agency head and

any exceptional performance characteristics denoted as a part of the procurement process prior to purchase.

(5) When a state agency purchases a vehicle with an internal combustion engine, it must ~~All state agencies shall~~ use ethanol and biodiesel blended or natural gas fuels when available. State agencies administering central fueling operations for state-owned vehicles with an internal combustion engine shall procure biofuels for fleet needs to the greatest extent practicable.

Section 2. Before July 1, 2024, the Department of Management Services shall make recommendations to state agencies, state universities, community colleges, and local governments regarding the procurement of electric and natural gas fuel vehicles and other vehicles powered by renewable energy as defined in s. 366.91(2), Florida Statutes, and best practices for integrating such vehicles into existing fleets.

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

Remove everything before the enacting clause and insert:
An act relating to government vehicles; amending s. 286.29, F.S.; revising the selection criteria for purchasing or leasing vehicles for state agencies, state universities, community colleges, and local governments under a state purchasing plan; specifying that, if available, a state agency must use certain

fuels in vehicles with internal combustion engines; requiring the Department of Management Services, before a specified date, to make recommendations to state agencies, state universities, community colleges, and local governments relating to the procurement and integration of electric and natural gas fuel vehicles and other vehicles powered by renewable energy; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1137 New Nuclear Energy
SPONSOR(S): Overdorf
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	16 Y, 0 N	Mortellaro	Keating
2) Commerce Committee		Mortellaro	Hamon

SUMMARY ANALYSIS

Under Federal Law, the United States Nuclear Regulatory Commission (NRC) is responsible for licensing and regulating the operation of commercial nuclear power plants in the United States. NRC approval is necessary before a nuclear power plant can be built and operated, and the NRC holds continued oversight to ensure the nuclear power plants comply with their regulations to protect public health and safety, defense and security, and the environment.

Reprocessing turns used and unusable uranium and plutonium into usable energy resources, reclaiming and repurposing nuclear waste. Many countries have been implementing policies to reprocess nuclear fuel.

This memorial urges the President and Congress to take action to adjust regulatory policy as necessary to allow states the ability to conduct feasibility studies on reclamation and repurposing of spent nuclear fuel for new nuclear energy generation.

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

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

This memorial is not subject to the Governor's veto powers.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Reprocessing

Reprocessing generally refers to "the processes used to separate spent nuclear reactor fuel into nuclear materials that may be recycled for use in new fuel and material that would be discarded as waste."[1] While there are no commercial reprocessing facilities currently operating in the U.S., there are many in other countries.[2] The process of reprocessing turns used and unusable uranium and plutonium into usable energy resources, reclaiming and repurposing nuclear waste. The nuclear power formed from this process is a low-carbon source of energy, since it doesn't produce CO2 during operations.[3] Many European countries, Russia, China, and Japan have been implementing policies to reprocess nuclear fuel.[4]

The U.S. currently has 86,000 metric tons of spent nuclear fuel from commercial reactors which are stored at 75 sites.[5] The spent nuclear fuel is held in repositories.[6] While the U.S. has had three commercial reprocessing plants in the past, they are all currently decommissioned due to nuclear weapons proliferation concerns and level of radioactivity in the waste.[7]

Regulatory Policy for Licensing

For Nuclear Fuel Facilities

Under Federal Law, the United States Nuclear Regulatory Commission (NRC) is responsible for licensing and regulating the operation of commercial nuclear power plants in the United States.[8] Currently, all operating nuclear power plants have been licensed under a two-step process described in Title 10 of the Code of Federal Regulations (10 CFR) under Part 50.[9] This process requires a construction permit and an operating license.[10] In 1989, to improve regulatory efficiency and add more predictability to the licensing process, 10 CFR Part 52[11] was created, which includes a combined license that provides the construction permit and an operating license.[12] There are other licensing options under Part 52, such as Early Site Permits and certified standard plant designs.[13] NRC holds final authority of approval, and their approval is necessary before a nuclear power plant can be built and operated.[14] The NRC holds continued oversight of these plants to make sure they comply with NRC regulations to protect public health and safety, defense and security, and the environment.[15]

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[1] United States Nuclear Regulatory Commission, *Reprocessing*, https://www.nrc.gov/materials/reprocessing.html (last visited Mar. 27, 2023).
[2] *Id*.
[3] World Nuclear Association, *Processing of Used Nuclear Fuel* (Dec. 2020), https://world-nuclear.org/information-library/nuclear-fuel-cycle/fuel-recycling/processing-of-used-nuclear-fuel.aspx (last visited Mar. 23, 2023).
[4] *Id*.
[5] U.S. Government Accountability Office, *Commercial Spent Nuclear Fuel: Congressional Action Needed to Break Impasse and Develop a Permanent Disposal Solution*, https://www.gao.gov/products/gao-21-603 (last visited Mar. 27, 2023).
[6] *Id*.
[7] World Nuclear Association, *Processing of Used Nuclear Fuel*, https://world-nuclear.org/information-library/nuclear-fuel-cycle/fuel-recycling/processing-of-used-nuclear-fuel.aspx (last visited Mar. 27, 2023).
[8] United States Nuclear Regulatory Commission, *Backgrounder on Nuclear Power Plant Licensing Process*, https://www.nrc.gov/reading-rm/doc-collections/fact-sheets/licensing-process-fs.html (last visited Mar. 23, 2023).
[9] 10 CFR 50.
[10] Backgrounder on Nuclear Power Plant Licensing Process, *supra* note 7.
[11] 10 CFR 52.
[12] Backgrounder on Nuclear Power Plant Licensing Process, *supra* note 7.
[13] *Id*.
[14] *Id*.
[15] *Id*.

For Reprocessing Facilities

The Global Nuclear Energy Partnership (GNEP) was an initiative with a comprehensive strategy to increase U.S. and global energy security, reduce the risk of nuclear proliferation,[16] and improve the environment.[17] The primary goal of implementing this initiative was to establish domestic reprocessing. In 2008, the U.S. Congress reduced funding of GNEP and this goal dissipated. Between 2008 and 2013, the NRC received four letters from companies supporting an updated reprocessing regulatory framework. As a result of these letters, the NRC focused its efforts on creating a more broadly applicable framework for commercial reprocessing facilities.[18] In 2013, the NRC provided resource cost estimates that would be required to update the NRC regulatory framework for licensing a reprocessing facility.

In 2020, stakeholders including the Nuclear Energy Institute (NEI), the U.S. Department of Energy (DOE), the Union of Concerned Scientists (UCS), industry representatives, environmental groups, and private citizens got involved. In March of 2020, NEI and industry representatives voiced support for continuing rulemaking for a clear regulatory framework of reprocessing, but none of these industry stakeholders planned to apply for a reprocessing facility. UCS indicated that they do not support rulemaking because of proliferation concerns. The NRC reached out to organizations who create reactors. The NRC determined that in addition to using fresh fuel obtained from enrichment and fabrication, other advanced reactor designs would eventually be able to source fuel from spent fuel of other reactors; however, there was limited interest in pursuing reprocessing activities in the near future. DOE has some reprocessing initiatives, but none of their initiatives require NRC licensing.[19] Eventually, in 2021, the NRC staff determined that reprocessing licensing rulemaking is not currently justified due to the limited interest from potential applicants for reprocessing facilities and the expansive costs.[20]

Nuclear Power Plants in Florida

The NRC Regional Officer in Atlanta holds jurisdiction over Florida's nuclear power reactors. Currently, there are two operating nuclear power reactors,[21] no fuel cycle facilities,[22] and no uranium recovery facilities located in Florida. The four operating nuclear power reactor units, are located in two locations in Florida, St. Lucie[23] and Turkey Point.[24] These power plants generate 12% of the state's electricity.[25]

Feasibility Studies

[16] World 101, *What is Nuclear Proliferation*, https://world101.cfr.org/global-era-issues/nuclear-proliferation/what-nuclear-proliferation (last visited Mar. 27, 2023).
[17] *The Global Nuclear Energy Partnership: Greater Energy Security in a Cleaner, Safer World*, https://www.energy.gov/articles/global-nuclear-energy-partnership-0 (last visited Mar. 27, 2023).
[18] Reprocessing, *supra* note 1.
[19] While DOE reprocessing is not required to obtain licensing under the NRC, the NRC must be consulted and is required to monitor DOE waste disposal actions. U.S. Department of Energy, DOE M 435.1-1, *Radioactive Waste Management Manual*, https://www.directives.doe.gov/directives-documents/400-series/0435.1-DManual-1 (last visited Mar. 27, 2023); Office of Environmental Management, *How DOE Makes Reprocessing Waste Determinations*, https://www.energy.gov/em/how-doe-makes-reprocessing-waste-determinations (last visited Mar. 27, 2023).
[20] United States Nuclear Regulatory Commission, *DISCONTINUATION OF RULEMAKING – SPENT FUEL REPROCESSING*, https://www.nrc.gov/docs/ML2030/ML20301A388.pdf.
[21] A "nuclear power reactor" uses heat energy released from splitting atoms of certain elements to generate electricity. Uranium is the basic fuel; World Nuclear Association, *Nuclear Power Reactors*, https://world-nuclear.org/information-library/nuclear-fuel-cycle/nuclear-power-reactors/nuclear-power-reactors.aspx#:~:text=Nuclear%20Power%20Reactors%201%20Nuclear%20reactors%20work%20by,most%20of%20those%20operating%20are%20second-generation.%20More%20items (last visited Mar. 23, 2023).
[22] According to the NRC, "fuel cycle facilities" make nuclear fuel for commercial nuclear reactors or manufacture specialty materials for the U.S. Navy's nuclear fleet. There are three types: uranium conversion, uranium enrichment, and fuel fabrication. United States Nuclear Regulatory Commission, *Fuel Cycle Facilities*, https://www.nrc.gov/materials/fuel-cycle-fac.html (last visited Mar. 27, 2023).
[23] United States Nuclear Regulatory Commission, *St. Lucie Plant, Unit 1*, https://www.nrc.gov/info-finder/reactors/stl1.html (last visited Mar. 23, 2023); USNRC, *St. Lucie Plant, Unit 2*, https://www.nrc.gov/info-finder/reactors/stl2.html (last visited Mar. 23, 2023).
[24] United States Nuclear Regulatory Commission, *Turkey Point Nuclear Generating Unit 3*, https://www.nrc.gov/info-finder/reactors/tp3.html (last visited Mar. 23, 2023); United States Nuclear Regulatory Commission, *Turkey Point Nuclear Generating Unit 4*, https://www.nrc.gov/info-finder/reactors/tp4.html (last visited Mar. 23, 2023).
[25] Florida Energy Systems Consortium, *Florida Energy Facts*, http://floridaenergy.ufl.edu/florida-energy-facts/#:~:text=Florida%20was%20second%20only%20to%20Texas%20in%202014,including%20renewable%20energy%2C%20supplied%20the%20remaining%20electricity%20generation (last visited Mar. 23, 2023).

A feasibility study is an important step in developing new nuclear projects.[26] As an overview, a feasibility study will assess all aspects of energy demand, each energy option, cost and technical aspects, any the varying degrees of social and environmental implications to determine if it is possible, practical, and viable.[27]

Effect of the Memorial

The memorial urges the President and Congress to take action to adjust regulatory policy as necessary to allow states the ability to conduct feasibility studies[28] on reclamation and repurposing of spent nuclear fuel for new nuclear energy generation.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review.[29] Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject. Upon adoption by both chambers, copies of the memorial will be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

B. SECTION DIRECTORY:

None.

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.

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[26] International Atomic Energy Agency, *Preparation of a Feasibility Study for New Nuclear Power Projects*, IAEA NUCLEAR ENERGY SERIES NO. NG-T-3.3 (2014), https://www-pub.iaea.org/MTCD/Publications/PDF/Pub1633Web-39794849.pdf.

[27] *Id*.

[28] *Id*.

[29] A "memorial" is a measure addressed to an executive agency or another legislative body, usually Congress, which expresses the consensus of the Florida Legislature or urges that certain action be taken on a matter within the jurisdiction of the agency or body to which it is addressed. When both houses adopt the measure, the memorial is signed by the legislative officers and transmitted to the Secretary of State for presentation to the addressee. A memorial is not subject to the approval or veto powers of the Governor, is not subject to constitutional title requirements, and does not have the effect of law. The Florida Senate, *Glossary*, https://www.flsenate.gov/Reference/Glossary (last visited Mar. 23, 2023).

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

House Memorial

A memorial to the President and Congress of the United States, urging the President and Congress to take action to adjust regulatory policy as necessary to allow states the ability to conduct feasibility studies on reclamation and repurposing of spent nuclear fuel for new nuclear energy generation.

WHEREAS, nuclear reprocessing technology has been used extensively throughout Europe, Russia, and Japan, and

WHEREAS, existing reprocessing technology has resulted in a gain of approximately 30 percent more energy than the initial uranium source, and

WHEREAS, the United States has conducted more than 250 plant-years of reprocessing technology operations, and

WHEREAS, reprocessing technology results in more rapid decay and reduces the volume of high-level nuclear waste to nearly one-fifth, and

WHEREAS, fourth generation fast neutron reactors will significantly expand the opportunity for reprocessing technology to include previously underused stockpiles of depleted uranium, and

WHEREAS, the use of depleted uranium in reprocessing technology potentially amounts to over 1.2 million tons of

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

underused uranium stockpiles, which significantly reduces the prevalence of uranium mining, and

WHEREAS, nuclear fuel is a green energy that supports the carbon-free power demand, and

WHEREAS, four nuclear reactors located at two power plants in the state generate more than 3,000 megawatts, powering nearly 1.9 million homes with clean energy, and

WHEREAS, federal government regulation and policy changes have resulted in the closure of all three civil reprocessing plants in the United States, NOW, THEREFORE,

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

That the President and Congress of the United States are urged to take action to adjust regulatory policy as necessary to allow states the ability to conduct feasibility studies on reclamation and repurposing of spent nuclear fuel for new nuclear energy generation.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1221 Broadband Internet Service Providers
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Tomkow
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	18 Y, 0 N	Keating	Keating
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N, As CS	Mullins	Topp
3) Commerce Committee		Keating	Hamon

SUMMARY ANALYSIS

Rural electric cooperatives are electric utilities owned by their customer-members and located primarily in rural areas where, at least historically, the economics of building or installing electrical infrastructure has not attracted investment. To promote economic development, a cooperative in Florida may provide any energy or nonenergy services to its membership. Currently, five of Florida's 18 rural electric cooperatives are engaged in or developing broadband service for their members. Both the state and federal government offer grant funds to entities seeking to expand broadband Internet service into unserved areas.

The term pole attachment refers to the process by which communications services providers can place communications infrastructure on existing electric utility poles. Rules governing pole attachments seek to balance the desire to maximize value for users of both electric and communications services with concerns unique to electric utility poles, such as safety and reliability. Since 2021, the Public Service Commission (PSC) has had the authority to regulate and enforce rates, charges, terms, and conditions for attachments to poles owned by investor-owned electric utilities. No party yet has initiated proceedings at the PSC under this authority. Attachments to poles owned by rural electric cooperatives are, and have historically been, exempt from regulation.

The bill provides explicit authority for rural electric cooperatives in Florida to "engage in the provisions of broadband." The bill defines this phrase to mean:

- Providing broadband service directly, through an affiliate, or pursuant to an agreement with a third party; or
- Accepting broadband grant funding pursuant to the Florida Broadband Opportunity Program or from any other federal or state program offering grants to expand broadband Internet service to unserved areas of the state.

Under the bill, if a rural electric cooperative engages in the provision of broadband, all poles owned by the cooperative are subject to the PSC's pole attachment regulations on the same basis as poles owned by investor-owned electric utilities. The PSC is granted access to the cooperative's books and records to the limited extent necessary to exercise its authority. The bill provides for the continued confidential treatment of certain records received by the PSC under existing public record exemptions The bill provides that it may not be construed to impair the contract rights of parties to an existing pole attachment agreement.

The bill does not impact state or local government revenues or local government expenditures. The bill may increase state government expenditures, but the PSC has indicated that it can handle the expected workload with existing resources.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Pole Attachments

The term pole attachment refers to the process by which communications services providers can place communications infrastructure on existing electric utility poles. This reduces the number of poles that must be built to accommodate utility and communications services, while reducing costs to users of both services by allowing providers to share costs. Rules governing pole attachments seek to balance the desire to maximize value for users of both electric and communications services with concerns unique to electric utility poles, such as safety and reliability.[1] The space requested for a pole attachment is typically one foot.

Pole attachments, originally by mutual agreement but later by federal statute and regulation, provide non-pole-owning cable and telecommunication service providers with access to a utility's distribution poles, conduits, and ROW for:

- Installing fiber, coaxial cable or wires, and other equipment;
- Building an interconnected network; and
- Reaching customers.[2]

Congress began regulating pole attachments[3] in 1978.[4] The Telecommunications Act of 1996[5] (the Act) expanded pole attachment rights to telecommunications[6] carriers. The Act requires utilities[7] to provide nondiscriminatory access to cable television systems and telecommunications carriers. The Act also authorizes the Federal Communications Commission[8] (FCC) to regulate the rates, terms, and conditions of attachments by cable television operators to the poles, conduit, or ROW owned or controlled by utilities in the absence of parallel state regulation.[9] The Legislation withheld from FCC jurisdiction the authority to regulate attachments where the utility is a railroad, cooperatively organized, or owned by a government entity.[10] Thus, federal pole attachment regulations apply only to investor-owned electric utilities (IOUs). Municipal and cooperative electric utilities are specifically exempted from federal pole attachment regulations.

The Act permits utilities to deny access where there is insufficient capacity and for reasons of safety, reliability or generally applicable engineering purposes. In addition to establishing a right of access, the Act provides a rate methodology for "attachments used by telecommunications carriers to provide

[1] American Public Power Association, *Issue Brief: Preserving the Municipal Exemption from Federal Pole Attachment Regulations* (Jan. 2021) https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations (last visited Mar. 13, 2021).
[2] Edison Electric Institute, Pole Attachments 101, https://ecfsapi.fcc.gov/file/7020708245.pdf (last visited Mar. 13, 2021).
[3] 47 U.S.C. § 224(a)(4), defines ''pole attachment'' as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."
[4] The Pole Attachment Act of 1978 granted utility pole access to cable companies, and was designed to promote utility competition and service to the public. Communications Act Amendments of 1978, Pub. L. No. 95-234. (Feb. 21, 1978).
[5] Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).
[6] The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(50).
[7] 47 U.S.C. § 224(a)(1), defines ''utility'' as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State."
[8] The FCC regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the FCC is the United States' primary authority for communications law, regulation and technological innovation. FCC, *What We Do*, https://www.fcc.gov/about-fcc/what-we-do (last visited Mar 19, 2023).
[9] 47 U.S.C. § 224.
[10] *In the Matter of Implementation of Section 224 of the Act- A Nat'l Broadband Plan for Our Future*, 26 F.C.C. Rcd. 5240, 5245–46 (2011)

telecommunications services"[11] in addition to the existing methodology for attachments "used by a cable television system solely to provide cable service.[12]

Federal law broadly preempts the regulation of telecommunications services.[13] However, federal law allows states to exercise reverse preemption over the FCC's jurisdiction of communications infrastructure access,[14] meaning that once a state adopts its own utility pole access rules, the FCC loses jurisdiction over pole attachments to the extent that the state regulates such matters.[15]

Pursuant to section 224(c) of the Act[16], each state that regulates the rates, terms, and conditions for pole attachments must certify to the FCC that:

- It regulates such rates, terms, and conditions; and
- In so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services provided by the pole owners.

Furthermore, a state is not considered to regulate the rates, terms, and conditions for pole attachments:

- Unless the state has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments; and
- With respect to any individual matter, unless the state takes final action on a complaint regarding such matter:
    - Within 180 days after the complaint is filed with the state, or
    - Within the applicable period prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

In Florida

In 2021, Florida exercised its power under the Act to assert reverse preemption over the FCC's regulation of pole attachments, directing the Florida Public Service Commission (PSC) to regulate and enforce rates, charges, terms, and conditions for pole attachments, and to ensure that they are just and reasonable. Accordingly, Florida law requires the PSC to adopt rules to administer its new regulatory authority and, in doing so, to consider the interests of the subscribers and users of the services offered through pole attachments, as well as the interests of the consumers of any pole owner providing such attachments.[17] Florida law maintains the federal regulatory exemption for attachments to poles owned by government-owned or cooperative electric utilities.

Florida law provides that the Legislature's intent is to encourage parties to enter into voluntary pole attachment agreements and provides that it may not be construed to prevent parties from voluntarily entering into such agreements without PSC approval. The law requires the PSC to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments. The law specifies that a party's right to nondiscriminatory access to a pole is identical to the rights afforded under section 224(f)(1) of the Act,[18] and that a pole owner may deny access to its poles on a nondiscriminatory basis when there is insufficient capacity, for reasons of safety and reliability, and when required by generally applicable engineering purposes. A pole owner must consider relevant construction and reliability standards approved by the PSC when evaluating capacity, safety, reliability, and engineering requirements.

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[11] 47 U.S.C. § 224(e).
[12] 47 U.S.C. § 224(d).
[13] "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a).
[14] 47 U.S.C. § 224(c)(1).
[15] Catherine J.K. Sandoval, *Contested Places, Utility Pole Spaces: A Competition and Safety Framework for Analyzing Utility Pole Association Rules, Roles, and Risks*, 69 Cath. U. L. Rev. 473, 486–87 (2020).
[16] 47 U.S.C. § 224(c)
[17] Ch. 2021-191, Laws of Fla., codified at s. 366.04(8), F.S.
[18] 47 U.S.C. s. 224(f)(1) provides for nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by a utility, subject to denial, on a nondiscriminatory basis, only on the grounds of insufficient pole capacity or for safety, reliability, or other engineering purposes.

Under Florida law, FCC precedent is not binding upon the PSC. However, the bill requires the PSC to apply the decisions and orders of the FCC and related appellate court decisions when determining just and reasonable pole attachment rates, terms and conditions unless a pole owner or attaching entity establishes by competent substantial evidence that an alternative cost-of-service based pole attachment rate is appropriate and in the public interest.

To help establish precedent on the establishment of pole attachment rates and guide negotiations toward voluntary pole attachment agreements, Florida law authorizes any pole owner or attaching entity to participate in the first five formal administrative proceedings conducted by the PSC to determine pole attachment rates. After the fifth such formal administrative proceeding is concluded by final order, parties to subsequent pole attachment rate proceedings are limited to the specific pole owner and pole attaching entities involved in and directly affected by the specific pole attachment rate. Currently, no party has initiated a pole attachment proceeding at the PSC.

Rural Electric Cooperatives

Rural electric cooperatives are electric utilities that are owned by their consumer-members. These private companies are generally nonprofit, with their principal purpose being to deliver electrical service to their members. Rural electric cooperatives are mostly located in rural areas where, at least historically, the return on investment for building or installing electrical infrastructure was not enough for investor-owned utilities to want to service them.[19]

Historically, rural homes, farms, and businesses were some of the last places to electrify in the United States (U.S.). By the mid-1930's, 90 percent of U.S. urban homes were electrified,[20] however, the opposite was true in rural areas—only one out of 10 rural homes had electric service.[21] This lack of electrical service deeply limited economic development in rural areas of the country. Despite this impact, the costs to electrify most rural areas were usually prohibitive and often thought not economically feasible.[22] In the limited areas where rural electric power was available, often the prices paid by such consumers were far higher than those paid by their urban counterparts.

In 1935, Executive Order 7037, issued by President Franklin Roosevelt, created the Rural Electrification Administration (REA). One year later, Congress passed the Rural Electrification Act (Pub. L. 74–605), codifying the REA and creating a loan program to encourage the growth of rural electrification. Even with these available federal loans, established investor-owned utilities did not have much interest in building rural systems. However, there was significant interest from farmer-based electric cooperatives.[23] By 1939, with assistance from REA funds, 413 rural electric cooperatives had been established in the U.S.,[24] and by 1950, 80 percent of U.S. farms had electric service.[25]

During a reorganization of the United States Department of Agriculture (USDA) in 1994, the REA was replaced with the Rural Utilities Service, which still exists today.[26] According to the National Rural Electric Cooperative Association (NRECA), now over 99 percent of U.S. farms have electrical service.[27] Rural electric cooperatives continue to be the most prevalent way for consumers in rural areas to obtain electrical service.[28]

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[19] University of Wisconsin Center for Cooperatives, *Research on the Economic Impact of Cooperatives*, https://reic.uwcc.wisc.edu/electric/ (last visited Mar. 19, 2023).
[20] *Id.*
[21] National Rural Electric Cooperative Association, *History,* https://www.electric.coop/our-organization/history (last visited Mar. 19, 2023).
[22] United States Department of Agriculture, *Celebrating the 80th Anniversary of the Rural Electrification Administration*, Feb. 21, 2017, https://www.usda.gov/media/blog/2016/05/20/celebrating-80th-anniversary-rural-electrification-administration (last visited Mar.19, 2023).
[23] National Rural Electric Cooperative Association, *History, supra* note 21.
[24] University of Wisconsin Center for Cooperatives, *supra* note 19.
[25] *Celebrating the 80th Anniversary of the Rural Electrification Administration, supra* note 22.
[26] University of Wisconsin Center for Cooperatives, *supra* note 19.
[27] National Rural Electric Cooperative Association, *History, supra* note 21.
[28] United States Energy Information Administration, *Today in Energy: August 15, 2019*, https://www.eia.gov/todayinenergy/detail.php?id=40913.

As of 2019, rural electric cooperatives in the U.S. averaged 7.98 customers per mile of line, as compared with 32.4 customers per mile of line for the rest of the electricity industry. In addition, while rural electric cooperatives have ownership of 42 percent of U.S. electricity distribution lines, their electricity sales only represent 12 percent of the nation's overall sales. Rural electric cooperatives have a different customer mix as well. For rural electric cooperatives, 53 percent of their customers are residential, with the remainder being commercial, industrial, and transportation customers—which generally have much higher energy consumption. For the U.S. electric industry at-large, the percentage of residential customers is 38 percent.[29]

These factors lead to rural electric cooperatives receiving significantly less revenue per dollar of capital investment in distribution. Rural electric cooperatives' average revenue for mile of distribution line is $19,135 (versus $79,298 for the rest of the electricity industry) and their cost of distribution plant per customer is $4,219 (versus $3,698).[30] Thus, on a per customer basis, the distribution of electric power in rural areas is higher versus the rest of the industry.

In Florida

In 1937, the REA drafted the Electric Cooperative Corporation Act as a model state law for states to adopt for forming and operating rural electric cooperatives. Florida's first distribution electric cooperatives were formed that same year.[31] At that time, much of Florida's geographic territory lacked electrical service, due to, like most of the U.S., the lack of enough economic development to make providing service worthwhile for existing electric companies.

At present, Florida has 18 rural electric cooperatives, with 16 of these cooperatives being distribution cooperatives and two being generation and transmission cooperatives. These cooperatives are represented by the Florida Electric Cooperative Association (FECA).[32] These cooperatives operate in 57 of Florida's 67 counties and have more than 2.7 million customers.[33] Much like other areas of the U.S., Florida rural electric cooperatives serve a large percentage of area, but have a low customer density. Specifically, Florida cooperatives serve approximately 10 percent of Florida's total electric utility customers, but their service territory covers 60 percent of Florida's total land mass. Each cooperative is governed by a board of cooperative members elected by the cooperative's membership.[34]

In addition to providing electric service, cooperatives in Florida are authorized to own and operate water and sewer systems.[35] To promote economic development, a cooperative may provide any energy or nonenergy services to its membership.[36]

Broadband Internet Deployment

Fixed and mobile broadband Internet services provide access to numerous employment, education, entertainment, and health care opportunities.[37] Communities that lack broadband access can have difficulty attracting new capital investment. While Florida's urban areas are served at a fixed broadband coverage rate of 98 percent, its rural areas are served at a rate of 78.6 percent.[38] This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across

[29] National Rural Electric Cooperative Association, *Fact Sheet: February 2021*, https://www.cooperative.com/programs-services/bts/documents/data/electric-co-op-fact-sheet-update-february-2021.pdf (last visited Mar. 19, 2023).
[30] *Id.*
[31] Seminole Electric Cooperative, *Empowering our Community*, https://www.seminole-electric.com/ (last visited Mar. 19, 2023).
[32] Florida Electric Cooperative Association, *Members*, https://feca.com/members/ (last visited Mar 19, 2023).
[33] Florida Electric Cooperative Association, *Our History*, https://feca.com/our-history/ (last visited Mar 19, 2023).
[34] *Id.*
[35] S. 425.04(4), F.S.
[36] S. 425.04 (15), F.S.
[37] U.S. Federal Communications Commission (FCC), *2018 Broadband Deployment Report,* at 1 (Feb. 2, 2018), https://docs.fcc.gov/public/attachments/FCC-18-10A1.pdf (last visited Mar. 23, 2023).
[38] FCC, *2021 Broadband Deployment Report* at 63 (Jan. 19, 2021), https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf (last visited Mar. 23, 2023). For purposes of this data, 'fixed broadband services' are measured at 25 megabits per second downstream and 3 megabits per second upstream.

larger swaths of rural geographic areas.[39] The recent COVID-19 pandemic amplified the need for broadband Internet access in everyday life. Studies indicate that broadband Internet access matters for jobs, income, business relocation, civic engagement, and health.[40]

Broadband Growth Programs

- Florida Broadband Opportunity Program

Established under s. 288.9962, F.S., the Broadband Opportunity Program (BOP) is a competitive reimbursement program within the Florida Department of Economic Opportunity (DEO).[41] The purpose of the program is to award grants to applicants who seek to expand broadband Internet service to unserved areas of Florida. To operate the program, the Legislature appropriated $400 million in federally funded State and Local Fiscal Recovery Funds (SLFRF) to increase Floridians' access to reliable, affordable, and high-speed internet service.[42]

- Connect America Fund

One of the earliest and most significant federal broadband programs is the Connect America Fund, which is part of the FCC's Universal Service Fund (USF). Started in 2011, the purpose of the fund is to provide subsidies to telecommunications companies to expand telecommunications infrastructure in rural and remote areas of the United States.[43] The Connect America Fund is a "high-cost" program, meaning that it is designed to ensure that consumers in rural, insular, and high cost areas have access to modern telecommunications networks and that services through those networks, like voice and broadband, are available at a cost comparable to that in more developed urban areas.[44] The Connect America Fund is the largest of the USF's programs, and has an annual budget of $4.5 billion.[45]

- Broadband Technology Opportunities Program

The Broadband Technology Opportunities Program (BTOP) is a federal grant program administered by the National Telecommunications and Information Administration (NTIA), part of the U.S. Department of Commerce. The BTOP is funded by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), and has an annual budget of $4 billion. The purpose of the program is to "bridge the technological divide" and BTOP projects include deploying broadband Internet infrastructure, enhancing and expanding public computer centers, and encouraging the sustainable adoption of broadband service.[46]

- USDA Programs: ReConnect Program and the Rural Broadband Program

The USDA operates two programs aimed at developing broadband in rural areas—the ReConnect Program and the Rural Broadband Program. Though these programs both existed prior to 2021, the Infrastructure Investment and Jobs Act (Public Law 117-58), signed into law on November 15, 2021,

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[39] American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), https://www.ntia.doc.gov/files/ntia/publications/american_broadband_initiative_milestones_report.pdf (last visited Mar. 23, 2023).
[40] *COVID-19 lockdowns expose the digital have-nots in rural areas – here's which policies can get them connected* (Sep. 2, 2020), https://theconversation.com/covid-19-lockdowns-expose-the-digital-have-nots-in-rural-areas-heres-which-policies-can-get-them-connected-144324 (last visited Mar. 23, 2023).
[41] Florida Department of Economic Opportunity, *Broadband Opportunity Program*, https://www.floridajobs.org/community-planning-and-development/broadband/broadband-opportunity-program (last visited Mar. 19, 2023).
[42] *Id.*
[43] Federal Communications Commission, *Universal Service Monitoring Report*, Feb. 13, 2023, (available at: https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports).
[44] Federal Communications Commission, *Universal Service for High Cost Areas-Connect America Fund,* https://www.fcc.gov/general/universal-service-high-cost-areas-connect-america-fund#releases (last visited Mar. 19, 2023).
[45] Universal Service Administrative Co., *Program Overview*, https://www.usac.org/high-cost/program-overview/ (last visited Mar 3, 2023).
[46] National Telecommunications and Information Administration, *Broadband Technology Opportunities Program,* https://ntia.gov/category/broadband-technology-opportunities-program#:~:text=The%20Broadband%20Technology%20Opportunities%20Program,in%20communities%20across%20the%20country (last visited Mar. 19, 2023).

provided new funding for both of these programs (and other broadband initiatives). The ReConnect Program received $1.926 billion in funds for grants and loans and the Rural Broadband Program received $74 million in funds for loans.[47]

The purpose of the ReConnect Program is to offer loans, grants, and loan-grant combinations to facilitate broadband deployment in rural areas that currently do not have sufficient access to broadband. The entities eligible to apply for the Reconnect Program include:

- Corporations, limited liability companies, and limited liability partnerships;
- State and local governments;
- U.S. territories and possessions; and
- Indian tribes, as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. §450b).48

Reconnect grants may be used for:

- Construction or improvement of facilities required to provide fixed terrestrial broadband services;
- Funding of reasonable pre-application expenses; and
- Funding the acquisition of an existing telecommunications system that does not currently provide sufficient access to broadband.[49]

The Rural Broadband Program offers funds to help construct, improve, or acquire facilities and equipment needed to provide broadband to rural areas. The entities eligible to apply for the program are:

- Corporations
- Limited liability companies
- Cooperative or mutual organizations
- State and local governments
- Indian tribes and tribal organizations

For the most recent years prior to 2021, Congress only appropriated funds to the Rural Broadband Program for loans. However, with the increase in funding under the Infrastructure Investment and Jobs Act, funding for grants and loan guarantees is also now available in the program.[50]

While the USDA's Reconnect and Rural programs are similar in their purpose, a key distinction lies in the standards for eligible service areas. For the ReConnect Program, eligible service areas exist where at least 90% of households lack sufficient access to broadband with at least 100 Mbps download and 20 Mbps upload speed (100/20 Mbps service). For the Rural Broadband Program, the standard for eligibility is if the area in question does not have at least 50% of households with at least 25 Mbps download and 3 Mbps upload speed (25/3 Mbps service).

Rural Electric Cooperative Engagement in Broadband

According to the NRECA, about 200 rural electric cooperatives are currently providing or building out broadband service. In addition, the NRECA states that 200 additional rural electric cooperatives are "assessing the feasibility of providing service to more than 6 million households in co-op service areas that don't have access to high-speed internet service."[51] To support its members who are or would like to be engaged in the broadband business, the NRECA launched a new level of service for its members in July 2022 called NRECA Broadband.[52] The stated purpose of NRECA Broadband is to offer federal

[47] Congressional Research Service, *Infrastructure Investment and Jobs Act: Funding for USDA Rural Broadband Programs*, Nov. 19. 2021, https://crsreports.congress.gov/product/pdf/IF/IF11918 (last visited Mar. 19, 2023).
[48] United States Department of Agriculture, *ReConnect Program*, https://www.usda.gov/reconnect/program-overview (last visited Mar. 19, 2023).
[49] *Id.*
[50] Federal Communications Commission, *Universal Service for High Cost Areas-Connect America Fund,* supra note 4447.
[51] National Rural Electric Cooperatives Association, *Broadband,* https://www.electric.coop/issues-and-policy/broadband (last visited Mar. 19, 2023).
[52] *Id.*

policy and regulatory advocacy; communication, events, and education; and operations and technology support.[53]

While rural electric cooperatives have experience in operating a monopoly electric utility, many have little institutional experience in operating in a non-monopoly competitive market in general or in broadband telecommunications specifically. Thus, these companies can face challenges in learning how to market and provide broadband services.[54]

Currently, five of Florida's 18 rural electric cooperatives, are engaged in or developing broadband service:

- Glades Electric Cooperative (5.1 members per mile of line).
- Central Florida Electric Cooperative (6.34 members per mile of line).
- Suwannee Valley Electric Cooperative (4.5 members per mile of line).
- Tri-County Electric Cooperative (4.48 members per mile of line).
- Escambia River Electric Cooperative (6.94 members per mile of line).

According to the FECA, these five cooperatives are the most rural in nature of the cooperatives in Florida.[55]

Confidentiality of Records Provided to the PSC

Florida law provides public record exemptions for records received by the PSC which contain proprietary confidential business information.[56] For records provided to the PSC under chapter 366, Florida Statutes, which includes the PSC's authority to regulate pole attachments, a person must request and the PSC must find that such records contain proprietary confidential business information. For records provided to the PSC under chapter 364, F.S., a person need only claim that such records are proprietary confidential business information, with such claims subject to challenge at the PSC.[57]

Effect of the Bill

The bill provides explicit authority for rural electric cooperatives in Florida to "engage in the provisions of broadband." The bill defines this phrase to mean:

- Providing broadband service directly, through an affiliate, or pursuant to an agreement with a third party; or
- Accepting broadband grant funding pursuant to the Florida Broadband Opportunity Program or from any other federal or state program offering grants to expand broadband Internet service to unserved areas of the state.

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[53] Cooperative.com, *NRECA Broadband*, https://www.cooperative.com/topics/telecommunications-broadband/nreca-broadband/Pages/default.aspx (last visited Mar. 19, 2023).
[54] National Rural Electric Cooperatives Association, *Along Those Lines: What It Takes for Electric Co-ops to Enter the Broadband Space*, Jan 24, 2023, https://www.electric.coop/along-those-lines-what-it-takes-for-electric-co-ops-to-enter-the-broadband-space.
[55] Senate Analysis of CS/SB 626 (2023), p. 15 (March 8, 2023), citing an email from Drew Love, Director of Government Affairs, Florida Electric Cooperatives Association, to Senate Regulated Industries Staff (Mar. 6, 2023).
[56] *See, e.g.*, ss. 366..093 and 364.183, F.S. For purposes of these exemptions, "proprietary confidential business information" means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

- Trade secrets.
- Internal auditing controls and reports of internal auditors.
- Security measures, systems, or procedures.
- Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
- Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

[57] *Id.*

Under the bill, if a rural electric cooperative engages in the provision of broadband, all poles owned by the cooperative are subject to the PSC's pole attachment regulations on the same basis as poles owned by investor-owned electric utilities. The PSC is granted access to the cooperative's books and records to the limited extent necessary to exercise this authority. Upon request of the cooperative, the PSC must maintain the confidential or exempt status of any records it receives that are proprietary confidential business information under existing public records exemptions in chapter 366, F.S., (which specifies the PSC's authority over attachments to investor-owned utility poles) or chapter 364, F.S., (which, under the bill, extends the PSC's authority to poles owned by rural electric cooperatives that provide broadband service).

The bill provides that it may not be construed to impair the contract rights of a party to a valid pole attachment agreement in existence before July 1, 2023.

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

B. SECTION DIRECTORY:

Section 1. Creates s. 364.391, F.S., relating to rural electric cooperatives engaged in the provision of broadband.

Section 2. Amends s. 425.04, F.S., relating to powers of rural electric cooperatives.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may increase state government expenditures. However, the PSC has indicated that it can handle the expected increased workload within existing resources.[58]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The financial and legal responsibilities of parties to rural electric cooperative pole attachment arrangements in Florida may substantially change depending on the PSC's implementation of new pole attachment regulatory authority under this bill.

[58] Florida Public Service Commission, Agency Analysis of 2023 HB 1221, p. 2 (Mar. 3, 2023).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize or require agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the State Administration and Technology Appropriations Subcommittee adopted an amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Clarified that the bill applies to a rural electric cooperative that engages in the provision of broadband, either directly, through an affiliate, or under agreement with a third party.
- Defined terms.
- Granted the PSC access to books and records of a rural electric cooperative and provides for the continued confidential treatment of certain records under existing public record exemptions.
- Provided that the bill may not be construed to impair the contract rights of a party to a valid pole attachment agreement in existence before July 1, 2023.

This analysis is drafted to the committee substitute approved by the State Administration & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to broadband Internet service providers; creating s. 364.391, F.S.; defining terms; specifying that the poles of rural electric cooperatives that are engaged in the provision of broadband are subject to regulation by the Public Service Commission; authorizing the commission to access the books and records of such cooperatives for specified purposes; providing that such information that contains proprietary confidential business information retains its confidential or exempt status when held by the commission; providing construction; amending s. 425.04, F.S.; authorizing rural electric cooperatives to engage in the provision of broadband; providing an effective date.

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

Section 1. Section 364.391, Florida Statutes, is created to read:

364.391 Rural electric cooperatives engaged in the provision of broadband.-

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

(a) "Affiliate" means an entity related through a parent cooperative's controlling interest. The term includes a

subsidiary or any other entity under common control with the cooperative.

(b) "Cooperative" means a rural electric cooperative established pursuant to chapter 425.

(c) "Engages in the provision of broadband" means an entity that:

1. Provides broadband service directly, through an affiliate, or pursuant to an agreement with a third party; or

2. Accepts broadband grant funding pursuant to s. 288.9962 or from any other federal or state program offering grants to expand broadband Internet service to unserved areas of this state.

(2) If a cooperative engages in the provision of broadband:

(a) All poles owned by the cooperative are subject to regulation under s. 366.04(8) on the same basis as if such cooperative were a public utility under that subsection; and

(b) The commission may access the books and records of such cooperative to the limited extent necessary to perform its functions and to exercise its authority under ss. 366.04(8) and 366.97(4). Upon request of the cooperative, any records the commission receives under this paragraph which are proprietary confidential business information under s. 364.183 or s. 366.093 shall retain their status as confidential or exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State

Constitution.

(3) This section may not be construed to impair the contract rights of a party to a valid pole attachment agreement in existence before July 1, 2023.

Section 2. Section 425.04, Florida Statutes, is amended to read:

425.04 Powers.—A cooperative shall have all of the following powers ~~power~~:

(1) To sue and be sued, in its corporate name.~~;~~

(2) To have perpetual existence.~~;~~

(3) To adopt a corporate seal and alter the same at pleasure.~~;~~

(4) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10 percent of the number of its members; to process, treat, sell, and dispose of water and water rights; to purchase, construct, own and operate water systems; to own and operate sanitary sewer systems; and to supply water and sanitary sewer services. However, a ~~no~~ cooperative may not ~~shall~~ distribute or sell any electricity~~,~~ or electric energy to any person residing within any town, city, or area in which the person is receiving adequate central station service or who at the time of

commencing such service, or offer to serve, by a cooperative, is receiving adequate central station service from any utility agency, privately or municipally owned individual partnership or corporation.~~;~~

(5) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such person in, wiring their premises and installing therein electric and plumbing fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such electric and plumbing fixtures, appliances, apparatus and equipment, and to accept or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor.~~;~~

(6) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants.~~;~~

(7) To become a member in one or more other cooperatives or corporations or to own stock therein.~~;~~

(8) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to own, hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey,

exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, lands, buildings, structures, dams, plants and equipment, and any and all kinds and classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.~~;~~

(9) To purchase or otherwise acquire; to own, hold, use and exercise; and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, rights-of-way and easement.~~;~~

(10) To borrow money and otherwise contract indebtedness; to issue notes, bonds, and other evidences of indebtedness therefor; and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues or income.~~;~~

(11) To construct, maintain, and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation, all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly owned lands, subject, however, to the requirements in respect of the use of such

thoroughfares and lands that are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems.~~;~~

(12) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems.~~;~~

(13) To engage in the provision of broadband pursuant to s. 364.391.

(14) To conduct its business and exercise any or all of its powers within or without this state.~~;~~

(15)~~(14)~~ To adopt, amend, and repeal bylaws.~~; and~~

(16)~~(15)~~ To do and perform any and all other acts and things, and to have and exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

(17) To promote economic development by providing~~, an electric cooperative may provide~~ any energy or nonenergy services to its membership.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1413 Health Care Expenses
SPONSOR(S): Healthcare Regulation Subcommittee, Tramont
TIED BILLS: **IDEN./SIM. BILLS:** SB 268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee	15 Y, 0 N, As CS	Poche	McElroy
2) Commerce Committee		Lloyd	Hamon
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The United States spends more per person on health care than any other high-income country in the world and spending has continued to increase over the past few decades.

Health care prices are a primary driver of health care spending. One study found that commercial health spending per enrollee increased by 21.8% between 2015 and 2019. The rising prices of health care services accounted for approximately two-thirds of that growth, with prices for prescription drugs, provider services (e.g., physical examinations, screenings and procedures) and inpatient and outpatient care rising by 18.3%.

Medical costs can result in overwhelming debts to patients, and in some cases, bankruptcy. Nationwide, over 100 million have some form of medical debt. Four in ten U.S. adults have some form of health care debt. About half of adults – including three in ten who do not currently have health care debt – are vulnerable to falling in the debt, saying they would be unable to pay a $500 unexpected medical bill without borrowing money. While about a third of adults with health care debt owe less than $1,000, even small amounts of debt can have significant financial consequences for some.

CS/HB 1413 increases patient access to health care cost information, and offers a measure of protection from unreasonable and burdensome medical debt. The various provisions apply to hospitals, ambulatory surgical centers, health insurers, and HMOs. The bill brings provisions from recent federal law and regulation into state law; in doing so, the bill requires compliance by facilities and insurers as a condition of state licensure, thus ensuring that these provisions will be fully adopted and adequately enforced in Florida. Specifically, the bill:

- Requires hospitals and ambulatory surgical centers (ASCs) to post a consumer-friendly list of standard charges for at least 300 shoppable health care services on a facility website, consistent with federal rule.
- Requires hospitals and ambulatory surgical centers to automatically provide patients with personalized pre-treatment estimates on the costs of care within certain timeframes.
- Requires a health plan, upon receipt of a facility cost estimate, to develop an advanced explanation of benefits, in accordance with the federal No Surprises Act of 2020.
- Prohibits hospitals and ASCs from taking actions to collect medical debt in certain circumstances.
- Requires hospitals and ASCs to establish an internal grievance process for patients to dispute charges.
- Increases exemptions from attachment, garnishment, or other legal process to include a single motor vehicle and personal property of a debtor of a value up to $10,000 when debt is incurred as a result of medical services provided in a licensed hospital facility, and establishes a 3-year statute of limitations on bringing legal action to collect medical debt.
- Specifies that shared savings incentives offered by health plans are to be counted as medical expenses for rate development and rate filing purposes, consistent with recent federal regulations.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

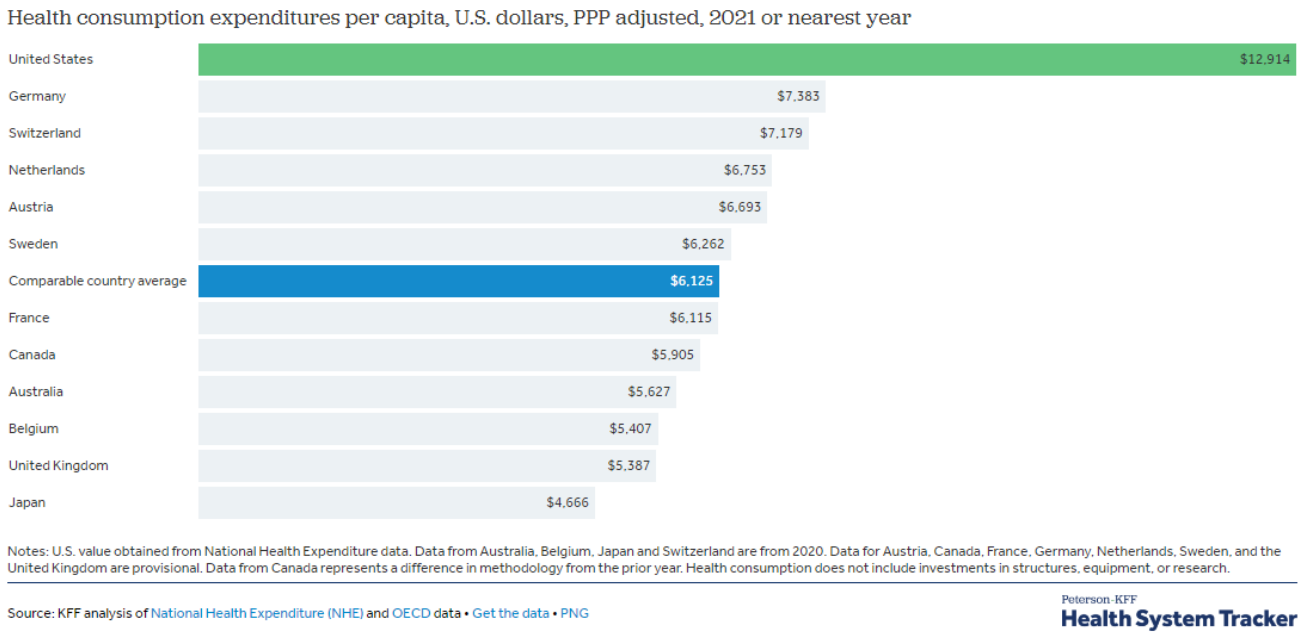
A. EFFECT OF PROPOSED CHANGES:

Background

Health Care Spending

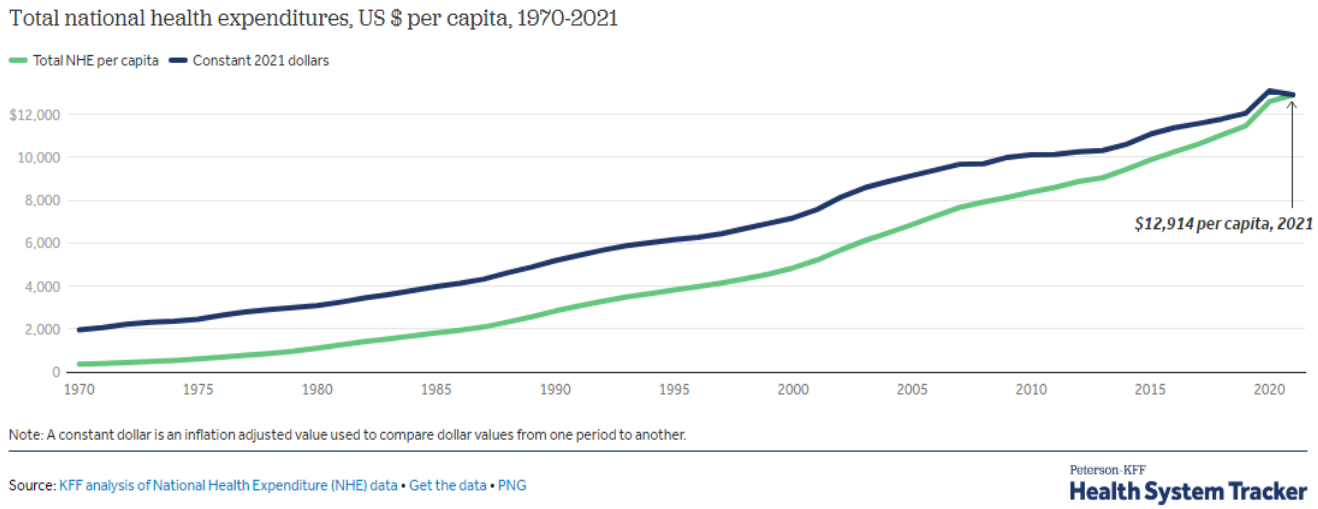
Health spending in the United States has exploded in the last 50 years, totaling $74.1 billion in 1970, increasing to $1.4 trillion by 2000, then tripling in 2021 to $4.3 trillion.[1]

The United States spends more per person on health care than any other high-income country in the world and spending has continued to increase over the past few decades. Health spending per person in the U.S. was $12,914 in 2021, more than $5,000 greater than any other high-come nation.[2]



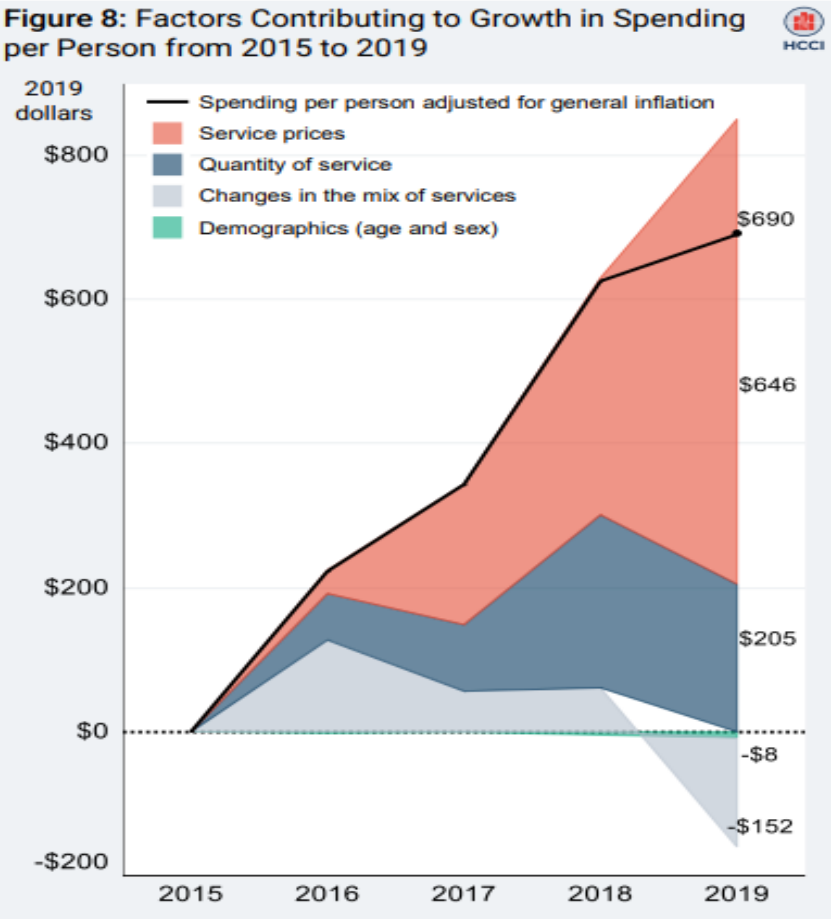
The following chart illustrates the rate of growth in total national health expenditures per capita from 1970 to 2021[3]:

[1] Peterson-Kaiser Family Foundation, Health System Tracker, *Health Spending – How has U.S. spending on healthcare changed over time?*, February 7, 2023, available at https://healthsystemtracker.org/chart-collection/u-s-spending-healthcare-changed-time/ (last viewed on March 23, 2023).
[2] Peterson-Kaiser Family Foundation, Health System Tracker, *Health Spending – How does health spending in the U.S. compare to other countries?*, February 9, 2023, available at https://healthsystemtracker.org/chart-collection/health-spending-u-s-compare-countries/ (last viewed on March 23, 2023). The average amount spent on health per person in comparable countries – $6,125 – is less than half of what the U.S. spends.
[3] Supra, FN 1.



Health care prices are a primary driver of health care spending. Between 1970 and 2019, total U.S. health care spending grew from 6.9 percent of GDP to 17.7 percent of GDP.[4] The Organization for Economic Cooperation Development estimated that total spending in 2019 in member countries averaged 8.8 percent of GDP, compared with 16.8 percent in the U.S.[5] One study found that U.S. commercial health spending per enrollee increased by 21.8% between 2015 and 2019.[6] The rising prices of health care services accounted for approximately two-thirds of that growth, with prices for prescription drugs, provider services (physical examinations, screenings and procedures) and inpatient and outpatient care rising by 18.3%.[7] At the same time, increased service quantity accounted for nearly one-fifth of overall spending growth, as per capita use increased by only 3.6 percent.[8] The following chart details the factors contributing to the growth in spending, per capita, in the U.S.:[9]

[4] Health Affairs, Research Brief – Considering Health Spending, *The Role of Prices in Excess US Health Spending*, June 9, 2022, available at https://www.healthaffairs.org/do/10.1377/hpb20220506.381195/full/> (citing the Centers for Medicare and Medicaid Services statistics at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected) (last viewed on March 23, 2023).
[5] Id.
[6] Health Care Cost Institute, *2019 Health Care Cost and Utilization Report*, pg. 2, available at https://healthcostinstitute.org/images/pdfs/HCCI_2019_Health_Care_Cost_and_Utilization_Report.pdf.
[7] Id.
[8] Supra, FN 4.
[9] Id., pg. 6.



Health Care Price Transparency

The United States is experiencing significant changes in health care payment and delivery. Consumers bear a greater share of health care costs, and more participate in high deductible health plans. Clear, factual information about the cost and quality of health care is necessary for consumers to select value-driven health care options and for consumers and providers to be involved in and accountable for decisions about health and health care services. To promote consumer involvement, health care pricing and other data needs to be free, timely, reliable, and reflect individual health care needs and insurance coverage.

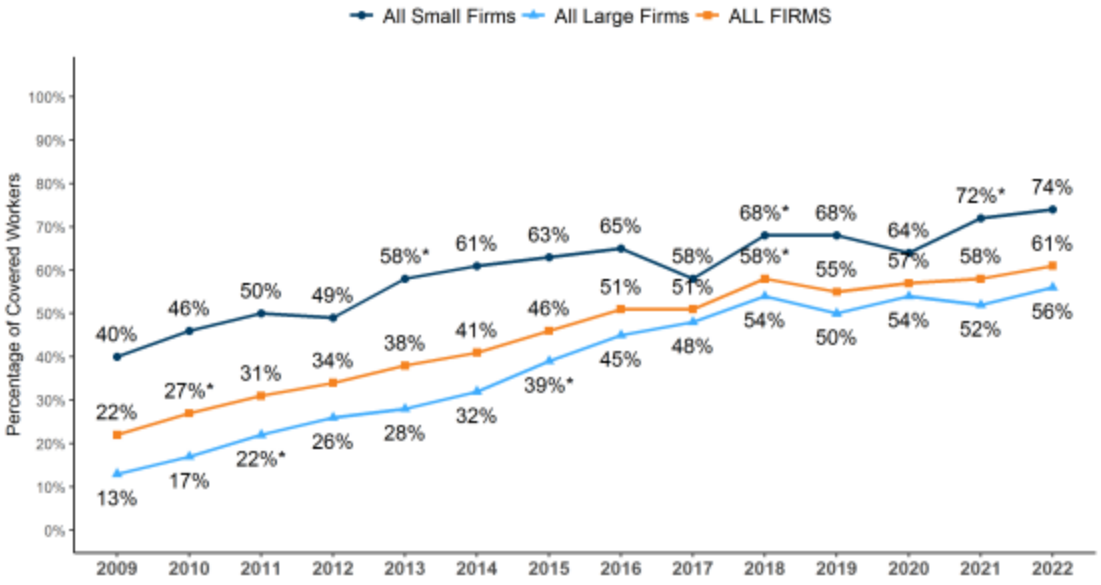
Price transparency can refer to the availability of provider-specific information on the price for a specific health care service or set of services to consumers and other interested parties.[10] Price can be defined as an estimate of a consumer's complete cost on a health care service or services that reflects any negotiated discounts; is inclusive of all costs to the consumer associated with a service or services, including hospital, physician, and lab fees; and, identifies a consumer's out-of-pocket cost.[11] Further, price transparency can be considered "readily available information on the price of health care services that, together with other information, helps define the value of those services and enables patients and other care purchasers to identify, compare, and choose providers that offer the desired level of value."[12] Indeed, the definition of the price or cost of health care has different meanings depending on who is incurring the cost.[13]

[10] Government Accounting Office, *Meaningful Price Information is Difficult for Consumers to Obtain Prior to Receiving Care*, September 2011, pg. 2, available at http://www.gao.gov/products/GAO-11-791.
[11] Id.
[12] Healthcare Financial Management Association, *Price Transparency in Health Care: Report from the HFMA Price Transparency Task Force*, pg. 2, 2014, available at https://www.hfma.org/content/dam/hfma/document/policies_and_practices/PDF/22279.pdf.
[13] Id.

As health care costs continue to rise, most health insurance buyers are asking their consumers to take on a greater share of their costs, increasing both premiums and out-of-pocket expenses. According to the Kaiser Family Foundation, more than one in five Americans with private insurance is enrolled in a high deductible health plan. Most covered workers face additional out-of-pocket costs when they use health care services, such as co-payments or coinsurance for physician visits and hospitalizations. Eighty-eight percent of covered workers have a general annual deductible[14] for single coverage that must be met before most services are paid for by their health plan.[15]

Among covered workers with a general annual deductible, the average deductible amount for single coverage is $1,763.[16] Deductibles differ by firm size; for workers in plans with a deductible, the average deductible for single coverage is $2,543 in small firms, compared to $1,493 for workers in large firms.[17] Sixty-one percent of covered workers in small firms are in a plan with a deductible of at least $1,000 for single coverage compared to 56 percent in large firms; a similar pattern exists for those in plans with a deductible of at least $2,000 (49 percent for small firms vs. 25 percent for large firms). The chart below shows the percent of workers enrolled in employer-sponsored insurance with an annual deductible of $1,000 or more for single coverage by employer size for 2009 through 2022.[18]

Figure 7.13
Percentage of Covered Workers Enrolled in a Plan with a General Annual Deductible of $1,000 or More for Single Coverage, by Firm Size, 2009-2022



* Estimate is statistically different from estimate for the previous year shown (p < .05).
NOTE: Small Firms have 3-199 workers and Large Firms have 200 or more workers. These estimates include workers enrolled in HDHP/SOs and other plan types. Average general annual deductibles are for in-network providers.
SOURCE: KFF Employer Health Benefits Survey, 2018-2022; Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2009-2017

Looking at the increase in deductible amounts over time does not capture the full impact for workers because the share of covered workers in plans with a general annual deductible also has increased significantly, from 59% in 2008 to 74% in 2011 to 88% in 2022. If we look at the change in deductible amounts for all covered workers (assigning a zero value to workers in plans with no deductible), we can look at the impact of both trends together. Using this approach, the average deductible for all covered workers in 2022 is $1,763, up nearly 100% from $883 in 2013 and over 400% from $433 in 2008.

[14] The term "general annual deductible" means a deductible which applies to both medical and pharmaceutical benefits and which must be met by the insured individual before most services are covered by the health plan.
[15] The Henry J. Kaiser Family Foundation, *2022 Employer Health Benefits Survey*, October 27, 2022, available at https://www.kff.org/health-costs/report/2022-employer-health-benefits-survey/ (last viewed on March 23, 2023).
[16] Id.
[17] Id.
[18] Id., figure 7.13.

From 2016 to 2022, the average premium for covered workers with family coverage increased 20%, while inflation totals just 11% over the same period; over the last ten years, the average premium rose 43%, while inflation grew at 17% over the same time frame.[19] The dramatic increases in the costs of health care in recent years have focused significant attention on the need for greater communication and transparency to inform individual health care choices.

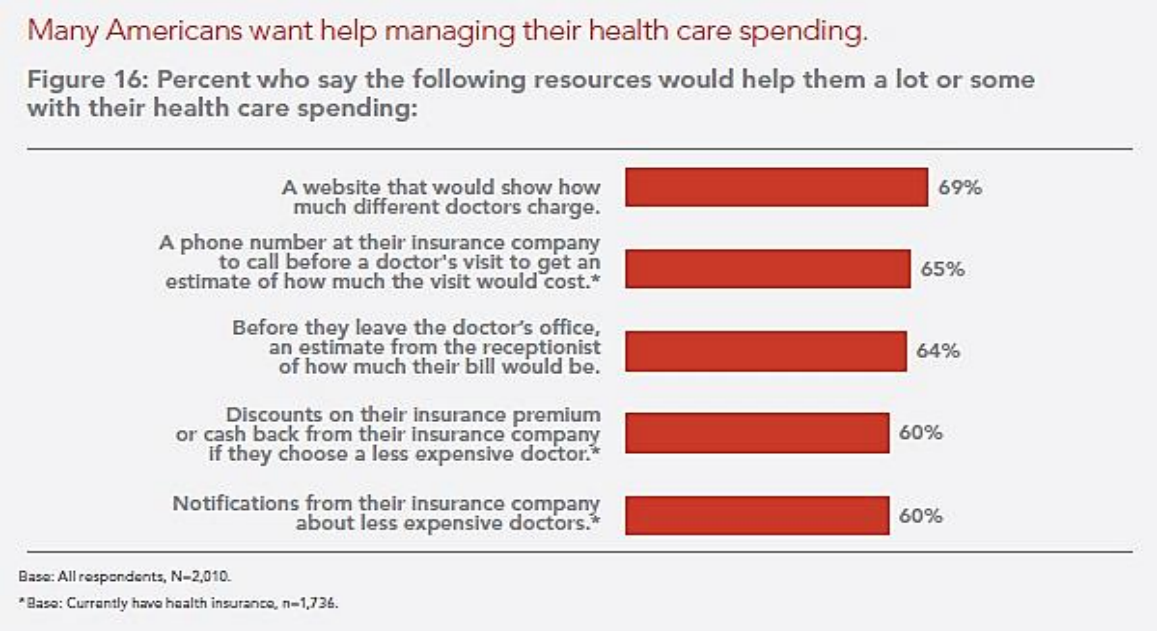
National Price Transparency Studies

To explore how expanding price transparency efforts could produce significant cost savings for the healthcare system, the Gary and Mary West Health Policy Center funded an analysis, "Healthcare Price Transparency: Policy Approaches and Estimated Impacts on Spending." This report, conducted in collaboration with researchers from the Center for Studying Health System Change and RAND, found that implementation of three policy changes could save $100 billion over ten years.

- Provide personalized out-of-pocket expense information to patients and families before receiving care.
- Provide prices to physicians through electronic health record systems when ordering treatments and tests.
- Expand state-based all-payer health claims databases, which could save up to $55 billion by collecting and providing data and analytics tools that supply quality, efficiency and cost information to policy makers, employers, providers, and patients.[20]

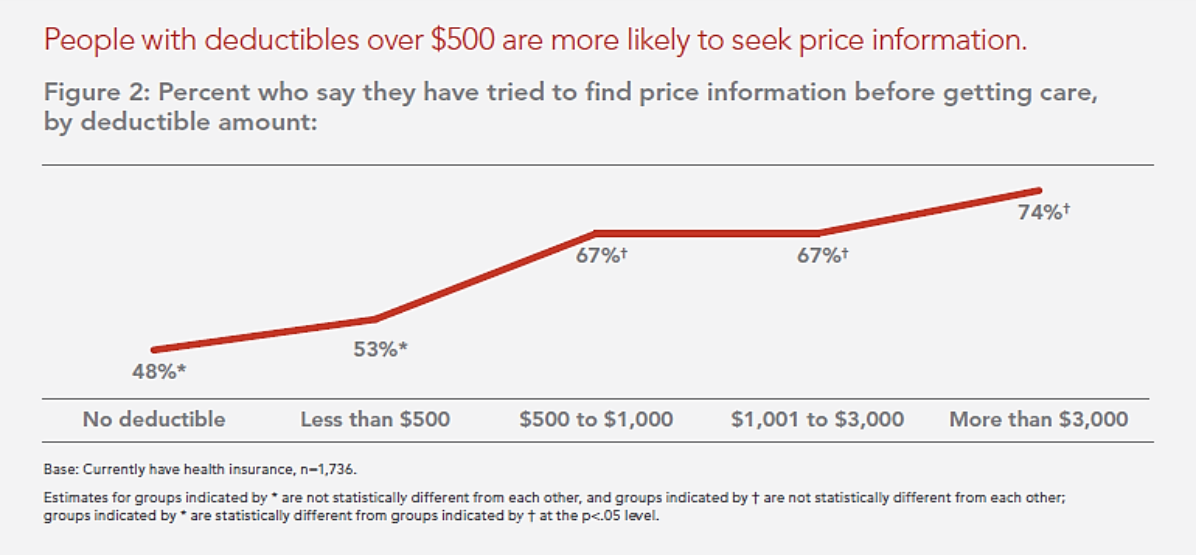
The report specifically found that requiring all private health insurance plans to provide personalized out-of-pocket price data to enrollees would reduce total health spending by an estimated $18 billion over the 10-year period from 2014 to 2023.[21]

As Americans take on more of their health care costs, research suggests that they are looking for more and better price information.[22]



[19] Id.
[20] White, C., Ginsburg, P., et al., Gary and Mary West Health Policy Center, *Healthcare Price Transparency: Policy Approaches and Estimated Impacts on Spending*, May 2014, available at http://www.westhealth.org/wp-content/uploads/2015/05/Price-Transparency-Policy-Analysis-FINAL-5-2-14.pdf.
[21] Id., pg. 1.
[22] Public Agenda and Robert Wood Johnson Foundation, *How Much Will It Cost? How Americans Use Prices in Health Care*, March 2015, page 34, available at https://www.publicagenda.org/reports/how-much-will-it-cost-how-americans-use-prices-in-health-care/.

One study in 2014, which included a survey of more than 2,000 adults from across the country, found that 56 percent of Americans actively searched for price information before obtaining health care, including 21 percent who compared the price of health care services across multiple providers.[23] The chart below illustrates the finding that, as a consumer's health plan deductible increases, the consumer is more likely to seek out price information.[24]



The individuals who compared prices stated that such research affected their health care choices and saved them money.[25] In addition, the study found that most Americans do not equate price with quality of care. Seventy-one percent do not believe higher price reflects higher level care quality and 63 percent do not believe that lower price is indicative of lower level care quality.[26] Consumers enrolled in high-deductible and consumer-directed health plans are more price-sensitive than consumers with plans that have much lower cost-sharing obligations. Accordingly, these consumers find an estimate of their individual out-of-pocket costs more useful than any other kind of health care price transparency tool.[27] Another study found that when they have access to well-designed reports on price and quality, 80 percent of health care consumers will select the highest value health care provider.[28]

Florida Price Transparency: Florida Patient's Bill of Rights and Responsibilities

In 1991, the Legislature enacted the Florida Patient's Bill of Rights and Responsibilities (Patient's Bill of Rights).[29] The statute established the right of patients to expect medical providers to observe standards of care in providing medical treatment and communicating with their patients.[30] The standards of care include, but are not limited to, the following aspects of medical treatment and patient communication:

- Individual dignity;
- Provision of information;
- Financial information and the disclosure of financial information;
- Access to health care;
- Experimental research; and

[23] Id., pg. 3.
[24] Id., pg. 13.
[25] Id., pg. 4.
[26] Supra, FN 14.
[27] American Institute for Research, *Consumer Beliefs and Use of Information About Health Care Cost, Resource Use, and Value*, Robert Wood Johnson Foundation, October 2012, pg. 4, available at https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf402126.
[28] Hibbard, JH, et al., *An Experiment Shows That a Well-Designed Report on Costs and Quality Can Help Consumers Choose High-Value Health Care*, Health Affairs 2012; 31(3): 560-568.
[29] S. 1, Ch. 91-127, Laws of Fla. (1991); s. 381.026, F.S.
[30] S. 381.026(3), F.S.

- Patient's knowledge of rights and responsibilities.

A patient has the right to request certain financial information from health care providers and facilities.[31] Specifically, upon request, a health care provider or health care facility must provide a person with a reasonable estimate of the cost of medical treatment prior to the provision of treatment.[32] Estimates must be written in language "comprehensible to an ordinary layperson."[33] The reasonable estimate does not preclude the health care provider or health care facility from exceeding the estimate or making additional charges as the patient's needs or medical condition warrant.[34] A patient has the right to receive a copy of an itemized bill upon request and to receive an explanation of charges upon request.[35]

Currently, under the Patient's Bill of Rights financial information and disclosure provisions:

- A request is necessary before a health care provider or health care facility must disclose to a Medicare-eligible patient whether the provider or facility accepts Medicare payment as full payment for medical services and treatment rendered in the provider's office or health care facility.
- A request is necessary before a health care provider or health care facility is required to furnish a person an estimate of charges for medical services before providing the services. The Florida Patient's Bill of Rights and Responsibilities does not require that the components making up the estimate be itemized or that the estimate be presented in a manner that is easily understood by an ordinary layperson.
- A licensed facility must place a notice in its reception area that financial information related to that facility is available on the website of the Agency for Health Care Administration (AHCA).
- The facility may indicate that the pricing information is based on a compilation of charges for the average patient and that an individual patient's charges may vary.
- A patient has the right to receive an itemized bill upon request.

Health care providers and health care facilities are required to make available to patients a summary of their rights. The applicable regulatory board or Agency may impose an administrative fine when a provider or facility fails to make available to patients a summary of their rights.[36]

The Patient's Bill of Rights also authorizes, but does not require, primary care providers[37] to publish a schedule of charges for the medical services offered to patients.[38] The schedule must include certain price information for at least the 50 services most frequently provided by the primary care provider.[39] The law also requires the posting of the schedule in a conspicuous place in the reception area of the provider's office and at least 15 square feet in size.[40] A primary care provider who publishes and maintains a schedule of charges is exempt from licensure fees for a single renewal of a professional license and from the continuing education requirements for a single 2-year period.[41]

The law also requires urgent care centers to publish a schedule of charges for the medical services offered to patients.[42] This applies to any entity that holds itself out to the general public, in any manner, as a facility or clinic where immediate, but not emergent, care is provided, expressly including offsite facilities of hospitals or hospital-physician joint ventures; and licensed health care clinics that operate

[31] S. 381.026(4)(c), F.S.
[32] S. 381.026(4)(c)3., F.S.
[33] Id.
[34] Id.
[35] S. 381.026(4)(c)5., F.S.
[36] S. 381.0261, F.S.
[37] S. 381.026(2)(d), F.S., defines primary care providers to include allopathic physicians, osteopathic physicians, and nurses who provide medical services that are commonly provided without referral from another health care provider, including family and general practice, general pediatrics, and general internal medicine.
[38] S. 381.026(4)(c)3., F.S.
[39] Id.
[40] Id.
[41] S. 381.026(4)(c)4., F.S.
[42] S. 395.107(1), F.S.

in three or more locations. The schedule requirements for urgent care centers are the same as those established for primary care providers.[43] The schedule must describe each medical service in language comprehensible to a layperson. This provision prevents a center from using medical or billing codes, Latin phrases, or technical medical jargon as the only description of each medical service. An urgent care center that fails to publish and post the schedule of charges is subject to a fine of not more than $1,000 per day (until the schedule is published and posted).[44]

Florida Price Transparency: Health Care Facilities

Under s. 395.301, F.S., a health care facility[45] must provide, within 7 days of a written request, a good faith estimate of reasonably anticipated charges for the facility to treat the patient's condition. Upon request, the facility must also provide revisions to the estimate. The estimate may represent the average charges for that diagnosis related group[46] or the average charges for that procedure. The facility is required to place a notice in the reception area that this information is available. A facility that fails to provide the estimate as required may be fined $500 for each instance of the facility's failure to provide the requested information.

Also pursuant to s. 395.301, F.S., a licensed facility must notify each patient during admission and at discharge of his or her right to receive an itemized bill upon request. If requested, within 7 days of discharge or release, the licensed facility must provide an itemized statement, in language comprehensible to an ordinary layperson, detailing the specific nature of charges or expenses incurred by the patient. This initial bill must contain a statement of specific services received and expenses incurred for the items of service, enumerating in detail the constituent components of the services received within each department of the licensed facility and including unit price data on rates charged by the licensed facility. The patient or patient's representative may elect to receive this level of detail in subsequent billings for services.

Current law also directs these health care facilities to publish information on their websites detailing the cost of specific health care services and procedures, as well as information on financial assistance that may be available to prospective patients. The facility must disclose to the consumer that these averages and ranges of payments are estimates, and that actual charges will be based on the services actually provided.[47] Under s. 408.05, F.S., AHCA contracts with a vendor to collect and publish this cost information to consumers on an internet site.[48] Hospitals and other facilities post a link to this site - https://pricing.floridahealthfinder.gov/ - to comply with the price transparency requirements. The cost information is searchable, and based on descriptive bundles of commonly performed procedures and services. The information must, at a minimum, provide the estimated average payment received and the estimated range of payment from all non-governmental payers for the bundles available at the facility.[49]

The law also establishes the right of a patient to request a personalized estimate on the costs of care from health care practitioners who provide services in a licensed hospital facility or ambulatory surgical center.[50]

Federal Price Transparency Laws and Regulations

[43] S. 395.107(2), F.S.
[44] S. 395.107(6), F.S.
[45] The term "health care facilities" refers to hospitals and ambulatory surgical centers, which are licensed under part I of Chapter 395, F.S.
[46] Diagnosis related groups (DRGs) are a patient classification scheme which provides a means of relating the type of patients a hospital treats (i.e., its case mix) to the costs incurred by the hospital. DRGs allow facilities to categorize patients based on severity of illness, prognosis, treatment difficulty, need for intervention and resource intensity. For more information, see https://www.cms.gov/icd10m/version37-fullcode-cms/fullcode_cms/Design_and_development_of_the_Diagnosis_Related_Group_(DRGs).pdf.
[47] S. 395.301, F.S.
[48] S. 408.05(3)(c), F.S.
[49] Id.
[50] S. 456.0575(2), F.S.

Congress and federal regulatory agencies recently took steps to improve the quantity and quality of health care cost information available to patients.

Hospital Facility Transparency

On November 15, 2019, the federal Centers for Medicare & Medicaid Services (CMS) finalized regulations[51] changing payment policies and rates for services furnished to Medicare beneficiaries in hospital outpatient departments. In doing so, CMS also established new requirements for hospitals to publish standard charges for a wide range of health care services offered by such facilities. Specifically, the regulations require hospitals to make public both a machine-readable file of standard charges and a consumer-friendly presentation of prices for at least 300 shoppable health care services. The regulations became effective on January 1, 2021.[52]

The regulations define a shoppable service as one that can be scheduled in advance, effectively giving patients the opportunity to select the venue in which to receive the service. This is a more expansive designation of shoppable services than currently exists in Florida law. For each shoppable service, a hospital must disclose several pricing benchmarks to include:

- The gross charge;
- The payer-specific negotiated charge;
- A de-identified minimum negotiated charge;
- A de-identified maximum negotiated charge; and,
- The discounted cash price.

This information should provide a patient with both a reasonable point estimate of the charge for a shoppable service, and also a range in which the actual charge can be expected to fall.

The penalty for facility noncompliance under the federal regulations is a maximum fine of $300 per day.[53] Very early indications suggest that there are varying levels of compliance with the new rules among hospital facilities.[54]

Health Insurer Transparency

On October 29, 2020, the federal Departments of Health and Human Services, Labor, and Treasury finalized regulations[55] imposing new transparency requirements on issuers of individual and group health insurance plans.

Estimates

Central to the new regulations is a requirement for health plans to provide an estimate of an insured's cost-sharing liability for covered items or services furnished by a particular provider. Under the final rule, health insurance plans must disclose cost-sharing estimates at the request of an enrollee and publicly release negotiated rates for in-network providers, historical out-of-network allowed amounts and billed charges, and drug pricing information. The rule's goal is to enable insured patients to estimate their out-of-pocket costs *before* receiving health care to encourage shopping and price competition amongst providers.[56]

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[51] Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public, 84 FR 65524 (November 27, 2019)(codified at 45 CFR Part 180).
[52] Id.
[53] Supra, FN 42.
[54] ADVI, "*Implementation of Newly Enacted Hospital Price Transparency*," available at https://advi.com/analysis/Hospital_Transparency_-_ADVI_Summary.pdf.
[55] Transparency in Coverage, 85 FR 73158 (November 12, 2020)(codified at 29 CFR Part 54, 29 CFR Part 2590, 45 CFR Part 147, and 45 CFR Part 158).
[56] Trump Administration Finalizes Transparency Rule for Health Insurers," Health Affairs Blog, November 1, 2020. Available at https://www.healthaffairs.org/do/10.1377/hblog20201101.662872/full/ (last accessed on March 23, 2023).

Each health plan will be required to establish an online shopping tool that will allow insureds to see the negotiated rate between their provider and their plan, as well as a personalized estimate of their out-of-pocket cost for 500 of the most shoppable items and services. This requirement is scheduled to take effect on January 1, 2023. Beginning in 2024, health plans will need to provide personalized cost-sharing information to patients across the full range of covered health care services.[57]

Medical Loss Ratio

The regulations also clarify the treatment of shared savings expenses under medical loss ratio (MLR) calculations required by the Patient Protection and Affordable Care Act (PPACA). MLR refers to the percentage of insurance premium payments that are actually spent on medical claims by an insurer. In general, MLR requirements are intended to promote efficiency among insurers.[58] The PPACA established minimum MLR requirements for group and individual health insurance plans.[59] Under the PPACA, large group plans must dedicate at least 85 percent of premium payments to medical claims, while small group and individual market plans must dedicate at least 80 percent of premium payments to medical claims.[60] Further, the law requires a health plan that does not meet these standards to provide annual rebates to individuals enrolled in the plan.[61]

The regulations finalized in October 2020 specify that expenses by a health plan in direct support of a shared savings program shall be counted as medical expenditures.[62] Thus, a health plan providing shared savings to members will receive an equivalent credit towards meeting the MLR standards established by PPACA. In theory, this policy should provide an additional incentive for insurers who have not already done so to adopt shared savings programs.

The Federal No Surprises Act

On December 27, 2020, Congress enacted the No Surprises Act as part of the Consolidated Appropriations Act of 2021.[63] The No Surprises Act includes a wide-range of provisions aimed at protecting patients from surprise billing practices and ensuring that patients have access to accurate information about the costs of care. Most sections of the Act go into effect on January 1, 2022, and the Departments of Health and Human Services, Treasury, and Labor are tasked with issuing regulations and guidance to implement a number of the provisions.[64]

Estimates – Facilities

In the realm of price transparency, the No Surprises Act establishes the concept of an "advanced explanation of benefits" that combines information on charges provided by a hospital facility with patient-specific cost information supplied by a health insurance plan. The process is triggered when a patient schedules a service at a hospital facility or requests cost information on a specific set of services. A hospital facility must share a "good faith estimate" of the total expected charges for scheduled items or services, including any expected ancillary services, with a health plan (if the patient is insured) or individual (if the patient is uninsured).[65]

Estimates – Health Plans

Once the "good faith estimate" has been shared with a patient's health plan, the plan must then develop a more detailed and "advanced explanation of benefits". This personalized cost estimate must include the following:

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[57] Supra, FN 51.
[58] "Explaining Health Care Reform: Medical Loss Ratio (MLR)", Henry J Kaiser Family Foundation, February 29, 2012. Available at https://www.kff.org/health-reform/fact-sheet/explaining-health-care-reform-medical-loss-ratio-mlr/ (last accessed on March 23, 2023).
[59] PPACA s. 1001; 42 U.S.C. 300gg-18.
[60] Supra note 51.
[61] Id.
[62] 45 CFR Part 158.
[63] PL 116-260. The No Surprises Act is found in Division BB of the Act.
[64] Id.
[65] PL 116-260, Division BB, Section 112.

- An indication of whether the facility participates in the patient's health plan network. If the facility is non-participating, information on how the patient can receive services from a participating provider;
- The good-faith estimate prepared by the hospital facility based on billing/diagnostic codes;
- A good-faith estimate of the amount to be covered by the health plan;
- A good-faith estimate of the amount of the patient's out-of-pocket costs;
- A good-faith estimate of the accrued amounts already met by the patient towards any deductible or out-of-pocket maximum under the patient's health plan;
- A disclaimer indicating whether the services scheduled are subject to medical management techniques (i.e., medical necessity determinations, prior authorization, step therapy, etc.); and,
- A disclaimer that the information provided is only an estimate of costs and may be subject to change.[66]

Furthermore, the Act directs the Secretary of Health and Human Services (HHS) to establish by January 1, 2022, a "patient-provider dispute resolution process" to resolve any disputes concerning bills received by uninsured individuals that substantially differ from a provider's good faith estimate provided prior to the service being rendered.[67]

The new requirements placed on hospitals and health plans by the No Surprises Act are cumulatively intended to provide patients with increased certainty about the total and out-of-pocket costs associated with health care services. In turn, patients may be more equipped to seek out cost-effective care and avoid unforeseen costs that can lead to financial strain.

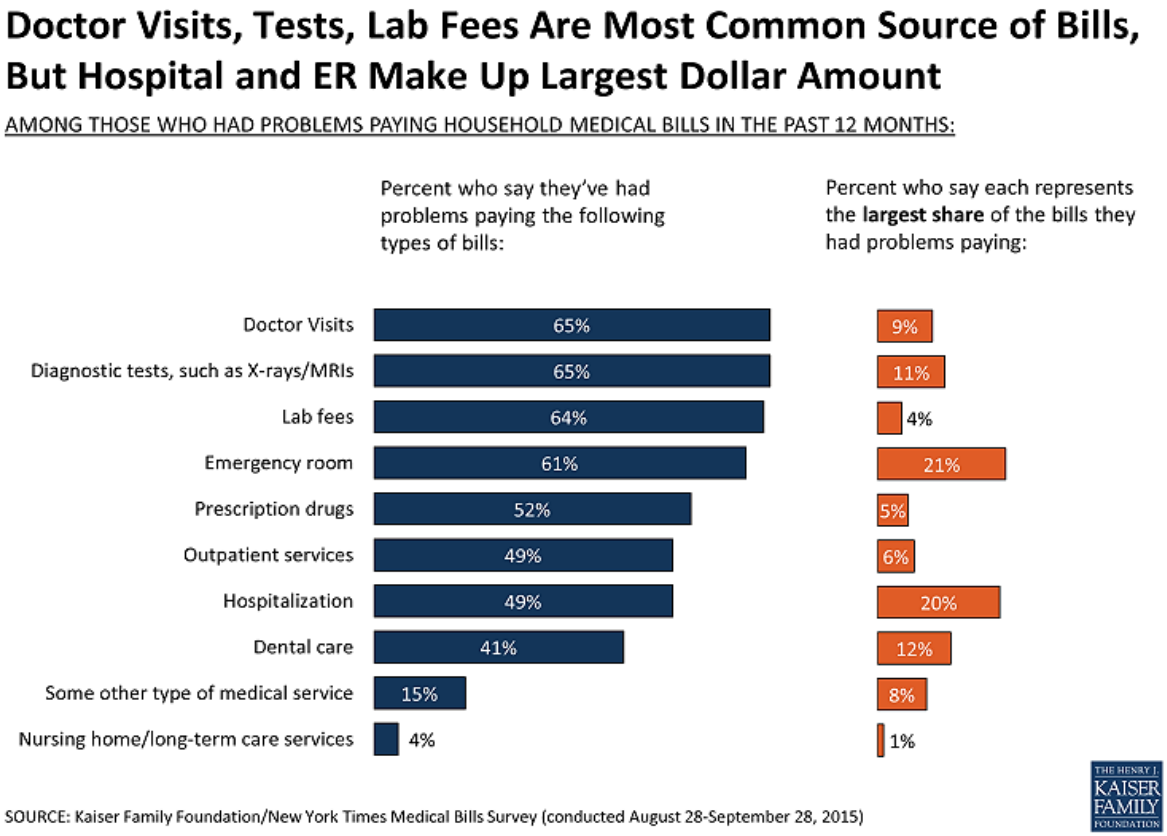
Many hospitals do not comply with the federal transparency requirement. A 2021 review of more than 3,500 hospitals found that 55 percent of hospitals were not compliant with the rule and had not posted price information for commercial plans or had not posted any prices at all.[68] Further, an August 2022 review of 2,000 hospitals found that 16 percent with all transparency requirements.[69] Nearly 84 percent of hospitals failed to post machine-readable files containing standard charges, and roughly 78 percent of hospitals did not provide a consumer-friendly shoppable services display.[70] Another review of more than 6,400 hospitals showed wide-spread non-compliance with the federal transparency rule- more than 63 percent of hospitals are not complying.[71] According to that review, only 38 percent of Florida hospitals are in compliance.[72]

Medical Debt

Medical costs can result in overwhelming debts to patients, and in some cases, bankruptcy. Nationwide, over 100 million have some form of medical debt.[73] A 2007 study suggested that illness and medical bills contributed to 62.1 percent of all personal bankruptcies filed in the U.S. during that year.[74] A more recent analysis, which considered only the impact of hospital charges, found that 4

[66] PL 116-260, Division BB, Section 111.
[67] Supra note 59.
[68] John Xuefeng Jiang, et al., Factors associated with compliance to the hospital price transparency final rule: A national land scape study, Journal of General Internal Medicine (2021), available at https://link.springer.com/article/10.1007/s11606-021-07237-y (last viewed on March 10, 2023).
[69] Patients' Rights Advocates, *Third semi-annual hospital transparency compliance report, 2022*, available at https://www.patientrightsadvocates.org/august-semi-annual-compliance-report-2022.
[70] Id.
[71] Foundation for Government Accountability, *How America's Hospitals Are Hiding the Cost of Health Care*, pg. 3, August 2022, available at https://www.TheFGA.org/paper/americas-hospitals-are-hiding-the-cost-of-health-care. (last viewed on March 10, 2023). Only two hospitals to date have been fined for noncompliance with the transparency rule, both of which are in Georgia's North side Hospital System.
[72] Id., pg. 4.
[73] Kaiser Health News, *Diagnosis: Debt – 100 Million People in America Are Saddled with Health Care Debt*, June 16, 2022, available at https://khn.org/news/article/diagnosis-debt-investigation-100-million-americans-hidden-medical-debt/ (last viewed on March 23, 2023).
[74] David U. Himmelstein, et al. *"Medical Bankruptcy in the United States, 2007: Results of a National Study." American Journal of Medicine* 2009; 122: 741-6. Available at https://www.amjmed.com/article/S0002-9343(09)00404-5/abstract.

percent of U.S. bankruptcies among non-elderly adults resulted from hospitalizations.[75] Four in ten U.S. adults have some form of health care debt.[76] About half of adults – including three in ten who do not currently have health care debt – are vulnerable to falling in the debt, saying they would be unable to pay a $500 unexpected medical bill without borrowing money.[77] While about a third of adults with health care debt owe less than $1,000, even small amounts of debt can have significant financial consequences for some.[78] Though a third of those with current debt expect to pay it off within a year and about a quarter expect to pay it within one to two years, nearly one in five adults with health care debt think they will never be able to pay it off.[79]



Even when medical costs do not result in personal bankruptcy, they often weigh heavily on the financial health of patients and their families. According to the Kaiser Family Foundation, about a quarter of U.S. adults ages 18-64 say they or someone in their household had problems paying or an inability to pay medical bills in the past 12 months.[80] About three in ten survey respondents reported medical debt of $5,000 or more, with 13 percent of respondents indicating medical debt in excess of $10,000. Even patients with lower amounts of medical debt reported that the outstanding bills led to financial distress, in light of other financial commitments and/or limited income.[81]

Among those who reported problems paying medical bills, 66 percent said the bills were the result of a one-time or short-term medical expense such as a hospital stay or an accident, while 33 percent cited bills for treatment of chronic conditions that have accumulated over time. Respondents to the Kaiser

[75] Carlos Dobkin, et al. *"Myth and Measurement: The Case of Medical Bankruptcies."* New England Journal of Medicine 2018; 378:1076-1078. Available at https://www.nejm.org/doi/full/10.1056/NEJMp1716604.
[76] Lopes, L., Kearney, A., et al, *Health Care Debt in the U.S.: The Broad Consequences of Medical and Dental Bills*, June 16, 2022 (using results from the Kaiser Family Foundation Health Care Debt Survey), available at https://www.kff.org/health-costs/report/kff-health-care-debt-survey/ (last viewed on March 12, 2023).
[77] Id.
[78] Id.
[79] Id.
[80] The Henry J. Kaiser Family Foundation, *"The Burden of Medical Debt: Results from the Kaiser Family Foundation/New York Times Medical Bills Survey."* January 5, 2016. Available at https://www.kff.org/health-costs/report/the-burden-of-medical-debt-results-from-the-kaiser-family-foundationnew-york-times-medical-bills-survey/.
[81] Id.

survey reported a wide range of illnesses and injuries that led to an accumulation of medical debt. The largest share (36 percent) named a specific disease, symptom, or condition like heart disease or gastrointestinal problems, followed by issues related to chronic pain or injuries (16 percent), accidents and broken bones (15 percent), surgery (10 percent), dental issues (10 percent), and infections like pneumonia and flu (9 percent).[82] The following illustration provides additional detail on the type of medical services that led to an accumulation of medical debt.[83]

More than two thirds of hospitals sue or take other legal action against patients with outstanding bills. Nearly 25 percent sell patient medical debt to collection agencies, who in turn can pursue patients for years to collect on unpaid bills. Further, 1 in 5 providers deny nonemergency care to people with outstanding medical debt.

Recognizing the inherent difficulties associated with medical debt, the major credit rating companies recently agreed to exclude from an individual's credit report medical debts that have been paid off and unpaid medical debts less than $500.

Personal Credit Rating

When a person first takes out a line of credit as an individual—a first credit card or a loan to pay for college, for example—this begins a personal credit history and the process of building a personal credit score. This score is linked to a person's Social Security Number.

From then on, the score reflects one's personal financial history. If a person always pays bills on time, does not use too much of the available credit at once, and avoids negative information like foreclosures and charge-offs, the person will develop a good personal credit score, also known as a FICO score. If, instead, one carries a balance on lines of credit, fails to develop a diverse mix of credit sources—different credit cards, an automobile loan, and a mortgage, for example—and accrues many "hard inquiries" on your credit score (which occurs when upon application for a new source of credit), the FICO score will be low. Personal credit scores generally range 350-800 with 800 being a "perfect" score.

Effective July 1, 2022, the three largest credit reporting agencies, Equifax, Experian, and TransUnion, starting removing medical debt remarks from millions of credit reports, which will eliminate an estimated 70 percent of negative medical debt remarks. Further actions include:

- Paid medical debt that was in collections will no longer be included on consumer credit reports.
- Unpaid medical debt that is currently in collections for one year will be reported on credit reports. This is an increase from six months that was enacted in 2017.
- Starting in 2023, medical debt in collections under $500 will not appear on credit reports.

In 2018-2020, more than a quarter of the nation's largest hospitals and health systems pursued nearly 39,000 legal actions regarding consumer medical debt.[84]

Medical Debt Collection Process

Current law provides a court process for the collection of lawful debts, including medical debts. A creditor may sue a debtor and, if the creditor prevails, the creditor may receive a final judgment awarding monetary damages. If the debtor does not voluntarily pay the judgment, the creditor has several legal means to collect on the debt, including:

[82] Id.
[83] Id., figure 4.
[84] Using data from Johns Hopkins University, study authors analyzed the top 100 hospitals in the U.S. (by revenue) to measure debt collection methods and frequency, average charges markups and billing scores, and compare that data to safety grades and charity care ratings, by hospital type (government, nonprofit and for-profit). See, "How America's top hospitals hound patients with predatory billing", July 2021, available at https://www.axios.com/hospital-billing (last viewed on March 26, 2023). Twelve Florida hospitals were included in the analysis, with a wide range of scores in each category.

- Wage garnishment.
- Garnishment of money in a bank account.
- Directing the sheriff to seize assets, sell them, and give the proceeds to the creditor.

In order to protect debtors from being destitute, current law provides that certain property is exempt from being taken by a creditor. The Florida Constitution provides that the debtor's homestead and $1,000 of personal property is exempt.[85] Statutory law provides numerous categories of exempt property, and federal statutory law also provides certain exemptions that apply in all of the states.[86]

In addition to the protection from creditors contained in the Florida Constitution, chapter 222, F.S., protects other personal property from certain claims of creditors and legal process: garnishment of wages for a head of family;[87] proceeds from life insurance policies;[88] wages or unemployment compensation payments due certain deceased employees;[89] disability income benefits;[90] assets in qualified tuition programs; medical savings accounts; Coverdell education savings accounts; hurricane savings accounts;[91] $1,000 interest in a motor vehicle; professionally prescribed health aids; certain refunds or credits from financial institutions; and $4,000 interest in personal property, if the debtor does not claim or receive the benefits of a homestead exemption under the State Constitution.[92]

Bankruptcy is a means by which a person's assets are liquidated in order to pay the person's debts under court supervision. The United States Constitution gives Congress the right to uniformly govern bankruptcy law.[93] Bankruptcy courts are operated by the federal government. A debtor (the bankrupt person) is not required to give up all of his or her assets in bankruptcy. Certain property is deemed "exempt" from the bankruptcy case, and may be kept by the debtor without being subject to creditor claims. The Bankruptcy Code provides for exempt property in a bankruptcy case.[94] In general, a debtor may choose to utilize the exempt property listing in state law or the exempt property of the Bankruptcy Code. However, federal law allows a state to opt-out of the federal law and thereby insist that debtors only utilize state law exemptions.[95] Florida, like most states, has made the opt-out election to prohibit the use of the federal exemptions and require that debtors may only use state law exemptions.[96]

Statutes of Limitations

A statute of limitations bars a lawsuit's filing after a certain amount of time elapses following an injury.[97] This time period typically begins to run when a cause of action accrues (that is, on the date of the injury), but may also begin to run on the date the injury is discovered or on which it would have been discovered with reasonable efforts.[98] In other words, a statute of limitations bars the available civil remedy if a lawsuit is not timely filed after an injury.

Chapter 95, F.S., contains the bulk of Florida's statutes of limitations. Specifically, s. 95.11, F.S., details a variety of statutes of limitation for legal actions other than for recovery of real property. Some of the limitations require legal actions to be commenced as follows:

- WITHIN TWENTY YEARS.—An action on a judgment or decree of a court of record in this state.[99]

[85] Art. X, s. 4(a), Fla. Const.
[86] For example, the federal ERISA law provides that most retirement plans are exempt from creditor claims.
[87] S. 222.11, F.S.
[88] S. 222.13, F.S.
[89] S. 222.15, F.S.
[90] S. 222.18, F.S.
[91] S. 222.22, F.S.
[92] S. 222.25, F.S.
[93] Art. 1, s. 8, cl. 4, U.S. Const.
[94] 11 U.S.C. s. 522.
[95] 11 U.S.C. s. 522(b).
[96] S. 222.20, F.S.
[97] Legal Information Institute, Statute of Limitations, https://www.law.cornell.edu/wex/statute_of_limitations (last visited March 23, 2023).
[98] Id.
[99] S. 95.11(1), F.S.

- WITHIN FIVE YEARS.—
    - An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.
    - A legal or equitable action on a contract, obligation, or liability founded on a written instrument, except for an action to enforce a claim against a payment bond, which shall be governed by the applicable provisions of paragraph (5)(e), s. 255.05(10), s. 337.18(1), or s. 713.23(1)(e), and except for an action for a deficiency judgment governed by paragraph (5)(h).
    - An action to foreclose a mortgage.
    - An action alleging a willful violation of s 448.110.
    - Notwithstanding paragraph (b), an action for breach of a property insurance contract, with the period running from the date of loss.[100]
- WITHIN FOUR YEARS.—
    - An action founded on negligence.
    - An action relating to the determination of paternity, with the time running from the date the child reaches the age of majority.
    - An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest, with some exceptions.
    - An action to recover public money or property held by a public officer or employee, or former public officer or employee, and obtained during, or as a result of, his or her public office or employment.
    - An action for injury to a person founded on the design, manufacture, distribution, or sale of personal property that is not permanently incorporated in an improvement to real property, including fixtures.
    - An action founded on a statutory liability.
    - An action for trespass on real property.
    - An action for taking, detaining, or injuring personal property.
    - An action to recover specific personal property.
    - A legal or equitable action founded on fraud.
    - A legal or equitable action on a contract, obligation, or liability not founded on a written instrument, including an action for the sale and delivery of goods, wares, and merchandise, and on store accounts.
    - An action to rescind a contract.
    - An action for money paid to any governmental authority by mistake or inadvertence.
    - An action for a statutory penalty or forfeiture.
    - An action for assault, battery, false arrest, malicious prosecution, malicious interference, false imprisonment, or any other intentional tort, except as provided in subsections (4), (5), and (7).
    - Any action not specifically provided for in these statutes.
    - An action alleging a violation, other than a willful violation, of s. 448.110.[101]
- WITHIN TWO YEARS.—
    - An action for professional malpractice, other than medical malpractice, whether founded on contract or tort; provided that the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence.
    - An action for medical malpractice shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than 4 years from the date of

[100] S. 95.11(2), F.S.
[101] S. 95.11(3), F.S.

the incident or occurrence out of which the cause of action accrued, except that this 4-year period shall not bar an action brought on behalf of a minor on or before the child's eighth birthday, providing for an extension in certain circumstances.
    - An action to recover wages or overtime or damages or penalties concerning payment of wages and overtime.
    - An action for wrongful death.
    - An action founded upon a violation of any provision of chapter 517, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 5 years from the date such violation occurred.
    - An action for personal injury caused by contact with or exposure to phenoxy herbicides while serving either as a civilian or as a member of the Armed Forces of the United States during the period January 1, 1962, through May 7, 1975; the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence.
    - An action for libel or slander.[102]
- WITHIN ONE YEAR.—
    - An action for specific performance of a contract.
    - An action to enforce an equitable lien arising from the furnishing of labor, services, or material for the improvement of real property.
    - An action to enforce rights under the Uniform Commercial Code—Letters of Credit, chapter 675.
    - An action against any guaranty association and its insured, with the period running from the date of the deadline for filing claims in the order of liquidation.
    - Except for actions governed by s. 255.05(10), s. 337.18(1), or s. 713.23(1)(e), an action to enforce any claim against a payment bond on which the principal is a contractor, subcontractor, or sub-subcontractor as defined in s. 713.01, for private work as well as public work, from the last furnishing of labor, services, or materials or from the last furnishing of labor, services, or materials by the contractor if the contractor is the principal on a bond on the same construction project, whichever is later.
    - Except for actions described in subsection (8), a petition for extraordinary writ, other than a petition challenging a criminal conviction, filed by or on behalf of a prisoner as defined in s. 57.085.
    - Except for actions described in subsection (8), an action brought by or on behalf of a prisoner, as defined in s. 57.085, relating to the conditions of the prisoner's confinement.
    - An action to enforce a claim of a deficiency related to a note secured by a mortgage against a residential property that is a one-family to four-family dwelling unit. The limitations period shall commence on the day after the certificate is issued by the clerk of court or the day after the mortgagee accepts a deed in lieu of foreclosure.[103]

Effect of Proposed Changes

CS/HB 1413 increases patient access to health care cost information, and offers a measure of protection from unreasonable and burdensome medical debt. The various provisions apply to hospitals, ambulatory surgical centers, health insurers, and HMOs. The bill brings provisions from recent federal law and regulation into the Florida Statutes; in doing so, the bill requires compliance by facilities and insurers as a condition of state licensure, thus ensuring that these provisions will be fully adopted and adequately enforced in Florida.[104]

Facility Price Transparency

Facility Billing Estimates

[102] S. 95.11(4), F.S.
[103] S. 95.11(5), F.S.
[104] SS. 395.003, 395.301, 408.802, 624.401, and 641.22, F.S.

The bill requires that all patients receive cost-of-care information prior to receiving scheduled, nonemergency treatment in hospitals and ambulatory surgical centers, and from physicians providing services in those facilities.

At present, licensed facilities are required to provide a customized estimate of "reasonably anticipated charges" to a patient for treatment of the patient's specific condition, *upon request of the patient*. The bill makes these personalized estimates mandatory, rather than dependent on patient requests. A facility must submit the estimate of charges to a patient's health plan at least 3 business days before a service is to be furnished, according to the following schedule:

- In the case of a service scheduled less than 10 business days in advance, no later than 1 business day after the service is scheduled;
- In the case of a service scheduled 10 or more business days in advance, no later than 3 business days after a service is scheduled.

By requiring facilities to provide a good-faith estimate of charges to each patient in advance of treatment, the bill mirrors the requirements of the federal No Surprises Act. Compliance with the Act was required by January 1, 2022.

Shoppable Services

The bill requires each licensed hospital and ambulatory surgical center to post a consumer-friendly list of standard charges for at least 300 shoppable health care services on a facility website. A facility that provides less than 300 distinct services will be required to post standard charges for each service it does provide.

The bill requires facilities to post pricing information for shoppable services in accordance with the definition of "standard charges" established in federal rule.[105] This information extends beyond the traditional concept of charges to include negotiated and actual prices paid for selected services. For each shoppable service, a hospital must disclose the following pricing benchmarks:

- The gross charge;
- The payer-specific negotiated charge;
- A de-identified minimum negotiated charge;
- A de-identified maximum negotiated charge; and,
- The discounted cash price.

This bill is intended to mirror the shoppable services requirement included in the hospital facility transparency regulations finalized by the CMS in 2019. The bill requires facilities to disclose the relevant cost information as a condition of state licensure, which should result in uniform compliance among facilities.

Facility Medical Debt Collection

The bill prohibits hospitals and ASCs from engaging in any "extraordinary collection actions" against a patient prior to determining whether that patient is eligible for financial assistance, before providing an itemized bill, during an ongoing grievance process, prior to billing any applicable insurance coverage, for 30 days after notifying a patient in writing that a collections action will commence, and while the patient is negotiating in good faith the final amount of the bill or is complying with the terms of a payment plan with the facility. For purposes of the provision, "extraordinary collection action" means any action that requires a legal or judicial process, including:

- Placing a lien on an individual's property;
- Foreclosing on an individual's real property;

[105] Supra, FN 47.

- Attaching or seizing an individual's bank account or any other personal property;
- Commencing a civil action against an individual;
- Causing an individual's arrest; or,
- Garnishing an individual's wages.

The bill also establishes a new set of debt collection exemptions in chapter 222, F.S. that apply explicitly to debt incurred as a result of medical services provided in hospitals, ambulatory surgical centers, or urgent care centers. Under current law, this type of medical debt is subject to the uniform exemptions that apply to all types of debt and are described above. The bill increases the ceiling on the debt collection exemptions, when the debt results from services provided in a hospital facility or ambulatory surgical center, as follows:

- To $10,000 interest in a single motor vehicle (versus the current law exemption of $1,000);
- To $10,000 interest in personal property, provided that a debtor does not claim the homestead exemption under s. 4, Art. X of the state constitution (versus the current law exemption of $4,000).

The bill also requires each hospital and ASC to establish an internal grievance process allowing a patient to dispute any charges that appear on an itemized statement or bill. When a patient initiates a grievance, the facility must then provide an initial response to that patient within 7 business days.

Lastly, the bill creates a three-year statute of limitations for any legal action related to medical debt for services rendered by a facility licensed under chapter 395, F.S., such as hospitals, ambulatory surgical centers, and urgent care centers. The statute of limitations begins running on the date that the facility refers the debt to a third-party collections entity.

Insurer Price Transparency

Shared Savings Programs

The bill establishes an accounting standard to remove a barrier to shared savings incentive programs. It specifies that insurer shared savings payments to patients shall be counted as medical expenses for rate development and rate filing purposes.[106] This change aligns Florida law with the federal regulations that became final in 2020.[107]

Advanced Explanation of Benefits

Effective July 1, 2022, the bill requires health plans to issue an advance explanation of benefits statement when a covered patient schedules a service in a hospital or ambulatory surgical center. This requirement builds on the facility charges estimate provision in the bill. Once a facility notifies a health plan that a patient has scheduled a medical service, the health plan must prepare a personalized estimate of costs for the patient in accordance with the federal No Surprises Act. A health plan must provide an advanced explanation of benefits to the patient according to the following schedule:

- In the case of a service scheduled less than 10 business days in advance, no later than 1 business day after receiving the estimate of charges from the facility;
- In the case of a service scheduled 10 or more business days in advance, no later than 3 business days after receiving the estimate of charges from the facility.

Health insurers and HMOs were required comply with the federal Act on January 1, 2022.

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

[106] Current law indicates that a shared savings incentive offered by a health plan is "not an administrative expense for r ate development or rate filing purposes," but does not affirmatively categorize the expense. SS. 627.6387, 627.6648, and 641.31076, F.S.
[107] Supra, FN 51.

B. SECTION DIRECTORY:

Section 1: Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.
Section 2: Creates s. 222.26, F.S., relating to additional exemptions from legal process concerning medical debt.
Section 3: Amends s. 395.301, F.S., relating to price transparency; itemized patient statement or bill; patient admission status notification.
Section 4: Creates s. 395.3011, F.S., relating to billing and collection activities.
Section 5: Creates s. 627.445, F.S., relating to advanced explanation of benefits.
Section 6: Amends s. 627.6387, F.S., relating to shared savings incentive program.
Section 7: Amends s. 627.6648, F.S., relating to shared savings incentive program.
Section 8: Amends s. 641.31076, F.S., relating to shared savings incentive program.
Section 9: Amends s. 475.01, F.S., relating to definitions.
Section 10: Amends s. 475.611, F.S., relating to definitions.
Section 11: Amends s. 517.191, F.S., relating to injunction to restrain violations; civil penalties; enforcement by the Attorney General.
Section 12: Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.
Section 13: Provides an effective date of October 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 may increase costs for facilities licensed under ch. 395, F.S., by requiring them to issue cost estimates for all non-emergency patients, but only if the facilities are out of compliance with the current federal requirement to provide these estimates.

Facilities may forego revenues due to the bill's limits on the use of extraordinary collection activities; however, some facilities may already be providing similar due process for patients, such that the bill will have little impact on them.

The bill may have a negative, but indeterminate, fiscal impact on health insurers and HMOs, due to the costs of producing advanced explanations of benefits for insureds and subscribers, triggered by the estimates provided by facilities, but only if these health plans are out of compliance with the current federal requirement to provide these to subscribers.

Additionally, the bill's increased dollar limit on personal property exemptions under ch. 222, F.S., may reduce revenues for medical service providers or their collection agents.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to impact municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

AHCA has sufficient rulemaking authority to implement the bill provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 28, 2023, the Healthcare Regulation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment changed the effective date from July 1, 2023, to October 1, 2023.

The bill was reported favorably as amended. The analysis is drafted to the committee substitute as passed by the Healthcare Regulation Subcommittee.

A bill to be entitled

An act relating to health care expenses; amending s. 95.11, F.S.; establishing a 3-year statute of limitations for an action to collect medical debt for services rendered by a health care provider or facility; creating s. 222.26, F.S.; providing additional personal property exemptions from legal process for medical debts resulting from services provided in certain licensed facilities; amending s. 395.301, F.S.; requiring a licensed facility to post on its website a consumer-friendly list of standard charges for a minimum number of shoppable health care services; providing definitions; requiring a licensed facility to provide an estimate to a patient or prospective patient and the patient's health insurer within specified timeframes; requiring a licensed facility to establish an internal grievance process for patients to dispute charges; requiring a facility to make available information necessary for initiating a grievance; requiring a facility to respond to a patient grievance within a specified timeframe; creating s. 395.3011, F.S.; prohibiting certain collection activities by a licensed facility; creating s. 627.445, F.S.; providing a definition; requiring each health insurer to provide an insured with an

advanced explanation of benefits after receiving a patient estimate from a facility for scheduled services; providing requirements for the advanced explanation of benefits; amending ss. 627.6387, 627.6648, and 641.31076, F.S.; providing that a shared savings incentive offered by a health insurer or health maintenance organization constitutes a medical expense for rate development and rate filing purposes; amending ss. 475.01, 475.611, 517.191, and 768.28, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (4) of section 95.11, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(4) WITHIN THREE YEARS.—An action to collect medical debt for services rendered by a facility licensed under chapter 395, provided that the period of limitations shall run from the date on which the facility refers the medical debt to a third party for collection.

Section 2. Section 222.26, Florida Statutes, is created to read:

222.26 Additional exemptions from legal process concerning medical debt.—If a debt is owed for medical services provided by a facility licensed under chapter 395, the following property is exempt from attachment, garnishment, or other legal process in an action on such debt:

(1) A debtor's interest, not to exceed $10,000 in value, in a single motor vehicle as defined in s. 320.01(1).

(2) A debtor's interest in personal property, not to exceed $10,000 in value, if the debtor does not claim or receive the benefits of a homestead exemption under s. 4, Art. X of the State Constitution.

Section 3. Paragraphs (b) through (d) of subsection (1) of section 395.301, Florida Statutes, are redesignated as paragraphs (c) through (e), respectively, subsection (6) is renumbered as subsection (7), present paragraph (b) of subsection (1) is amended, and a new paragraph (b) is added to subsection (1) and a new subsection (6) is added to that section, to read:

395.301 Price transparency; itemized patient statement or bill; patient admission status notification.—

(1) A facility licensed under this chapter shall provide timely and accurate financial information and quality of service measures to patients and prospective patients of the facility,

or to patients' survivors or legal guardians, as appropriate. Such information shall be provided in accordance with this section and rules adopted by the agency pursuant to this chapter and s. 408.05. Licensed facilities operating exclusively as state facilities are exempt from this subsection.

(b) Each licensed facility shall post on its website a consumer-friendly list of standard charges for at least 300 shoppable health care services. If a facility provides fewer than 300 distinct shoppable health care services, it shall make available on its website the standard charges for each service it provides. As used in this paragraph, the term:

1. "Shoppable health care service" means a service that can be scheduled by a healthcare consumer in advance. The term includes, but is not limited to, the services described in s. 627.6387(2)(e) and any services defined in regulations or guidance issued by the United States Department of Health and Human Services.

2. "Standard charge" has the same meaning as that term is defined in regulations or guidance issued by the United States Department of Health and Human Services for purposes of hospital price transparency.

(c)~~(b)~~1. ~~Upon request, and~~ Before providing any nonemergency medical services, each licensed facility shall provide in writing or by electronic means a good faith estimate of reasonably anticipated charges by the facility for the

treatment of a ~~the~~ patient's or prospective patient's specific condition. Such estimate must be provided to the patient or prospective patient upon scheduling a medical service. The facility ~~must provide the estimate to the patient or prospective patient within 7 business days after the receipt of the request and~~ is not required to adjust the estimate for any potential insurance coverage. The facility must provide the estimate to the patient's health insurer, as defined in s. 627.445(1), and the patient at least 3 business days before a service is to be furnished, but no later than 1 business day after the service is scheduled or, in the case of a service scheduled at least 10 business days in advance, no later than 3 business days after the service is scheduled. The estimate may be based on the descriptive service bundles developed by the agency under s. 408.05(3)(c) unless the patient or prospective patient requests a more personalized and specific estimate that accounts for the specific condition and characteristics of the patient or prospective patient. The facility shall inform the patient or prospective patient that he or she may contact his or her health insurer ~~or health maintenance organization~~ for additional information concerning cost-sharing responsibilities.

2. In the estimate, the facility shall provide to the patient or prospective patient information on the facility's financial assistance policy, including the application process, payment plans, and discounts and the facility's charity care

policy and collection procedures.

3. The estimate shall clearly identify any facility fees and, if applicable, include a statement notifying the patient or prospective patient that a facility fee is included in the estimate, the purpose of the fee, and that the patient may pay less for the procedure or service at another facility or in another health care setting.

4. ~~Upon request,~~ The facility shall notify the patient or prospective patient of any revision to the estimate.

5. In the estimate, the facility must notify the patient or prospective patient that services may be provided in the health care facility by the facility as well as by other health care providers that may separately bill the patient, if applicable.

~~6. The facility shall take action to educate the public that such estimates are available upon request.~~

6.~~7.~~ Failure to timely provide the estimate pursuant to this paragraph shall result in a daily fine of $1,000 until the estimate is provided to the patient or prospective patient and the health insurer. The total fine per patient estimate may not exceed $10,000.

~~The provision of an estimate does not preclude the actual charges from exceeding the estimate.~~

(6) Each facility shall establish an internal process for

reviewing and responding to grievances from patients. Such process must allow patients to dispute charges that appear on the patient's itemized statement or bill. The facility shall prominently post on its website and indicate in bold print on each itemized statement or bill the instructions for initiating a grievance and the direct contact information required to initiate the grievance process. The facility must provide an initial response to a patient grievance within 7 business days after the patient formally files a grievance disputing all or a portion of an itemized statement or bill.

Section 4. Section 395.3011, Florida Statutes, is created to read:

395.3011 Billing and collection activities.—

(1) As used in this section, the term "extraordinary collection action" means any of the following actions taken by a licensed facility against an individual in relation to obtaining payment of a bill for care covered under the facility's financial assistance policy:

(a) Selling the individual's debt to another party.

(b) Reporting adverse information about the individual to consumer credit reporting agencies or credit bureaus.

(c) Deferring, denying, or requiring a payment before providing medically necessary care because of the individual's nonpayment of one or more bills for previously provided care covered under the facility's financial assistance policy.

(d) Actions that require a legal or judicial process, including, but not limited to:

1. Placing a lien on the individual's property;

2. Foreclosing on the individual's real property;

3. Attaching or seizing the individual's bank account or any other personal property;

4. Commencing a civil action against the individual;

5. Causing the individual's arrest; or

6. Garnishing the individual's wages.

(2) A facility may not engage in an extraordinary collection action against an individual to obtain payment for services:

(a) Before the facility has made reasonable efforts to determine whether the individual is eligible for assistance under its financial assistance policy for the care provided and, if eligible, before a decision is made by the facility on the patient's application for such financial assistance.

(b) Before the facility has provided the individual with an itemized statement or bill.

(c) During an ongoing grievance process as described in s. 395.301(6) or an ongoing appeal of a claim adjudication.

(d) Before billing any applicable insurer and allowing the insurer to adjudicate a claim.

(e) For 30 days after notifying the patient in writing, by certified mail, or by other traceable delivery method, that a

collection action will commence absent additional action by the patient.

(f) While the individual:

1. Negotiates in good faith the final amount of a bill for services rendered; or

2. Complies with all terms of a payment plan with the facility.

Section 5. Section 627.445, Florida Statutes, is created to read:

627.445 Advanced explanation of benefits.—

(1) As used in this section, the term "health insurer" means a health insurer issuing individual or group coverage or a health maintenance organization issuing coverage through an individual or a group contract.

(2) Each health insurer shall prepare an advanced explanation of benefits upon receiving a patient estimate from a facility pursuant to s. 395.301(1). The health insurer must provide the advanced explanation of benefits to the insured no later than 1 business day after receiving the patient estimate from the facility or, in the case of a service scheduled at least 10 business days in advance, no later than 3 business days after receiving such estimate.

(3) At a minimum, the advanced explanation of benefits must include detailed coverage and cost-sharing information pursuant to the No Surprises Act, Title I of Division BB, Pub.

L. No. 116-260.

Section 6. Paragraph (a) of subsection (4) of section 627.6387, Florida Statutes, is amended to read:

627.6387 Shared savings incentive program.—

(4)(a) A shared savings incentive offered by a health insurer in accordance with this section:

1. Is not an administrative expense for rate development or rate filing purposes and shall be counted as a medical expense for such purposes.

2. Does not constitute an unfair method of competition or an unfair or deceptive act or practice under s. 626.9541 and is presumed to be appropriate unless credible data clearly demonstrates otherwise.

Section 7. Paragraph (a) of subsection (4) of section 627.6648, Florida Statutes, is amended to read:

627.6648 Shared savings incentive program.—

(4)(a) A shared savings incentive offered by a health insurer in accordance with this section:

1. Is not an administrative expense for rate development or rate filing purposes and shall be counted as a medical expense for such purposes.

2. Does not constitute an unfair method of competition or an unfair or deceptive act or practice under s. 626.9541 and is presumed to be appropriate unless credible data clearly demonstrates otherwise.

Section 8. Paragraph (a) of subsection (4) of section 641.31076, Florida Statutes, is amended to read:

641.31076 Shared savings incentive program.—

(4) A shared savings incentive offered by a health maintenance organization in accordance with this section:

(a) Is not an administrative expense for rate development or rate filing purposes and shall be counted as a medical expense for such purposes.

Section 9. Paragraphs (a) and (j) of subsection (1) of section 475.01, Florida Statutes, are amended to read:

475.01 Definitions.—

(1) As used in this part:

(a) "Broker" means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business

opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property information or lists. A broker renders a professional service and is a professional within the meaning of s. 95.11(5)(a) ~~s. 95.11(4)(a)~~. Where the term "appraise" or "appraising" appears in the definition of the term "broker," it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II. The term "broker" also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term "broker" also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in ss. 475.011 and 721.20.

(j) "Sales associate" means a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person. A sales associate renders a professional service and is a professional within the meaning of s. 95.11(5)(a) ~~s. 95.11(4)(a)~~.

Section 10. Paragraph (h) of subsection (1) of section 475.611, Florida Statutes, is amended to read:

475.611 Definitions.—

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

(h) "Appraiser" means any person who is a registered trainee real estate appraiser, a licensed real estate appraiser, or a certified real estate appraiser. An appraiser renders a professional service and is a professional within the meaning of s. 95.11(5)(a) ~~s. 95.11(4)(a)~~.

Section 11. Subsection (7) of section 517.191, Florida Statutes, is amended to read:

517.191 Injunction to restrain violations; civil penalties; enforcement by Attorney General.—

(7) Notwithstanding s. 95.11(5)(e) ~~s. 95.11(4)(c)~~, an enforcement action brought under this section based on a violation of any provision of this chapter or any rule or order issued under this chapter shall be brought within 6 years after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence,

but not more than 8 years after the date such violation occurred.

Section 12. Subsection (14) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(14) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution must be commenced within the limitations provided in s. 768.31(4), and an action for damages arising from medical malpractice or wrongful death must be commenced within the limitations for such actions in s. 95.11(5) ~~s. 95.11(4)~~.

Section 13. This act shall take effect October 1, 2023.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1437 Pub. Rec./Broadband Opportunity Program Information/DEO
SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee, Esposito and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 552

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	18 Y, 0 N, As CS	Mortellaro	Keating
2) Ethics, Elections & Open Government Subcommittee	17 Y, 0 N	Poreda	Toliver
3) Commerce Committee		Mortellaro	Hamon

SUMMARY ANALYSIS

In 2021, the Legislature created the Broadband Opportunity Program to award grants to applicants who seek to expand access to broadband Internet service in unserved areas of the state. The grant program is administered by the Florida Office of Broadband within the Department of Economic Opportunity (DEO). The grant process requires that certain information about existing and proposed telecommunications facilities be submitted to DEO.

This bill creates a public record exemption for information relating to communications service locations, project proposals, and challenges submitted to and held by DEO under s. 288.9962, F.S. Under the bill, such information is confidential and exempt from public record requirements if it is not otherwise publicly available and would reveal:

- The location and capacity of communications network facilities;
- Communications network areas, including geographical maps;
- Features, functions, and capabilities of communications network infrastructure and facilities;
- Security, including cybersecurity, of the design, construction, and operation of the communications network and associated services and products;
- Specific customer locations; or
- Sources of funding or in-kind contributions for a project.

The bill provides that the exemption does not to apply to any required functions of DEO under s. 288.9962, F.S., relating to publishing a description of the proposed unserved areas to be served and the proposed broadband Internet speeds for those areas that are provided by each applicant.

The bill provides a statement of public necessity for this exemption. The statement provides that disclosing this information could result in identification of vulnerabilities in networks, thus allowing security breaches that may damage and disrupt their safe and reliable operation. This would adversely impact the public health and safety of the state and affect business interests through such compromise of network security.

The public record exemption created by the bill is subject to the Open Government Sunset Review Act and will repeal on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

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

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person the right to inspect or copy any public record from the legislative, executive, and judicial branches of government.[1] The Legislature, however, may provide by general law for exemption from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.[2]

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person the right to inspect and copy any state, county, or municipal record, unless the record is exempt.[3] Furthermore, the Open Government Sunset Review Act[4] provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."[5] An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.[6]

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.

Florida's Office of Broadband

In 2020, the Legislature designated the Department of Economic Opportunity (DEO) as the lead state agency to facilitate the expansion of broadband Internet service in the state.[7] The Florida Office of Broadband (Office) was created within DEO's Division of Community Development for purposes of developing, marketing, and promoting broadband Internet service in the state.[8]

In 2021, the Legislature appropriated $1.5 million to DEO to develop geographic information system maps of broadband Internet service availability, including transmission speeds, consistent with the Federal Communications Commission's data collection program standards.[9] DEO must collaborate with

[1] Article I, s. 24(a), FLA. CONST.
[2] Article I, s. 24(c), FLA. CONST.
[3] A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the State Constitution. S. 119.011(8), F.S.
[4] S. 119.15, F.S.
[5] S. 119.15(6)(b), F.S.
[6] *Id*.
[7] Ch. 2002-26, Laws of Fla.
[8] *Id*.
[9] Ch. 2021-24, Laws of Fla.

broadband service providers, state agencies, local government entities, private businesses, educational institutions, and community organizations to develop these maps.[10] Through its website, DEO allows for public input concerning the speed, connectivity, and access to broadband Internet service in areas throughout the state to help identify unserved and underserved areas.

Broadband Opportunity Program

In 2021, the Legislature also created the Broadband Opportunity Program[11] to award grants to applicants who seek to expand access to broadband Internet service[12] in unserved[13] areas of the state, regardless of the technology to be used. Grant funds may not be used to provide broadband Internet service to a geographic area where broadband Internet is already deployed by at least one provider.[14] Applicants eligible for grant awards include corporations, limited liability companies, general partnerships, limited partnerships, political subdivisions, and Indian tribes.[15]

In support of a grant application, an applicant must provide specified information, including, among other things:

- A description of the project area;
- A description of the kind and amount of broadband Internet service infrastructure that is proposed; and
- Evidence demonstrating the unserved nature of the project area.[16]

After the close of the grant application process, the Office must publish on its website, from each grant application submitted, the proposed unserved areas to be served and the proposed broadband internet speeds of the areas to be served.[17]

If a broadband Internet service provider provides service in or adjacent to a proposed project area, it can submit a written challenge to the Office within 45 days of the information's publication. The challenge must demonstrate:

- The provider currently has deployed broadband Internet service to retail customers within the project area;
- The provider has begun construction to provide broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant; or
- The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

Within three business days after the submission of a written challenge, the Office is to notify the applicant of the challenge. The Office must evaluate each challenge submitted. If the Office determines that the provider currently has deployed, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the Office may not fund the challenged project.[18]

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[10] *Id.*
[11] S. 288.9962, F.S.
[12] S. 288.9961(2)(a), F.S., defines the term "broadband Internet service" to mean any service that provides access to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second download and 3 megabits per second upload.
[13] S. 288.9961(2)(g), F.S., defines the term "unserved" to mean a geographic area of the state without access to broadband Internet service.
[14] S. 288.9962(2), F.S.
[15] S. 288.9962(3), F.S.
[16] S. 288.9962(5), F.S.
[17] S. 288.9962(6)(b), F.S.
[18] S. 288.9962(e), F.S.

Effect of the Bill

The bill creates a public record exemption by providing that information relating to communications services locations, project proposals, and challenges submitted to and held by DEO under s. 288.9962, F.S., are confidential and exempt[19] from public record requirements if the information is not otherwise publicly available and would reveal:

- The location and capacity of communications network facilities;
- Communications network areas, including geographical maps indicating actual or proposed locations of network infrastructure, facilities, or coverage;
- Features, functions, and capabilities of communications network infrastructure and facilities;
- Security, including cybersecurity, of the design, construction, and operation of the communications network and associated services and products;
- Specific customer locations;
- Sources of funding or in-kind contributions for a project.

The bill states the exemption does not apply to any required functions of DEO under s. 288.9962, F.S., relating to publishing a description of the proposed unserved areas to be served and the proposed broadband Internet speeds for those areas that are provided by each applicant.

The bill provides that there is a public necessity for this exemption because the information at issue contains security information and propriety business information of communications services providers. The bill states that disclosing sensitive information relating to locations, capacities, features, functions, and security of these networks, aids in identifying vulnerabilities which could result in a breach. A breach may damage and disrupt the safe and reliable operation of such networks, adversely impacting the public health and safety of the state and affecting business interests through such compromise of the network security for communications services providers.

The public record exemption created by the bill is subject to the Open Government Sunset Review Act and will automatically repeal on October 2, 2028, unless reviewed and saved from repeal by the Legislature.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 119.0712, F.S., to create a public records exemption for certain information held by the Department of Economic Opportunity.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date.

[19] 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).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on DEO as agency staff responsible for complying with public record requests may require training related to the newly created public record exemption. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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:

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 the information at issue contains security information and propriety business information of communications services providers and disclosing such sensitive information could aid in identifying vulnerabilities which could result in a breach.

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 information relating to communications service locations, project proposals, and challenges submitted to and held by DEO under s. 288.9962, F.S, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 21, 2023, the Energy, Communications & Cybersecurity Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Removes information that reveals communication network coverage areas from the public record exemption created by this bill.
- Clarifies that the exemption does not apply to publication of information by the Department of Economic Opportunity that identifies specified areas proposed to be served, and the broadband Internet speeds in those areas, under the requirements of the state's Broadband Opportunity Program.
- Modifies the public necessity statement to state specifically that communications services providers are at risk and identify information that if exposed without the exemption would lead to harm.

The analysis is drafted to the committee substitute as passed by the Energy, Communications & Cybersecurity Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 119.0712, F.S.; providing an exemption from public records requirements for certain information relating to communications services locations, project proposals, and challenges submitted to and held by the Department of Economic Opportunity under the Broadband Opportunity Program or pursuant to a federal broadband access grant program implemented by the department; providing applicability; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (5) is added to section 119.0712, Florida Statutes, to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(5) DEPARTMENT OF ECONOMIC OPPORTUNITY.—

(a) Information relating to communications services locations, project proposals, and challenges submitted to and held by the Department of Economic Opportunity under s. 288.9962 or pursuant to a federal broadband access grant program

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

implemented by the Department of Economic Opportunity is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if such information is not otherwise publicly available and the release of such information would reveal:

1. The location or capacity of communications network facilities;

2. Communications network areas, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;

3. The features, functions, and capabilities of communications network infrastructure and facilities;

4. Security, including cybersecurity, of the design, construction, and operation of the communications network and associated services and products;

5. Specific customer locations; or

6. Sources of funding or in-kind contributions for a project.

(b) This exemption does not apply to any required functions of the department under s. 288.9962 relating to publishing a description of the proposed unserved areas to be served and the proposed broadband Internet speeds of the areas to be served as provided by the applicant and approved by the department.

(c) 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 certain information relating to communications services locations, project proposals, and challenges submitted to and held by the Department of Economic Opportunity under the Broadband Opportunity Program or pursuant to a federal broadband access grant program implemented by the department be made confidential and exempt from public records requirements. Such information contains security information and proprietary business information of communications services providers. The disclosure of sensitive information relating to the location, capacity, features, functions, and security of these networks could result in the identification of vulnerabilities in such networks and allow a security breach that could damage the networks or disrupt the networks' safe and reliable operation, adversely impacting the public health and safety of this state. Further, the disclosure of such information would adversely affect the business interests and compromise the network security of the communications services providers and their networks. Therefore, the Legislature finds that it is a public necessity that certain information relating to communications services locations, project proposals, and challenges submitted to and held by the Department of Economic Opportunity under the

Broadband Opportunity Program or pursuant to a federal broadband access grant program implemented by the department be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

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

HB 1459

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1459 Registration Fees for Malt Beverage Brands and Labels
SPONSOR(S): Yeager
TIED BILLS: **IDEN./SIM. BILLS:** SB 658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N	Thompson	Anstead
2) State Administration & Technology Appropriations Subcommittee	12 Y, 0 N	Helpling	Topp
3) Commerce Committee		Thompson	Hamon

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 (ABT) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law, which requires licenses for businesses in the industry and payment of various associated fees and taxes.

Before doing business in Florida, manufacturers, brewers, bottlers, distributors, and importers of malt beverages must register with the ABT the brands or labels under which the malt beverages are to be sold or moved. Current law requires the ABT to charge a $30 fee per brand or label.

The bill:

- Provides that the annual registration fee of $30 for each malt beverage brand and label only applies to a brand or label that is sold to a distributor, not to a brand or label that is kept in-house.
- Specifies that no other annual registration fee for a brand or label is authorized under the provision.

The bill will have an indeterminate negative fiscal impact on state government, and no fiscal impact on 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, alcoholic beverages are regulated by the Beverage Law,[1] which regulates and licenses the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (ABT) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition, has traditionally been based upon a "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer. A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.

Generally, Florida has adopted the three-tier system. Exceptions to the three-tier regulatory system permit in-state wineries,[4] breweries,[5] and craft distilleries to be licensed as a vendor and sell directly to consumers under certain circumstances.[6]

Brand and Label Registration Fee

No manufacturer, brewer, bottler, distributor, or importer of malt beverages may sell or offer for sale in Florida, or move or cause to be moved within or into Florida, any malt beverages, without:[7]

- Qualifying to do business in the state and registering its name and the brands or labels under which the malt beverages are to be sold or moved; and
- Furnishing any samples and information as to content, quality, and formula of such malt beverages as the ABT may require.

Each registrant must pay an annual registration fee of $30 for a brand or label.[8]

Effect of Proposed Changes

The bill provides that the annual registration fee of $30 for each malt beverage brand and label only applies to **a brand or label that is sold to a distributor**, not to a brand or label that is kept in-house.

The bill also specifies that no other annual registration fee for a brand or label is authorized under the provision.

B. SECTION DIRECTORY:

Section 1: Amends s. 563.045, F.S., revising requirements for brand and label fees.

[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] *See* s. 561.221(1), F.S.
[5] *See* s. 561.221(2), F.S.
[6] *See* s. 565.03, F.S.
[7] S. 563.045(1), F.S.
[8] S. 563.045(2), F.S.

Section 2: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may cause an indeterminate decrease in brand and label fees collected by the ABT.

The table below shows the last three fiscal years of revenue collected for brands/label registrations.[9]

	2020	2021	2022
Initial Malt Beverages Licenses	$206,280	$239,730	$255,930
Malt Beverage License Renewals	$98,580	$130,020	$131,820

These revenues include brand and label fees for all beverages. The reduction in revenue will be determined by the number of beverages that are kept in house, which is not currently tracked.

2. Expenditures:

There will be minor adjustments to the online system for brand registration which is estimated to cost $16,000.[10]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on craft brewers and brewpubs, who may pay less in brand and label fees to the ABT.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[9] Florida Department of Business and Professional Regulation, Agency Analysis of 2023 Senate Bill 658, p. 5 (Feb. 23, 2023).
[10] *Id.*

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 registration fees for malt beverage brands and labels; amending s. 563.045, F.S.; providing that the annual registration fee is required only if labels or brands are sold to a distributor; specifying that no other registration fee is authorized; providing an effective date.

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

Section 1. Subsection (2) of section 563.045, Florida Statutes, is amended to read:

563.045 Brands or labels to be registered; qualification to do business; fee; revocation.—

(2) The ~~each registrant shall pay an~~ annual registration fee for a brand or label sold to a distributor is ~~of~~ $30 ~~for a brand or label~~. No other annual registration fee for a brand or label is authorized under this section. Any registration may be suspended or revoked in the same manner as a beverage license for any violation of the Beverage Law.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1521 Facility Requirements Based on Sex
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, 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	11 Y, 3 N, As CS	Hamon	Hamon
2) Commerce Committee		Hamon	Hamon

SUMMARY ANALYSIS

Currently, Florida law does not address whether 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 open to the public. In addition, Florida 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."
- 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.
- Exempts individuals born with certain verifiable disorders of sex development.
- 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]

Restrooms in Florida's Public Lodging 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]

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.[27] 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.[28]

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 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.[29]

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.[30]

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.[31]

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

[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] American Restroom Association, Family and Unisex Restrooms, https://americanrestroom.org/family-unisex-restrooms/ (last visited Mar. 20, 2023).
[28] *Id.*
[29] *Id.*
[30] 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).
[31] *Id.*

in disrepair, and have a reputation for attracting illegal activity.[32] The resulting restroom shortage has resulted in real inconvenience in cities, and sometimes public health problems.[33]

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.[34] 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.[35]

Federal Law and Recent Cases Related to the Use of Restrooms

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.

Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 (Title VII) 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 to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.[37]

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[32] 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).*
[33] *Id.*
[34] 29 CFR 1910.141(c)(1)(i).
[35] 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/
[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] 42 U.S.C. §§ 2000e - 2000e17 (as amended).

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 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.[38]

Title IX of the Education Amendments of 1972

The U.S. Department of Education (USDOE) Office for Civil Rights (OCR) enforces, among other statutes, Title IX of the Education Amendments of 1972,[39] 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.[40]

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.[41] 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.[42]

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[43] 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] 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).

[39] 20 U.S.C. 1681 through 1688; Pub. L. 100-259, 102 Stat. 28 (Mar. 22, 1988).

[40] 20 U.S.C. § 1681(a).

[41] 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).

[42] 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).

[43] 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.[44] In 2017, the DOE and the DOJ rescinded the letter.[45] 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.[46]

In 2021, President Biden signed an executive order addressing implementation of non-discrimination[47] protections[48] on the basis of "sex" related to Title IX and Title VII.[49], The executive order cited the 2020 U.S. Supreme Court Bostock decision[50] 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.[51] The USDOE[52] issued guidance and the EEOC[53] 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**.[54]

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.[55] 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.[56] 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.[57] 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.[58]

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.[59]

Cases Related to State and Local Policies

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[44] 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).
[45] 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).
[46] 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).
[47] 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).
[48] 34 C.F.R. ch. I.
[49] Executive Order 13988.
[50] *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020).
[51] *Id*.
[52] 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).
[53] 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).
[54] *Id*.
[55] *Tennessee. et al. v. U.S. Dep't of Educ. et al*., Case No. 3:21-cv-308 (E.D. Tenn.).
[56] *Id*.
[57] *State of Texas v. EEOC*, Case No. 2:21-cv-00194-Z.
[58] *Id*.
[59] 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 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."[60]

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]

Domestic Violence Centers

Florida law governing domestic violence[70] requires the Department of Children and Families (DCF) to operate the domestic violence program and coordinate and administer statewide activities related to the prevention of domestic violence.[71] DCF is responsible for providing services to victims of domestic violence and their families, including, but not limited to, certifying and monitoring domestic violence centers.[72]

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[60] *Bostock v. Clayton County, Georgia*, 590 U.S. __, 140 S. Ct. 1731, 1737 (2020).
[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.
[70] Ch. 39, part XII, F.S.
[71] S. 39.903(1), F.S.
[72] S. 39.901(2), F.S.

A "domestic violence center" is defined as an agency that provides services to victims of domestic violence as its primary mission.[73] According to the DCF Office of Domestic Violence, Florida has 41 certified domestic violence centers, which offer temporary emergency shelter, advocacy, and crisis intervention services to provide victims with the resources necessary to be safe and live free of violence. Such services include:[74]

- 24-Hour Hotline.
- Temporary Emergency Shelter.
- Safety Planning.
- Information and Referrals.
- Counseling and Case Management.
- Nonresidential Outreach Services.
- Training for Law Enforcement Personnel.
- Needs Assessments and Referrals for Resident Children.
- Educational Services for Community Awareness Related to domestic violence and Available Services/Resources for Survivors.

DCF employees and domestic violence center employees or volunteers are prohibited from disclosing the location of a center or any records relating to domestic violence center clients, as such information is deemed confidential and exempt from disclosure under the public records laws in ch. 119, F.S. Violations are a second degree misdemeanor for a first offense and third degree felony for subsequent offenses.[75]

Correctional Institutions

Florida's correctional system, under the jurisdiction of the Florida Department of Corrections (DOC),[76] is the third largest state corrections system in the U.S. and the largest state agency in Florida.[77] The purpose of the DOC is to:

- Protect the public through the incarceration and supervision of offenders;
- Rehabilitate offenders;
- Provide a safe and humane environment for offenders and staff; and
- Protect offenders from victimization within the institution.[78]

According to the DOC, inmates are transported from a county jail or enter the system through one of five receptions centers located throughout the state. Upon arrival at a reception center, an inmate is processed, tested, evaluated by health services, assessed for rehabilitative program needs, at which point custody and housing is determined.[79]

As of March 2022, the DOC housed 80,917 inmates in its facilities and was responsible for an additional 86,391 offenders on active community supervision. Prior to the COVID-19 pandemic, the DOC incarcerated approximately 94,000 inmates.[80]

The state pays for the vast majority of prison beds in the Florida. However, it receives some funding from the federal government in the form of grants. One grant comes from the state's compliance with

[73] S. 39.902(2), F.S.
[74] Florida Department of Children and Families, Office of Domestic Violence, *Domestic Violence Services*, https://www.myflfamilies.com/services/abuse/domestic-violence/office-domestic-violence (last visited Apr. 6, 2023).
[75] S. 39.9057, F.S.
[76] *See* ch. 944, F.S.
[77] Florida Department of Corrections, *Strategic Plan & Annual Report (2021-2024)*, http://www.dc.state.fl.us/pub/annual/1819/2020-2021-Strategic-Plan.pdf (last visited Mar. 29, 2023).
[78] S. 20.315(1), F.S.
[79] Florida Department of Corrections, *Strategic Plan & Annual Report (2021-2024)*, http://www.dc.state.fl.us/pub/annual/1819/2020-2021-Strategic-Plan.pdf (last visited Mar. 29, 2023).
[80] Office of Program Policy Analysis and Government Accountability (OPPAGA), *Department of Corrections*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1074 (last visited Mar. 29, 2023).

the federal Prison Rape Elimination Act (PREA),[81] which was created to eliminate sexual abuse in confinement facilities. Florida receives a PREA allocation as part of the Edward Byrne Memorial Justice Assistance Grant (JAG) program. The grant has varied over the years between $150,000 to $180,000.

Under PREA program, all funds must be used to implement initiatives to reduce, eliminate, and/or mitigate the risk of prison rape.[82] PREA includes forty-three standards that define three clear goals: to prevent, detect and respond to sexual abuse.

PREA provides that if a state that does not certify full compliance with the PREA standards it is subject to the loss of certain U.S. Department of Justice (DOJ) grant funds that it would otherwise receive for prison purposes.[83] Failure to follow PREA would make Florida subject to the loss of 5 percent of any DOJ grant funds that it would otherwise receive for prison purposes. As of the Fiscal Year 2022 reporting cycle, Florida has certified that it is in full compliance.[84]

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.
    - 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.

[81] 34 U.S.C. 30301(1).
[82] Florida Department of Law Enforcement, Office of Criminal Justice Grants, *Prison Rape Elimination Act (PREA)* https://www.fdle.state.fl.us/Grants/Programs/PREA.aspx#:~:text=Florida%20receives%20a%20PREA%20allocation,the%20risk%20of%20prison%20rape. (last visited April 5, 2023).
[83] 34 U.S.C. 30307(e).
[84] US Department of Justice, Bureau of Justice Assistance, Prison Rape Elimination Act (PREA), Overview, https://bja.ojp.gov/doc/fy22-prea-certification-assurance-submissions.pdf

- "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 misdemeanor is punishable by a term of up to 60 days imprisonment and a $500 fine.[85]

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:

[85] Ss. 775.082, and 775.083, F.S.

- 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 exempts 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.

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 requirements for exclusive use of restrooms and changing facilities based on sex.

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[86] and/or the similar clause in the Florida Constitution.[87] 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. [88]

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 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."[89]

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.[90] 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.

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[86] 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."

[87] Article I, s. 2, Fla. Const., reads in pertinent part: "All natural persons, female and male alike, are equal before the law…"

[88] *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

[89] *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020).

[90] *Drew Adams v. School Board of St. John's County, Florida*, No. 18-13592 (December 30, 2022).

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

On March 28, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute provides an exception for individuals born with a certain verifiable disorder of sex development.

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

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 an exception for individuals born with certain genetically or biochemically verifiable disorders of sex development; 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:

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.

(12) This section does not apply to an individual 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.

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.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7041 PCB RRS 23-01 Space Florida
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Sirois
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N	Thompson	Anstead
1) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Established by the Legislature in 2006, Space Florida was created to promote and foster the growth and development of a sustainable and world-leading aerospace industry in this state. Space Florida is an independent special district and subject to the provisions of the Uniform Special District Accountability Act, which governs such issues as operations, financial reporting, taxation, assessments, elections, compliance with general law, and comprehensive planning. Space Florida officials and employees are subject to public notice and ethics requirements for officials and employees with few exceptions.

Space Florida is governed by a 13 member independent board of directors (Board), consisting of the 12 private sector members of the Enterprise Florida, Inc. (EFI), board of directors, who are appointed by the Governor, President of the Senate, and Speaker of the House of Representatives, plus the Governor or Governor's designee, who is a voting member and serves as the chair.

The bill revises provisions governing Space Florida to increase collaboration with public and private stakeholders regarding spaceport activities, enhance transparency measures regarding spaceport projects, and makes several revisions to the Board. In part, the bill:

- Separates the Board from the EFI board, establishes membership and appointment criteria, term lengths, prohibits compensation, provides per diem and travel limits, allows electronic meetings, and provides quorum requirements.
- Requires Space Florida to:
  - Solicit input on Space Florida plans and activities from the aerospace industry, private sector spaceport territory stakeholders, each entity that owns or has ownership interest in a facility within spaceport territory, and other political subdivisions within spaceport territory.
  - Solicit input from certain federal aerospace entities and political subdivisions that own facilities within spaceport territory regarding the spaceport master plan.
  - Include additional economic data in the Space Florida annual report to the Governor and Legislature.
  - Explain certain travel and entertainment expenditures and address recent audit findings.
  - Assess and report on contracts with service organizations.
- Includes Space Florida among the list of economic development programs scheduled to be reviewed and analyzed by the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA).
- Adds Space Florida as an entity that the Department of Economic Opportunity (DEO) has contract authority over and requires DEO's annual repot to include Space Florida information.
- Requires the Board to conduct new member training using DEO's board member training program.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Space Florida

In 2006, the Legislature passed the Space Florida Act,[1] which consolidated Florida's three existing space entities, the Florida Space Authority, the Florida Space Research Institute, and the Florida Aerospace Finance Corporation, into a single entity called Space Florida.[2] Space Florida is established as an independent special district, a body politic and corporate, and a subdivision of the state, to foster the growth and development of a sustainable and world-leading aerospace industry in the state. Space Florida has all the powers, rights, privileges, and authority as provided under the laws of this state.[3]

Space Florida acts as Florida's point of contact for state aerospace-related activities with federal agencies, the military, state agencies, businesses, and the private sector.[4] Space Florida is authorized to purchase or construct facilities, set rates, fees, and charges for the use of facilities, and undertake joint financing with municipalities or private sector entities for any project.[5]

According to Space Florida's 2022 Annual Operations Report, as of July 1, 2022, Space Florida had 85 total projects in development with an estimated value of $2.4 billion in capital investment, and provided $4.3 million in funding for 30 research projects, partnerships, and grants.[6]

Powers of Space Florida

In furtherance of its duties, Space Florida is given certain powers, including, but not limited to:[7]

- Using a corporate seal;
- Using patents, copyrights and trademarks;
- Lending and investing money;
- Acquiring certain properties;
- Executing contracts;
- Issuing revenue bonds;
- Making expenditures for entertainment and travel expenses and business clients, guests, and other authorized persons; and
- Fixing and collecting fees, loan payments, rental payments, and other charges in connection with financing agreements.

Duties of Space Florida

In order to implement the Space Florida Act and carry out spaceport operations, Space Florida is given certain duties, including, but not limited to, creating a business plan, entering into agreements and cooperating with other state agencies, and consulting with appropriate federal agencies.[8]

Specifically, Space Florida is required to:

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[1] Ch. 2006-60, Laws of Fla.
[2] *See* ss. 331.301 through 331.371, F.S.
[3] S. 331.302, F.S.
[4] S. 331.3011, F.S.
[5] S. 331.305, F.S.
[6] Space Florida, Space Florida Annual Report 2022, https://www.spaceflorida.gov/wp-content/uploads/2023/01/Space-Florida-FY22-Annual-Operating-Report.pdf (last visited Feb. 27, 2023).
[7] S. 331.305, F.S.
[8] S. 331.3051, F.S.

- Enter into agreements with the Department of Education (DOE), the Department of Transportation (DOT), Enterprise Florida, Inc. (EFI), and CareerSource Florida, Inc. (CSF).[9]
- In cooperation with EFI, develop a plan to retain, expand, attract, and create aerospace industry entities, public or private, which results in the creation of high-value-added businesses and jobs in this state.[10]
- Develop, in cooperation with EFI, a plan to provide financing assistance to aerospace businesses.[11]
- Carry out its responsibilities for spaceport operations by:[12]
    - Seeking federal support and developing partnerships to renew and upgrade the infrastructure and technologies at the Cape Canaveral Air Force Station, the John F. Kennedy Space Center, and the Eastern Range.
    - Supporting federal efforts to clarify roles and responsibilities of federal agencies in an effort to streamline access for commercial launch users.
    - Pursuing the development of commercial spaceports in the state in partnership with counties or municipalities, the Federal Government, or private entities.
    - Promoting and facilitating launch activity within the state by supporting and assisting commercial launch operators' interactions with federal agencies for launching from Florida.
    - Consulting, as necessary, with the appropriate federal, state, and local authorities, including the National Aeronautics and Space Administration (NASA), Federal Aviation Administration (FAA), Department of Defense (DOD), DOT, Florida National Guard, and industry on establishing and operating spaceport infrastructure and facilities in the state.

Annual Reports

Space Florida is required to provide an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on its performance with respect to its business plan, financing, spaceport operations, research and development, workforce development, and education. Space Florida is required to submit the report by November 30 for the previous fiscal year. The annual report must include operations information from its annual report of operations.[13]

Annual Report of Operations

The Space Florida board of directors is required to prepare an annual report of operations as a supplement to the annual report. The report must include, but not be limited to, a balance sheet, an income statement, a statement of changes in financial position, a reconciliation of changes in equity accounts, a summary of significant accounting principles, the auditor's report, a summary of the status of existing and proposed bonding projects, comments from management about the year's business, and prospects for the next year.[14]

Transportation and Public Utilities Facilities

Space Florida is authorized to:[15]

- Own, acquire, construct, reconstruct, equip, operate, maintain, extend, or improve transportation facilities appropriate to meet the transportation requirements of Space Florida and activities conducted within spaceport territory;
- Own, acquire, construct, reconstruct, equip, operate, maintain, extend, or improve electric power plants, transmission lines and related facilities, gas mains and facilities of any nature for the production or distribution of natural gas, transmission lines and related facilities and plants

[9] S. 331.3051(2), F.S.
[10] S. 331.3051(3), F.S.
[11] S. 331.3051(6), F.S.
[12] S. 331.3051(7), F.S.
[13] S. 331.3051(11), F.S.
[14] S. 331.310(2)(e), F.S.
[15] S. 331.305(12) and (13), F.S.

and facilities for the generation and transmission of power through traditional and new and experimental sources of power and energy;
- Purchase electric power, natural gas, and other sources of power for distribution within any spaceport territory;
- Develop and operate water and sewer systems and waste collection and disposal;[16] and
- Develop and operate such new and experimental public utilities, including, but not limited to, centrally distributed heating and air-conditioning facilities and services, closed-circuit television systems, and computer services and facilities, as the board may from time to time determine.

Space Florida Board of Directors

Space Florida is governed by a 13 member[17] independent board of directors (Space Florida Board). The Governor, or the Governor's designee, is a voting member and serves as the chair.[18] The 12 appointed private sector members of the EFI board of directors also serve, by default, on the Space Florida Board and are appointed to four-year terms.[19]

The duties of the Space Florida Board include:[20]
- Adopting rules and orders to conduct the business of Space Florida, the maintenance of records, and the form of all documents and records of Space Florida.
- Maintaining an executive office and Space Florida offices in close proximity to the John F. Kennedy Space Center.
- Appointing a president of Space Florida, and determining his or her title, functions, duties, powers, and salary.
- Abiding by all applicable federal labor laws in the construction and day-to-day operations of Space Florida and any spaceport.
- Preparing the annual report of operations as a supplement to its annual report, which is also required by law.

The Space Florida Board is authorized to exercise the following powers:[21]
- Enter, and authorize any agent or employee of Space Florida to enter, upon any lands, waters, and premises, upon giving reasonable notice and due process to the land owner, for the purposes of making surveys, soundings, drillings, appraisals, and examinations necessary to perform its duties and functions.
- Execute all contracts and other documents, adopt all proceedings, and perform all acts determined by the Space Florida Board to be necessary or desirable to carry out the purposes given it in statute.
- Establish and create such departments, committees, or other entities as from time to time the Space Florida Board deems necessary or desirable in the performance of any acts or other things necessary to the exercise of the powers provided in statute.
- Provide financial services to support aerospace-related business development within the state. Financial services may include, but are not limited to:
    - Insuring, coinsuring, or originating for sale direct aerospace-related loans.
    - Direct lending.
    - Guaranteeing and collateralizing loans.
    - Creating accounts.
    - Capitalizing, underwriting, leasing, selling, or securing funding for aerospace-related infrastructure.
    - Investing in permissible securities.
    - Organizing financial institutions and international bank syndicates.

[16] This must be done consistent with ch. 88-130, Laws of Fla.
[17] Six members are appointed by the Governor, three members are appointed by the President of the Senate, and three members are appointed by the Speaker of the House of Representatives. S. 288.901(5)(a)7., F.S.
[18] S. 331.3081, F.S.
[19] S. 288.901(5)(a)8., F.S.
[20] S. 331.310(2), F.S.
[21] S. 331.310(1), F.S.

    - Acquiring, accepting, or administering grants, contracts, and fees from other organizations to perform activities that are consistent with the purposes of Space Florida's business plan. If the Space Florida Board deems a financial services entity is necessary, the Space Florida Board may create, form, or contract with one or more such entities.
- Examine, and authorize any officer or agent of Space Florida to examine, the county tax rolls with respect to the assessed valuation of the real and personal property within any spaceport territory.
- Engage in the planning and implementation of space-related economic and educational development within the state.
- Provide the strategic direction for the aerospace-related research priorities of the state and its aerospace-related businesses.
- Execute intergovernmental agreements and development agreements consistent with prevailing statutory provisions, including, but not limited to, special benefits or tax increment financing initiatives.
- Establish reserve funds for future Space Florida Board operations.
- Adopt rules to carry out the purposes of the Space Florida Act.

Travel and Entertainment Expenses

Notwithstanding the provisions for per diem and travel expenses for public officers, employees, and authorized persons, and the statewide travel management system,[22] Space Florida is required to adopt rules for travel and entertainment expenses that:[23]

- Make expenditures by advancement or reimbursement, or a combination thereof, to Space Florida officers and employees;
- Reimburse business clients, guests, and authorized persons;[24] and
- Make direct payments to third-party vendors.

The travel and entertainment expenses of business clients, guests, and authorized persons must be incurred by Space Florida in connection with the performance of its statutory duties. The travel expenses of state officials and employees must be incurred while accompanying business clients, guests, or authorized persons or when authorized by the Space Florida Board or its designee. The entertainment expenses for Space Florida officials and employees must be incurred while in the physical presence of such business clients, guests, or authorized persons.[25]

The travel and entertainment rules are subject to approval by the Chief Financial Officer (CFO) before adoption, and are prescribed as follows:[26]

- Must require the submission of paid receipts, or other proof prescribed by the CFO, with any claim for reimbursement.
- Must require, as a condition for any advancement, an agreement to submit paid receipts or other proof and to refund any unused portion of the advancement within 15 days after the expense is incurred or, if the advancement is made in connection with travel, within 15 days after completion of the travel.
- With respect to an advancement made solely for travel expenses, the rules may allow paid receipts or other proof to be submitted, and any unused portion of the advancement to be refunded, within 30 days after completion of the travel.

[22] S. 112.061, F.S.
[23] S. 331.3101, F.S.
[24] "Authorized persons" are defined in s. 112.061(2)(e), F.S., as a person other than a public officer or employee, whether elected or commissioned or not, who is authorized by an agency head to incur travel expenses in the performance of official duties; called upon by an agency to contribute time and services as consultant or adviser; a candidate for an executive or professional position.
[25] S. 331.3101(1), F.S.
[26] S. 331.3101(2), F.S.

An annual report must be made to the Legislature not later than November 30 of each year for the previous fiscal year that consists of a synopsis concisely summarizing all travel, entertainment, and incidental expenses incurred inside and outside of the U.S.[27]

Claims are not required to be sworn to but are required to contain a statement that the expenses were necessary in the performance of official duties of Space Florida and verified by written declaration.[28] Untrue or incorrect claims, and fraudulent or false claims, are a second degree misdemeanor, punishable by a term of imprisonment of up to 60 days[29] and a $500 fine.[30] Whoever receives an advancement or reimbursement by means of a false claim is civilly liable, in the amount of the overpayment, for the reimbursement of the public fund from which the claim was paid.[31]

Effective July 1, 2022 through July 1, 2023, Space Florida is required to adhere to certain travel and entertainment restrictions. In addition to the requirements set forth for the annual report summarizing all travel, entertainment, and incidental expenses, the 2022 annual report by Space Florida must also:

- Provide an itemized accounting, by date of travel, of all travel, entertainment, and incidental expenses incurred;
- To the extent such expenses exceed the generally allowable expense limits for per diem and travel expenses of public officers, employees, and authorized persons, provide reasons behind the need to exceed such statutory expense limits;
- Categorize expenses for Space Florida Board members, staff, employees, and business clients. The report must also set forth any expenses authorized by the Space Florida Board or its designee for a guest; and
- Include information related to corrective actions and steps taken by Space Florida to address the findings in Auditor General Report No. 2022-049.[32]

Furnishing Facilities and Services within the Spaceport Territory

Space Florida is authorized to construct, develop, create, maintain, and operate its projects within the geographical limits of the spaceport territory. This includes any portions of the spaceport territory located inside the boundaries of any incorporated municipality or other political subdivision.[33]

Space Florida is authorized to offer, supply, and furnish the facilities and services provided for in the Space Florida Act, and establish and collect fees, rentals, and other charges, within the geographical limits of the spaceport territory and for the use of Space Florida itself.[34]

Power of Space Florida with Respect to Roads

Within the territorial limits of any spaceport territory, Space Florida is authorized to acquire, through purchase or interagency agreement, or as otherwise provided in law, to construct, control, and maintain, roads, connections and extensions that it deems necessary in accordance with established highway safety standards.[35]

If a road being addressed by Space Florida is owned by another agency or jurisdiction, Space Florida, before proceeding with the proposed project or work activity, must coordinate the desired work with the owning agency or jurisdiction or successfully execute an interagency agreement with the owning agency or jurisdiction.[36]

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[27] S. 331.3101(3), F.S.
[28] S. 331.3101(4), F.S.
[29] S. 775.082(4)(b), F.S.
[30] S. 775.083(1)(e), F.S.
[31] *Id*.
[32] State of Florida Auditor General, *SPACE FLORIDA Board Duties and Governance and Selected Administrative Activities*, https://flauditor.gov/pages/pdf_files/2022-049.pdf (last visited Mar. 1, 2023).
[33] S. 331.312, F.S.
[34] *Id*.
[35] S. 331.313, F.S.
[36] *Id*.

Contracts, Grants and Contributions

Space Florida is authorized to:[37]

- Make and enter all contracts and agreements necessary or incidental to the performance of its functions and execution of its powers.
- Contract with, and accept and receive grants or loans of money, material, or property from, any person, private or public as the Space Florida Board determines necessary or desirable to carry out the purposes of the Space Florida Act.
- In connection with any such contract, grant, or loan, stipulate and agree to such covenants, terms, and conditions as the Space Florida Board deems appropriate.

Spaceport Master Plan

Space Florida is required to develop a spaceport master plan for expansion and modernization of space transportation facilities within spaceport territories. The plan must contain recommended projects to meet current and future commercial, national, and state space transportation requirements.[38]

Space Florida is required to submit the plan to:[39]

- Any appropriate metropolitan planning organization for review of intermodal impacts.
- DOT, and it may be included within DOT's five-year work program of qualifying aerospace discretionary capacity improvement.

The plan must identify appropriate funding levels and include recommendations on appropriate sources of revenue that may be developed to contribute to the State Transportation Trust Fund.[40]

Special Districts

Space Florida is an independent special district, and subject to the provisions of the Uniform Special District Accountability Act, to the extent that the provisions of that act do not conflict with the Space Florida Act.[41] The Uniform Special District Accountability Act sets forth the general provisions for all special districts, addressing such issues as creation, operation, financial reporting, taxation, assessments, elections, definitions, compliance with general law, and comprehensive planning.[42]

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.[43] Special districts are created by general law,[44] special act,[45] local ordinance,[46] or by rule of the Governor and Cabinet.[47] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter.[48] Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[49]

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[37] S. 331.324, F.S.
[38] S. 331.360(3), F.S.
[39] *Id*.
[40] *Id*.
[41] S. 331.302, F.S.
[42] Ch. 189, F.S.
[43] *See Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).
[44] S. 189.031(3), F.S.
[45] *Id*.
[46] S. 189.02(1), F.S.
[47] S. 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.
[48] *Halifax Hosp. Med. Center, supra* at 548.
[49] *Local Gov't Formation Manual* at p. 58, available at https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3227&Session=2023&DocumentType=General+Publications&FileName=2022+Local+Government+Formation+Manual.pdf (last visited Jan. 25, 2023).

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of governing body of a single county or municipality.[50] An "**independent special district**" is any district that is not a dependent special district[51] and may only be created by legislative authorization as provided in the Uniform Special District Accountability Act.[52]

Special districts do not possess "home rule" powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.[53]

Special districts may enter into interlocal agreements with one or more other local governmental units.[54] Under such an agreement, the special district may exercise jointly with the other participating local governments those powers, privileges, or authorities which they have in common and each may exercise separately.[55]

Special District Charter

The charter of a newly-created district must state whether it is dependent or independent.[56] Charters of independent special districts must address and include a list of required provisions, including the purpose of the district, its geographical boundaries, taxing authority, bond authority, and selection procedures for the members of its governing body.[57]

Specifically, the charter creating an independent special district must contain the following:[58]

- The purpose of the special district;
- The powers, functions and duties of the special district relating to ad valorem taxes, bonds and other revenue-raising abilities, budget preparation and approval, liens and lien foreclosures, and the use of tax deeds and certificates for non-ad valorem assessments and contractual agreements;
- A method for establishing the district and amending the district charter;
- The membership, organization, compensation, and administrative duties of the governing board and its members;
- Applicable financial disclosures, noticing, and reporting requirements;
- Procedures and requirements for bond issues, if the special district will issue bonds;
- Election procedures and requirements;
- A method for financing the district;
- Authorized millage rate, and methods for collecting non-ad valorem assessments, fees, or service charges;
- Planning requirements; and
- District boundaries.

Special District Accountability

[50] S. 189.012(2), F.S.
[51] S. 189.012(3), F.S.
[52] S. 189.011(1), F.S.
[53] Art. VII, s. 9(a), Fla. Const.
[54] S. 163.01(2), (3)(b), F.S.
[55] S. 163.10(4), F.S.
[56] S. 189.031(5), F.S.
[57] S. 189.031(3), F.S.
[58] S. 189.031, F.S.

The Uniform Special District Accountability Act establishes a Special District Accountability Program administered by the Department of Economic Opportunity (DEO) that provides certain oversight and accountability measures that special districts must follow. Some of the duties of the program include:[59]

- Electronically publishing special district noncompliance status reports from the Department of Management Services (DMS), the Department of Financial Service (DFS)s, the Division of Bond Finance of the State Board of Administration (SBA), the Auditor General, and the Legislative Auditing Committee.
- Maintaining the official list of special districts.
- Publishing and updating of a "Florida Special District Handbook."
- Coordinating and communicating among state agencies regarding special districts.
- Providing technical advisory assistance to special districts.
- Providing assistance to local general-purpose governments and state agencies in collecting delinquent reports or information.
- Helping special districts comply with reporting requirements.
- Declaring special districts inactive when directed by the Joint Legislative Auditing Committee (JLAC) or required by the Uniform Special District Accountability Act.
- Initiating certain enforcement proceedings for failure to file reports and information.

The Uniform Special District Accountability Act requires special districts to comply with many of the same accountability standards as those of counties and municipalities and state government. Examples of these standards include:[60]

- Filing an Annual Financial Report with DFS disclosing the district's revenues, expenditures, long-term debt, and other financial information.
- Filing a Financial Audit Report, performed by an independent Certified Public Accountant, with the Florida Auditor General for review (most but not all special districts).
- Filing information with the SBA concerning advance notice of bond sales and new bond issues.
- Certifying to the state compliance with Truth-in-Millage requirements (if establishing a property tax).
- Complying with ethics laws, including financial disclosures by governing board members and certain employees.
- Conducting district business within the Government-in-the-Sunshine laws, including specific public meeting requirements.

Special District Oversight

Special districts may be reviewed for general oversight purposes as follows:[61]

- Each special district created by special act may be reviewed by the Legislature using the process provided in s. 189.0651, F.S.
- Each special district created by local ordinance or resolution may be reviewed by the local general-purpose government that enacted the ordinance or resolution using the process provided in s. 189.0652, F.S.
- Each dependent special district not created by special act may be reviewed by the local general-purpose government upon which it is dependent.
- All special districts created or established by rule of the Governor and Cabinet may be reviewed as directed by the Governor and Cabinet.
- All other special districts may be reviewed as directed by the President of the Senate and the Speaker of the House of Representatives.

Certain state agencies are responsible for monitoring special districts and collecting, reviewing, interpreting, and summarizing financial information for the public, the Legislature and other officials.

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[59] S. 189.064, F.S.

[60] Department of Economic Opportunity, Special District Accountability and Oversight, https://floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/special-district-accountability-and-oversight (last visited Mar. 1, 2023).

[61] S. 189.068, F.S.

Therefore, each special district must submit the following reports and filings to various state and local agencies and the Legislature, as applicable:[62]

- The Annual Financial Report;
- The Financial Audit Report;
- Bond financing related reports;
- Retirement system reports;
- Public facilities reports;
- Designation of registered office and agent;
- Regular Public Meeting Schedule;
- Charters (creation document), as amended; and
- Boundary maps, as amended.

Failure to File Reports or Information

Depending on the issue, when special districts fail to comply with a requirement, state and local agencies, as well as citizens, can take action. For example:[63]

- Citizens can file ethics complaints with the Florida Commission on Ethics.
- The appropriate oversight entity, depending on how the special district was created, may conduct a general oversight review process (applies to most, but not all, special districts).
- The Governor may suspend or remove a special district governing body member under certain circumstances.
- The entity that created the special district can amend, merge, or dissolve the special district.
- The state attorney for the area can investigate and prosecute district officials who violate Government-in-the-Sunshine laws.
- JLAC can send state auditors to a district if something warrants such action.
- JLAC and/or DMS can request DEO to file a petition in the Leon County circuit court to compel compliance when special districts fail to file certain financial reports with the state.
- JLAC, at the direction of the President of the Senate and the Speaker of the House of Representatives, may convene a public hearing on the issue of noncompliance concerning any special district created by special act that fails to file certain financial information with the state.
- The chair of a county or municipality may convene a public hearing on the issue of noncompliance concerning any special district it created that fails to file certain financial information with the state.
- DEO can declare special districts inactive under certain circumstances.

Education for New District Board Members

DEO is authorized to provide, contract for, or assist in conducting education programs, as its budget permits, for all newly elected or appointed members of district governing bodies. The education programs must include, but are not limited to, courses on:[64]

- The code of ethics for public officers and employees;
- Public meetings and public records requirements;
- Public finance; and
- Parliamentary procedure.

Currently, members of special districts are not considered "Elected Municipal Officers" subject to the annual ethics training requirement found in s. 112.3142, F.S.[65]

Special District Meetings, Public Records and Public Notice Requirements

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[62] *Id*.
[63] *Id*.
[64] S. 189.063(1), F.S.
[65] Department of Economic Opportunity, Florida Special District Handbook, (Oct. 2022), https://www.floridajobs.org/docs/default-source/2015-community-development/community-assistance/sdap/florida-special-district-handbook.pdf?sfvrsn=152e57b0_2 (last visited Mar. 1, 2023).

Special districts, along with counties, municipalities, and other governmental agencies, must comply with Florida's public meetings requirements, also known as the "Sunshine Law,"[66] public records requirements in Florida's public records law,[67] and the public notice requirements in the Florida laws that govern legal and official advertisements.[68]

In addition, special districts must comply with specific meeting requirements in the Uniform Special District Accountability Act, and certain special districts may need to comply with meeting requirements in other laws. Meeting requirements under the act require that a district:[69]

- Quarterly, semiannually, or annually, prepare a schedule of regular meetings that includes the date, time, and location of each meeting.
- File the schedule with each local governing authority in which the special district has jurisdiction.
- Publish the schedule in the county or counties in which the special district has jurisdiction.
- For any meeting other than a regular meeting or any recessed and reconvened meeting, advertise in the county or counties in which the special district has jurisdiction the day, time, place, and purpose of such meeting at least seven days before the meeting.
- In the event of an emergency, provide reasonable notice in the county or counties in which the special district has jurisdiction, hold the emergency meeting, and subsequently ratify the emergency meeting. Do not approve the annual budget at an emergency meeting.

Special District Ethics Laws and Disclosures

Florida's Code of Ethics was created to help prevent conflicts between public duty and private interests, and ensure that public sector employees and officers will not abuse their public positions in order to obtain a disproportionate benefit or misuse their government office for private gain.[70] All special district local officers and special district employees must comply with Florida's ethics laws.[71]

The Code of Ethics defines a "local officer" in part to include any appointed member of an independent special district or other political subdivision of the state.[72]

The following public officers and employees of a special district must file ethics disclosures:[73]

- A person elected to a special district's governing body.
- A person appointed to complete an unexpired term.
- A person appointed to a special district's governing body.
- A person seeking nomination or election to a special district's governing body.
- A special district's chief administrative employee.
- A fire chief of a fire control special district.
- A special district purchasing agent making purchases more than $35,000.

Each January, the Florida Commission on Ethics (Commission) receives updates from all counties, municipalities, and special districts regarding who must file a Statement of Financial Interests. The Commission then provides a list of those who must file this form to all county supervisors of elections. All special district local officers and specified employees must file this form. They may also need to file additional disclosures, depending upon their position, businesses, or interests.[74]

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[66] Ch. 286, F.S.
[67] Ch. 119, F.S.
[68] Ch. 50, F.S.
[69] S. 189.015, F.S.
[70] Ch. 112, Part III, F.S., and Article II, Section 8, Fla. Const.
[71] Department of Economic Opportunity, Florida Special District Handbook, (Oct. 2022), https://www.floridajobs.org/docs/default-source/2015-community-development/community-assistance/sdap/florida-special-district-handbook.pdf?sfvrsn=152e57b0_2 (last visited Mar. 1, 2023).
[72] S. 112.3145(1)(a), F.S.
[73] S. 112.3144, F.S.
[74] *Id.*

Any person who does not file this form is subject to automatic fines of $25 for each late day, up to a cap of $1,500. Modeled after the automatic fine system in place for campaign finance reports, the Commission can hear appeals and has the power to waive fines under limited circumstances.[75]

Any person who fails to file their annual disclosure is subject to automatic complaint proceedings to determine if the failure to file was willful. If the Commission determines that the person willfully failed to file their disclosure form, the Commission will enter an order recommending that the officer or employee be removed from office or employment.[76]

Special district local officers and employees are prohibited from:[77]

- Doing business with their special district.
- Entering into a conflicting employment or contractual relationship with any other special district local officer, employee, their spouse and/or their children.

Certain limited exemptions apply to these prohibitions, such as the following:[78]

- The business is awarded under a system of sealed competitive bidding.
- The special district local officer has exerted no influence on bid negotiations or specifications.
- Disclosure is made, before or at the time of the submission of the bid, of the special district local officer's or employee's or his or her spouse's or child's interest and the nature of the intended business.

A special district local officer must abstain from voting on the following measures:[79]

- One that inures to his or her special private gain or loss.
- One that inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained.
- One that could result in special private gain or loss to a relative.
- One that could result in special private gain or loss to a business associate.

Gifts

Gifts valued at more than $100 from vendors, lobbyists, or political committees, are prohibited. Special district local officers and specified employees may not solicit any gift, including food or beverage, from the following:[80]

- A political committee.
- A lobbyist who has lobbied that special district local officer's or specified employee's special district within the past 12 months.
- A partner, firm, employer, or principal of a lobbyist.
- A vendor.

A special district local officer or employee may accept a gift valued between $25 and $100 from a lobbyist. However, the person giving the gift must report the gift to the Commission and notify the special district local officer that they will disclose the gift as required.[81]

A special district local officer or employee may not directly or indirectly accept a gift worth more than $100 from a lobbyist. However, they may accept it on behalf of the special district. Then, the special district local officer or specified employee must promptly transfer the gift to the special district.[82]

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[75] S. 112.3144(8)(f), F.S.
[76] S. 112.3144(9), F.S...
[77] S. 112.313, F.S...
[78] *Id*.
[79] S. 112.3143, F.S.
[80] S. 112.3148, F.S.
[81] Department of Economic Opportunity, Florida Special District Handbook, (Oct. 2022), https://www.floridajobs.org/docs/default-source/2015-community-development/community-assistance/sdap/florida-special-district-handbook.pdf?sfvrsn=152e57b0_2 (last visited Mar. 1, 2023).
[82] *Id*.

Penalties for Code of Ethics Violations

Non-criminal penalties for code of ethics violations for special district officers and employees include:[83]

- Impeachment.
- Removal or suspension from office or employment.
- Public censure, reprimand, demotion, or salary reduction.
- A civil penalty up to $10,000.
- Restitution of pecuniary benefits they received.

Non-criminal penalties for candidates seeking election to a special district's governing body:[84]

- Disqualification from being on the ballot.
- Public censure or reprimand.
- A civil penalty up to $10,000.

Non-criminal penalties for former special district local officers and employees include:[85]

- Public censure and reprimand.
- A civil penalty up to $10,000.
- Restitution of pecuniary benefits they received.

Special district officers or employees convicted in a court of law of a specified felony offense involving their public office or employment is subject to forfeiture of retirement benefits. Examples of such offenses include the following felonies: embezzlement or theft of public funds, bribery, impeachable offenses, threatening a public servant and defrauding the public or the special district.[86]

Violations of the gift law and/or honorarium provisions by a lobbyist may result in:[87]

- A fine up to $5,000.
- A two-year ban from lobbying, or employing someone to lobby, before the agency of the person to whom the gift or honorarium was given.

Confidentiality of Records

Current law contains a number of provisions that make certain information held by an economic development agency, including Space Florida, exempt or confidential and exempt[88] from public records requirements.[89] This includes information regarding plans to locate or relocate a business, trade secrets, proprietary confidential business information, sales tax registration numbers, and information held pursuant to an economic incentive program or loan program. Some of the exemptions are temporary and some are permanent.

Information concerning a corporation's plans to relocate or expand any of its business activities in the state is confidential and exempt, as follows: [90]

- For 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed;

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[83] S. 112.317, F.S.
[84] *Id*.
[85] *Id*.
[86] *Id*.
[87] S. 112.3148, F.S.
[88] There is a difference between records the Legislature designates as 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. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 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 st atute. See Attorney General Opinion 85-62 (August 1, 1985).
[89] *See* s. 288.075, F.S.
[90] S. 288.075(2), F.S.

- An economic development agency may extend the period of confidentiality for up to 12 months upon written request by the entity that originally requested confidentiality and upon a finding by the economic development agency that such entity is still actively considering locating, relocating, or expanding its business activities in this state. Such a request must be received prior to the expiration of the original period.
- If a final project order for a signed economic development agreement is issued, then the information remains confidential and exempt for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first. However, the 180 day timeframe may not extend beyond the original or extended period.

Proprietary confidential business information is confidential and exempt until the information becomes publicly available or is no longer treated by the proprietor as confidential.[91]

Specific sales, employee wage, and tax information associated with the administration of an economic incentive program for qualified businesses is confidential and exempt for the duration of the incentive agreement or upon termination of the agreement.[92] The following information is protected:

- The percentage of the business's sales occurring outside this state and for businesses applying for the qualified defense contractor and space flight business tax refund program under s. 288.1045, F.S., the percentage of the business's gross receipts derived from Department of Defense contracts during the five years immediately preceding the date the business's application is submitted.
- An individual employee's personal identifying information that is held as evidence of the achievement or nonachievement of the wage requirements of the tax refund, tax credit, or incentive agreement programs or of the job creation requirements of such programs.
- The amount of:
  - Taxes on sales, use, and other transactions;
  - Corporate income taxes;
  - Intangible personal property taxes;
  - Insurance premium taxes;
  - Excise taxes;
  - Ad valorem taxes; or
  - State communications services taxes.
- However, an economic development agency may disclose in the annual incentives report required under s. 288.907, F.S., the aggregate amount of each of these taxes paid by all businesses participating in each economic incentive program.

The following information held by an economic development agency relating to a specific business participating in an economic incentive program is no longer confidential or exempt 180 days after a final project order for an economic incentive agreement is issued, until a date specified in the final project order, or if the information is otherwise disclosed, whichever occurs first:[93]

- The name of the qualified business.
- The total number of jobs the business committed to create or retain.
- The total number of jobs created or retained by the business.
- Notwithstanding s. 213.053(2), the amount of tax refunds, tax credits, or incentives awarded to, claimed by, or, if applicable, refunded to the state by the business.
- The anticipated total annual wages of employees the business committed to hire or retain.

For a business applying for the qualified defense contractor and space flight business tax refund program under s. 288.1045, F.S., which is based on obtaining a new Department of Defense contract, the total number of jobs expected and the amount of tax refunds claimed may not be released until the new Department of Defense contract is awarded.[94]

[91] S. 288.075(4), F.S.
[92] Ss. 288.075(6), F.S.
[93] S. 288.075(6)(b)1., F.S.
[94] S. 288.075(6)(b)2., F.S.

Trade secrets, federal employer identification numbers, reemployment assistance account numbers, and Florida sales tax registration numbers are permanently exempt from public records.[95]

Information held by an economic development agency pursuant to its administration of a state or federally funded small business loan program is exempt from inspection by the public. Disclosure of such information is authorized in an aggregated and anonymized format.[96]

An employee of an economic development agency who violates these provisions commits a second degree misdemeanor, punishable by a maximum penalty of 60 days in jail and a $500 fine.[97]

Legislative Budget Commission

The Legislative Budget Commission (LBC) is a standing joint committee of the Legislature[98] that is authorized to oversee certain aspects of the implementation of the approved budget for the State of Florida. The LBC is empowered to ratify certain adjustments to the budget as recommended by the Governor or the Chief Justice of the Supreme Court. The LBC's responsibilities include:

- Reviewing and approving or disapproving agency requests to amend original approved budgets;[99]
- Reviewing agency spending plans;[100]
- Reviewing the recommendations of the Technology Review Workgroup regarding information technology issues;[101] and
- Taking other actions related to the fiscal matters of the state, as authorized by law.

The LBC is required to answer budget questions that may arise throughout the year[102] and ensure that the funding for the executive and judicial branches remains appropriate and sufficient until the Legislature reconvenes for the following Legislative Session.

There are three levels of LBC oversight for proposed agency actions impacting the implementation of the state budget: approval, consultation, and notification. Examples of some of the types of proposed actions that require the LBC's approval or review include:[103]

- Visit Florida contracts with a total cost of $750,000 or more.[104]
- EFI contracts with a total cost of $750,000 or more.[105]
- Funds awarded under the Quick Action Closing Fund that exceed $5 million.[106]
- Funds awarded under the Innovative Incentive Program.[107]
- Changes in the amounts appropriated from trust funds in excess of $1 million.[108]
- The transfer of General Revenue appropriations for operations in the executive branch or judicial branch in excess of the amount authorized in ss. 216.292(2) and (3), F.S.[109]
- The transfer of appropriations in the executive branch or the judicial branch for fixed capital outlay.[110]

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[95] Ss. 288.075(3) and (5), F.S.
[96] S. 288.075(7), F.S.
[97] Ss. 775.082 and 775.083, F.S.
[98] Art. 3, s. 19, Fla. Const., s. 11.90, F.S.
[99] S. 216.181(2) F.S.
[100] S. 11.90 F.S.
[101] S. 216.0446 F.S
[102] S. 216.177(1)(b) F.S.
[103] Other examples include: ss. 216.011(1), F.S.; 216.181(10)(a), F.S.; 216.292(4)(b), F.S.; 216.292(4)(d), F.S.; 216.216, F.S.; 252.37(2), F.S.; 339.135(6)(c), F.S.; 339.135(7)(g), F.S.; 402.80, F.S.;
[104] S. 288.1226, F.S.
[105] S. 288.903(7), F.S.
[106] S. 288.1088(3)(c)4., F.S.
[107] S. 288.1089(7), F.S.
[108] S. 216.181(11), F.S.
[109] S. 216.292(4)(a), F.S.
[110] S. 216.292(4)(c), F.S.

- The initiation of new programs or changes in current programs in the executive branch or the judicial branch that are not contemplated by the General Appropriations Act.[111]
- The transfer of funds from a school district's class size reduction operating categorical to the district's approved fixed capital outlay account for class size reduction.[112]
- Actions increasing the number of positions authorized by the legislature for executive branch agencies and judicial branch entities.[113]

Notice of budget amendments must be provided to the chair and vice chair of the LBC at least 14 days prior to the action or at least 3 days prior to a release of funds. The chair and vice chair of the LBC or the presiding officers of the Legislature may void a budget action if notice is provided in writing to the Governor, for the executive branch, or the Chief Justice, for the judicial branch, that such action exceeds delegated authority or is contrary to legislative policy and intent. If such notice is given, the Governor or Chief Justice must void such budget action until the LBC or Legislature addresses the issue.[114]

Space Florida Auditor General Report No. 2022-049

In 2021, the State of Florida Auditor General released findings of an operational audit of Space Florida that focused on cooperative agreements, board duties and governance, and selected administrative activities.[115] The audit disclosed the following findings:

- Space Florida Board committee meetings were not always held in accordance with committee charter requirements.
- Certain Space Florida entertainment and travel expenses did not appear to be clearly necessary or reasonable to the performance of Space Florida's statutory duties or commensurate with the entertainment and travel expenses authorized by State law.
- Space Florida did not comply with certain requirements of State law regarding public deposits.
- Space Florida contracted with a service organization to provide information technology (IT) services. However, Space Florida did not take steps to reasonably ensure that service organization controls relevant to the IT services performed on behalf of Space Florida were suitably designed and operating effectively.
- Space Florida policies and procedures did not adequately promote the retention of records related to the sanitization and disposition of surplus computer hard drives.
- Security controls over mobile device utilization need improvement to ensure the confidentiality, integrity, and availability of Space Florida data and IT resources.
- Space Florida records did not evidence that network user access privileges were timely disabled for former employees.

The audit also provided recommendations on ways to address each of these findings. Space Florida responded to the audit by submitting to the Auditor General written statements explaining each of the findings and a plan for correcting or improving the findings.[116]

In 2022, the General Appropriations Act implementing bill amended the travel and entertainment provisions in the Space Florida Act to limit Space Florida's expenditures on entertainment and lodging, and require Space Florida to submit additional information in its annual report relating to itemized expenses and information related to corrective actions taken by Space Florida to address the findings in the audit. These requirements are temporary and are set to expire July 1, 2023.

[111] S. 216.241, F.S.
[112] S. 1003.03, F.S.
[113] S. 216.262(1)(a), F.S.
[114] S. 216.177, F.S.
[115] State of Florida Auditor General, *SPACE FLORIDA Board Duties and Governance and Selected Administrative Activities*, https://flauditor.gov/pages/pdf_files/2022-049.pdf (last visited Mar. 1, 2023).
[116] *Id.*

DEO Annual Report

DEO is tasked with assisting the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.[117] DEO must also ensure that the state's goals and policies relating to economic development, workforce development, community planning and development, and affordable housing are fully integrated with appropriate implementation strategies.[118]

The Secretary of DEO is required to serve as the manager for the state with respect to contracts with EFI and all applicable direct-support organizations. Such contracts may be for multiyear terms and must include specific performance measures for each year.[119]

DEO, with assistance from EFI is required to, by November 1 of each year, submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state.
The report must:[120]

- Include the identification of problems and a prioritized list of recommendations; and
- Incorporate annual reports of other programs, including:
    - Information provided by the Department of Revenue (DOR).
    - Information provided by enterprise zone development agencies and an analysis of the activities and accomplishments of each enterprise zone.
    - The Economic Gardening Business Loan Pilot Program and the Economic Gardening Technical Assistance Pilot Program.
    - A detailed report of the performance of the Black Business Loan Program and a cumulative summary of the quarterly report data.
    - The Rural Economic Development Initiative.
    - The Florida Unique Abilities Partner Program.
    - A detailed report of the performance of the Florida Development Finance Corporation and a summary of the corporation's annual report.

Economic Development Programs Evaluation

As directed by the Legislature, the Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Office of Economic and Demographic Research (EDR) are required to complete detailed analyses of state economic development programs (analysis) beginning on a certain date and every three years thereafter. OPPAGA evaluates each program for its effectiveness and value to the state's taxpayers. EDR evaluates and determines the economic benefits and return-on-investment of each program.[121]

Currently, the analysis includes more than 18 economic development programs, including, but not limited to:

- The Quick Action Closing Fund.[122]
- Enterprise Zone Program incentives.[123]
- The New Markets Development Program.[124]
- VISIT Florida and its programs.[125]

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[117] S. 20.60(4), F.S.
[118] OPPAGA, *Program Summary: Department of Economic Opportunity*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=6101 (last visited Mar. 11, 2021).
[119] S. 20.60(9), F.S.
[120] S. 20.60(10), F.S.
[121] S. 288.0001, F.S.
[122] S. 288.1088, F.S.
[123] Ss. 212.08(5) and (15), 212.096, 220.181, and 220.182, F.S.
[124] Ss. 288.991-288.9922, F.S.
[125] Ss. 288.122, 288.1226, 288.12265, and 288.124, F.S.

- The Florida Sports Foundation and related programs.[126]
- The qualified defense contractor and space flight business tax refund program.[127]
- The tax exemption for semiconductor, defense, or space technology sales.[128]
- The Military Base Protection Program.[129]

Effect of Proposed Changes

The bill revises provisions governing Space Florida to increase collaboration with public and private stakeholders regarding spaceport activities, enhance transparency measures regarding spaceport projects, and separate the Space Florida Board from EFI.

The bill includes Space Florida and the Space Florida Act to the list of entities and laws over which DEO has contract authority, and requires DEO's annual report to incorporate annual report information provided by Space Florida under s. 331.3051, F.S., and an analysis of the activities and accomplishments of Space Florida.

The bill includes Space Florida among the list of economic development programs scheduled to be reviewed and analyzed by EDR and OPPAGA, beginning January 1, 2024, and every three years thereafter.

The bill expands the definition of "aerospace" to include:
- Technology intended to be used or designed for flight or re-entry.
- Aircraft facilities.
- Space-based platforms.

The bill expands the definition of "landing area" to include:
- Areas within spaceport territory that are designated by an appropriate body.
- Areas within the spaceport territory that are intended for controlling, assisting, flying, navigating, piloting, maintenance, or construction of any aerospace vehicle or craft.

The bill requires Space Florida to solicit input from NASA, the DOD, and other political subdivisions that own facilities within spaceport territory as Space Florida develops the spaceport master plan.

The bill requires Space Florida to work with DEO, instead of EFI, as follows:
- Enter into agreement with DEO to implement the Space Florida Act.
- Cooperate with DEO to develop a plan to retain, expand, attract, and create aerospace industry entities, public or private, which results in the creation of high-value-added businesses and jobs in this state.
- Develop a plan with DEO to provide financing assistance to aerospace businesses.

The bill requires Space Florida to carry out its responsibilities for spaceport operations by consulting regularly with the appropriate federal, state, and local authorities on all aspects of establishing and operating spaceport infrastructure and related aerospace facilities within the state.

The bill requires Space Florida to conduct the following collaborative measures:
- Solicit input regularly on Space Florida plans and activities from the aerospace industry, private sector spaceport territory stakeholders, each entity that owns or has ownership interest in a facility within spaceport territory, and other political subdivisions within spaceport territory.
- Partner with the Board of Governors to foster technological advancement and economic development for spaceport activities by strengthening higher education programs and supporting aerospace activities.

[126] Ss. 288.1162, 288.11621, 288.1166, 288.1167, 288.1168, 288.1169, and 288.1171, F.S.
[127] S. 288.1045, F.S.
[128] S. 212.08(5)(j), F.S.
[129] S. 288.980, F.S.

- Partner with the Division of Workforce Services (DWS), CSF, and local workforce development boards to support initiatives that address the high technology skills and staff resources needed to better promote the state's efforts in becoming the nation's leader in aerospace and space exploration.
- Partner with the Metropolitan Planning Organization Advisory Council to coordinate and specify how aerospace planning and programming will be part of the state's cooperative transportation planning process.

The bill also requires Space Florida, before October 1 of each year, to submit to DEO, for inclusion in DEO's annual report, a complete and detailed written report setting forth:

- Its operations and accomplishments during the fiscal year.
- Accomplishments and progress concerning the implementation of the spaceport master plan and other measurable goals, and any updates to such plan and measurable goals.
- Any other information required by DEO.

The bill requires Space Florida's annual report to include certain information, including data on the economic impact of the aerospace industry in the state during the previous year, and:

- The amount and sources of capital investment.
- The number of jobs created and retained.
- Annualized average wages, listed by geographic areas within the state as specified by the Space Florida Board.

The bill revises the Space Florida Board as follows:

- Separates the Space Florida Board entirely from the EFI board.
- Creates an independent Space Florida Board that includes the Governor, who serves ex officio, or who may appoint a designee to serve, as the chair and a voting member of the Space Florida Board, and the following appointed members:
    - The Secretary of Transportation or his or her designee.
    - Five members appointed by the Governor who must have five years of experience in at least one of the following areas:
        - The aerospace industry, but not currently employed by an entity that is under contract with Space Florida,.
        - An employee or official of a port district or port authority as defined in s. 315.02(2).
        - Bond financing.
        - Academic experience in aerospace, aviation, or a relevant science.
        - As an aircraft facilities manager, a fixed-based operator, or a commercial airport operator.
    - A representative of each of the following entities, who will serve as an ex officio, nonvoting member of the Space Florida Board, appointed by the Governor:
        - Jacksonville Aviation Authority.
        - Titusville-Cocoa Airport Authority.

Appointed members are to serve four year staggered terms.

The bill also specifies the following requirements related to the Space Florida Board membership:

- Initial appointments must be made by October 1, 2023.
- Terms end on September 30.
- Any member is eligible for reappointment, except that a member may not serve more than two 4-year terms.
- Vacancies must be filled for the remainder of the unexpired term in the same manner as the original appointment.
- Appointed members may be removed by the appointing official for cause.
- Absence from three consecutive meetings is cause for removal.
- Space Florida Board members serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses pursuant to requirements for per diem and

travel expenses of public officers and employees. Such expenses must be paid out of the funds of Space Florida.
- The Space Florida Board must meet at least quarterly, upon the call of the chairperson, or at the request of a majority of the membership.
- A majority of the total number of current voting members constitutes a quorum.
- Official action requires a majority vote of the members present at any meeting at which a quorum is present.
- Meetings may be held via teleconference or other electronic means.
- The Space Florida Board must conduct education for newly appointed Space Florida Board members as provided by DEO in accordance with the Uniform Special District Accountability Act.
- Space Florida may not endorse any candidate for elected public office or contribute moneys to the campaign of any such candidate.

The bill makes the following travel and entertainment provisions permanent by removing the July 1, 2023 sunset date:
- Limits Space Florida's expenditures on entertainment and lodging; and
- Requires Space Florida to submit additional information in its annual report relating to itemized expenses.

The bill extends the July 1, 2023 sunset date to July 1, 2024, for the requirement that information related to corrective actions taken by Space Florida that address the findings in Auditor General Report No. 2022-049 be included in the Space Florida annual report.

The bill revises Space Florida's authority to construct, develop, create, and maintain facilities and services within spaceport territory to:
- Additionally allow Space Florida to own, acquire, equip, extend, improve, and reconstruct its projects within the geographical limits of the spaceport territory;
- Allow Space Florida to maintain such facilities; and
- Specify that this authority includes spaceport territory located inside the boundaries of any political subdivision.

The bill revises Space Florida's power with respect to roads as follows:
- Before proceeding with a proposed project or work activity that is owned by another agency or jurisdiction, Space Florida is required to consult with the agency or jurisdiction that owns the road.
- Requires Space Florida to advise DOT of any determination Space Florida makes to construct or maintain a road or bridge within its territory.
- Requires Space Florida to provide DOT with complete copies of all documents, agreements, resolutions, contracts, and instruments relating thereto; and, if necessary, request DOT to conduct such construction or maintenance work, including the acquisition of necessary rights-of-way, planning, surveying, and actual construction of the project.
- Requires Space Florida to transfer to DOT any funds provided for such construction or maintenance.
- Authorizes DOT to proceed with such construction or maintenance and to use such funds for such work in the same manner that DOT is authorized to use the funds otherwise provided by law for use in construction of roads and bridges.

The bill revises provisions related to Space Florida contracts, as follows:
- Subjects proposed Space Florida contracts with a total cost of $10 million or more to the notice and review procedures of legislative appropriations planning and budgeting.
- Specifies that if the chair and vice chair of the Legislative Budget Commission or the President of the Senate and the Speaker of the House of Representatives timely advise Space Florida in writing that such proposed contract is contrary to legislative policy and intent, Space Florida is prohibited from executing such proposed contract.

- Prohibits Space Florida from entering into multiple related contracts to avoid the requirements of this subsection.

The bill requires Space Florida and the Space Florida Board to take the following steps to ensure that contracted service organizations that provide services to Space Florida are operating effectively:

- Requires Space Florida, after execution of a contract with a service organization, to make and obtain independent and periodic assessments of the effectiveness of the executed contract document, the service organization, and any other providers relevant to the contract, to ensure that adequate internal controls are in place for complying with the terms and conditions of the contract, for the validation and receipt of goods and services, and to determine that the contracted service is cost effective and meets Space Florida's requirements and goals.
- Requires Space Florida to submit a final assessment report to the Space Florida Board and the Secretary of DEO or his or her designee.
- Requires the Space Florida Board, within 30 days after receipt of the final assessment report, to submit to DEO a written statement of explanation or rebuttal concerning findings requiring corrective action, including corrective action to be taken to preclude a recurrence.
- Requires Space Florida, beginning October 1, 2023, and every three years thereafter, to complete a risk-based compliance assessment of all internal contracts executed by Space Florida for the preceding three fiscal years, which must include steps to reasonably ensure that contracted service organizations' controls relevant to services provided are suitably designed and operating effectively.
    - The assessment findings must be submitted to the Space Florida Board, the Secretary of DEO or his or her designee, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill specifies that the provisions of this act shall control if the provisions conflict with the provisions of another act.

B. SECTION DIRECTORY:

Section 1: amends s. 20.60, F.S., relating to DEO; creation; powers and duties.

Section 2: amends s. 288.0001, F.S., relating to economic development programs evaluation.

Section 3: amends s. 331.303, F.S., making changes to definitions.

Section 4: amends s. 331.305, F.S., revising the powers of Space Florida.

Section 5: amends s. 331.3051, F.S., relating to the duties of Space Florida.

Section 6: amends s. 331.3081, F.S., revising the Space Florida Board.

Section 7: amends s. 331.310, F.S., revising the powers and duties of the Space Florida Board.

Section 8: amends s. 331.3101, F.S., revising provisions related to Space Florida travel and entertainment expenses.

Section 9: amends s. 331.312, F.S., revising provisions related to furnishing facilities and services within the spaceport territory.

Section 10: amends s. 331.313, F.S., revising provisions related to the power of Space Florida with respect to roads.

Section 11: amends s. 331.324, F.S., revising provisions related to Space Florida contracts, grants, and contributions.

Section 12: amends s. 331.360, F.S., revising provisions relating to the Space Florida spaceport master plan.

Section 13: provides the provisions of the act shall control to the extent of certain conflicts.

Section 14: 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:

The provisions in the bill may allow Space Florida to operate more transparently and efficiently internally and with its partners and surrounding communities, which may result in a positive fiscal impact to state and local government, and the private sector.

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:

Current law gives the Space Florida Board sufficient rulemaking authority to carry out the purposes of the Space Florida Act.[130]

[130] S. 331.310(1)(j), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Space Florida; amending s. 20.60, F.S.; requiring the Secretary of Economic Opportunity to serve as the manager for the state with respect to contracts with Space Florida; requiring a certain report by the Department of Economic Opportunity to include an annual report on Space Florida; amending s. 288.0001, F.S.; requiring the Office of Economic and Demographic Research and the Office of Program Policy and Government Accountability to provide to the Governor and the Legislature an analysis of Space Florida by a date certain and thereafter at certain intervals; amending s. 331.303, F.S.; revising definitions; amending s. 331.305, F.S.; making a technical change; amending s. 331.3051, F.S.; revising the duties of Space Florida; amending s. 331.3081, F.S.; revising membership of the board of directors of Space Florida; providing for staggered terms, appointments, filling of vacancies, removal of members, and meetings of the board; providing that members serve without compensation but may receive reimbursement for per diem and travel expenses; requiring the board to conduct certain education for new board members; prohibiting Space Florida from endorsing a candidate or contributing moneys to a

campaign; amending s. 331.310, F.S.; conforming a cross-reference; amending s. 331.3101, F.S.; requiring the annual report of Space Florida to include certain information; prohibiting Space Florida from expending funds on certain expenses; providing that certain expenses may not exceed a certain amount; revising the scheduled expiration of provisions requiring certain information in an annual report; abrogating the scheduled expiration of provisions relating to the expenditure of certain funds; amending s. 331.312, F.S.; providing Space Florida with certain authority; amending s. 331.313, F.S.; requiring Space Florida to consult with certain agencies and jurisdictions; requiring Space Florida to advise the Department of Transportation of certain determinations and take certain actions relating to certain construction projects; amending s. 331.324, F.S.; providing that certain contracts are subject to review by the Legislative Budget Commission; requiring Space Florida to make and obtain certain assessments; requiring the submission of a final assessment report to certain persons; requiring the board of directors to submit a certain statement to the Department of Economic Opportunity; requiring Space Florida to complete a certain assessment at certain intervals beginning on a

certain date; amending s. 331.360, F.S.; requiring Space Florida to solicit input from certain entities to develop the spaceport master plan; providing that the provisions of this act shall control to the extent of certain conflicts; providing an effective date.

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

Section 1. Paragraph (b) of subsection (9) and paragraph (b) of subsection (10) of section 20.60, Florida Statutes, are amended to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(9) The secretary shall:

(b) Serve as the manager for the state with respect to contracts with Space Florida, Enterprise Florida, Inc., and all applicable direct-support organizations. To accomplish the provisions of this section and applicable provisions of chapters ~~chapter~~ 288 and 331, and notwithstanding the provisions of part I of chapter 287, the secretary shall enter into specific contracts with Space Florida, Enterprise Florida, Inc., and other appropriate direct-support organizations. Such contracts may be for multiyear terms and must include specific performance measures for each year. For purposes of this section, the Florida Tourism Industry Marketing Corporation and the Institute

for Commercialization of Florida Technology are not appropriate direct-support organizations.

(10) The department, with assistance from Enterprise Florida, Inc., shall, by November 1 of each year, submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state.

(b) The report must incorporate annual reports of other programs, including:

1. Information provided by the Department of Revenue under s. 290.014.

2. Information provided by enterprise zone development agencies under s. 290.0056 and an analysis of the activities and accomplishments of each enterprise zone.

3. The Economic Gardening Business Loan Pilot Program established under s. 288.1081 and the Economic Gardening Technical Assistance Pilot Program established under s. 288.1082.

4. A detailed report of the performance of the Black Business Loan Program and a cumulative summary of quarterly report data required under s. 288.714.

5. The Rural Economic Development Initiative established under s. 288.0656.

6. The Florida Unique Abilities Partner Program.

7. A detailed report of the performance of the Florida

Development Finance Corporation and a summary of the corporation's report required under s. 288.9610.

8. Information provided by Space Florida under s. 331.3051 and an analysis of the activities and accomplishments of Space Florida.

Section 2. Paragraph (e) is added to subsection (2) of section 288.0001, Florida Statutes, 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:

(e) By January 1, 2024, and every 3 years thereafter, an analysis of Space Florida established under part II of chapter 331.

Section 3. Subsections (1) and (9) of section 331.303, Florida Statutes, are amended to read:

331.303 Definitions.—

(1) "Aerospace" means the technology and industry related to the design, manufacture, maintenance, repair, and operation

of aircraft or any other device intended to be used or designed for flight or reentry, including ~~that designs and manufactures aircraft,~~ rockets, missiles, spacecraft, satellites, space vehicles, space stations, space and aircraft facilities or components thereof, and related equipment, systems, facilities, simulators, programs, and ~~related~~ activities, including, but not limited to, the application of aerospace and aviation technologies in air-based, land-based, space-based, and sea-based platforms for commercial, civil, and defense purposes.

(9) "Landing area" means the geographical area designated by Space Florida or another appropriate body within the spaceport territory for or intended for the landing, controlling, assisting, flying, navigating, piloting, maintenance, construction, and surface maneuvering of any launch or other space vehicle or aerospace technology or craft.

Section 4. Subsection (13) of section 331.305, Florida Statutes, is amended to read:

331.305 Powers of Space Florida.—Space Florida may:

(13) Own, acquire, construct, reconstruct, equip, operate, maintain, extend, or improve electric power plants, transmission lines and related facilities, gas mains and facilities of any nature for the production or distribution of natural gas, transmission lines and related facilities and plants and facilities for the generation and transmission of power through traditional and new and experimental sources of power and

energy; purchase electric power, natural gas, and other sources of power for distribution within any spaceport territory; develop and operate water and sewer systems and waste collection and disposal consistent with chapter 88-130, Laws of Florida; and develop and operate such new and experimental public utilities, including, but not limited to, centrally distributed heating and air-conditioning facilities and services, closed-circuit television systems, and computer services and facilities, as the board may from time to time determine. However, Space Florida may not construct any system, work, project, or utility authorized to be constructed under this subsection ~~paragraph~~ in the event that a system, work, project, or utility of a similar character is being actually operated by a municipality or private company in the municipality or territory adjacent thereto, unless such municipality or private company consents to such construction.

Section 5. Subsection (11) of section 331.3051, Florida Statutes, is renumbered as subsection (16), subsections (2), (3), and (6), paragraph (e) of subsection (7), and present subsection (11) are amended, and a new subsection (11) and subsections (12) through (15) are added to that section, to read:

331.3051 Duties of Space Florida.—Space Florida shall:

(2) Enter into agreement with the Department of Education, the Department of Transportation, the Department of Economic

Opportunity ~~Enterprise Florida, Inc.~~, and CareerSource Florida, Inc., for the purpose of implementing this act.

(3) In cooperation with the Department of Economic Opportunity ~~Enterprise Florida, Inc.~~, develop a plan to retain, expand, attract, and create aerospace industry entities, public or private, which results in the creation of high-value-added businesses and jobs in this state.

(6) Develop, in cooperation with the Department of Economic Opportunity ~~Enterprise Florida, Inc.~~, a plan to provide financing assistance to aerospace businesses. The plan may include the following activities:

(a) Assembling, publishing, and disseminating information concerning financing opportunities and techniques for aerospace projects, programs, and activities; sources of public and private aerospace financing assistance; and sources of aerospace-related financing.

(b) Organizing, hosting, and participating in seminars and other forums designed to disseminate information and technical assistance regarding aerospace-related financing.

(c) Coordinating with programs and goals of the Department of Defense, the National Aeronautics and Space Administration, the Export-Import Bank of the United States, the International Trade Administration of the United States Department of Commerce, the Foreign Credit Insurance Association, and other private and public programs and organizations, domestic and

foreign.

(d) Establishing a network of contacts among those domestic and foreign public and private organizations that provide information, technical assistance, and financial support to the aerospace industry.

(e) Financing aerospace business development projects or initiatives using funds provided by the Legislature.

(7) Carry out its responsibilities for spaceport operations by:

(e) Consulting regularly~~, as necessary,~~ with the appropriate federal, state, and local authorities, including the National Aeronautics and Space Administration, the Federal Aviation Administration, the Department of Defense, the Department of Transportation, the Florida National Guard, and industry on all aspects of establishing and operating spaceport infrastructure and related aerospace facilities within the state.

(11) Regularly solicit input on Space Florida plans and activities from the aerospace industry, private sector spaceport territory stakeholders, each entity that owns or has ownership interest in a facility within spaceport territory, and other political subdivisions within spaceport territory.

(12) Partner with the Board of Governors to foster technological advancement and economic development for spaceport activities by strengthening higher education programs and

supporting aerospace activities.

(13) Partner with the Division of Workforce Services of the Department of Economic Opportunity, CareerSource Florida, Inc., and local workforce development boards to support initiatives that address the high technology skills and staff resources needed to better promote the state's efforts in becoming the nation's leader in aerospace and space exploration.

(14) Partner with the Metropolitan Planning Organization Advisory Council to coordinate and specify how aerospace planning and programming will be part of the state's cooperative transportation planning process.

(15) By October 1, 2023, and each year thereafter, submit to the Department of Economic Opportunity for inclusion in the annual report required under s. 20.60 a complete and detailed written report setting forth:

(a) Its operations and accomplishments during the fiscal year.

(b) Accomplishments and progress concerning the implementation of the spaceport master plan and other measurable goals, and any updates to such plan and measurable goals.

(c) Any other information required by the Department of Economic Opportunity.

(16)(a) ~~(11)~~ In addition to the reporting requirements in chapter 189, annually report on its performance with respect to its business plan, to include finance, spaceport operations,

research and development, workforce development, and education.

(b) Space Florida shall submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 30 for the previous fiscal year.

(c) The annual report must include operations information as required under s. 331.310(2)(e) and data on the economic impact of the aerospace industry in the state during the previous year, including, but not limited to, the amount and sources of capital investment, the number of jobs created and retained, and annualized average wages, listed by geographic areas within the state as specified by the board.

Section 6. Section 331.3081, Florida Statutes, is amended to read:

331.3081 Board of directors.—

(1) Space Florida shall be governed by an ~~a 13-member~~ independent board of directors that consists of the Governor, who shall serve ex officio, or who may appoint a designee to serve, as the chair and a voting member of the board, and the following appointed members:

(a) The Secretary of Transportation or his or her designee.

(b) Five members appointed by the Governor who must each have at least 5 years of experience in at least one of the following areas:

1. The aerospace industry. Such member may not be

currently employed by an entity that is under contract with Space Florida.

2. An employee or official of a port district or port authority as defined in s. 315.02(2).

3. Bond financing.

4. Academic experience in aerospace, aviation, or a relevant science.

5. An aircraft facilities manager, a fixed-based operator, or a commercial airport operator.

(c) One member appointed by the President of the Senate, who has at least 5 years of experience as provided in paragraph (b).

(d) One member appointed by the Speaker of the House of Representatives, who has at least 5 years of experience as provided in paragraph (b).

(e) A representative of each of the following entities, who shall serve as an ex officio, nonvoting member of the board, appointed by the Governor:

1. The Jacksonville Aviation Authority.

2. The Titusville-Cocoa Airport Authority.

(2)(a) Appointed members shall serve 4-year terms, except that initially, to provide for staggered terms, the Governor shall appoint two members to serve 2-year terms and two members to serve 3-year terms. All subsequent appointments shall be for 4-year terms.

(b) Initial appointments must be made by October 1, 2023. Terms end on September 30.

(c) Any member is eligible for reappointment, except that a member may not serve more than two 4-year terms.

(d) A vacancy on the board of directors shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(e) Appointed members may be removed by the appointing official for cause. Absence from three consecutive meetings is cause for removal.

(3) Board members shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061. Such expenses must be paid out of funds of Space Florida.

(4)(a) The board of directors shall meet at least quarterly, upon the call of the chairperson, or at the request of a majority of the membership.

(b) A majority of the total number of current voting members shall constitute a quorum. The board of directors may take official action by a majority vote of the members present at any meeting at which a quorum is present.

(c) Meetings may be held via teleconference or other electronic means.

(5) The board shall conduct education for newly appointed board members as provided by the Department of Economic

Opportunity in accordance with s. 189.063.

(6) Space Florida may not endorse any candidate for elected public office or contribute moneys to the campaign of any such candidate ~~the members appointed to the board of directors of Enterprise Florida, Inc., by the Governor, the President of the Senate, and the Speaker of the House of Representatives pursuant to s. 288.901(5)(a)8. and the Governor, who shall serve ex officio, or who may appoint a designee to serve, as the chair and a voting member of the board~~.

Section 7. Paragraph (e) of subsection (2) of section 331.310, Florida Statutes, is amended to read:

331.310 Powers and duties of the board of directors.—

(2) The board of directors shall:

(e) Prepare an annual report of operations as a supplement to the annual report required under s. 331.3051(16) ~~s. 331.3051(11)~~. The report must include, but not be limited to, a balance sheet, an income statement, a statement of changes in financial position, a reconciliation of changes in equity accounts, a summary of significant accounting principles, the auditor's report, a summary of the status of existing and proposed bonding projects, comments from management about the year's business, and prospects for the next year.

Section 8. Subsections (5) and (6) of section 331.3101, Florida Statutes, are amended to read:

331.3101 Space Florida; travel and entertainment

expenses.—

(5) In addition to the requirements set forth for the annual report under subsection (3), the ~~2022~~ annual report by Space Florida must also:

(a) Provide an itemized accounting, by date of travel, of all travel, entertainment, and incidental expenses incurred;

(b) To the extent such expenses exceed the generally allowable expense limits under s. 112.061, provide reasons behind the need to exceed the statutory expense limits in s. 112.061;

(c) Categorize expenses for Space Florida board members, staff, employees, and business clients. The report must also set forth any expenses authorized by the board or its designee for a guest; and

(d) Include information related to corrective actions and steps taken by Space Florida to address the findings in Auditor General Report No. 2022-049. <u>This paragraph expires July 1, 2024.</u>

~~This subsection expires July 1, 2023.~~

(6) Notwithstanding the provisions of this section, travel and entertainment expenses incurred by Space Florida may only be for expenses that are solely and exclusively incurred in connection with the performance of its statutory duties and made in accordance with this subsection.

(a) ~~For the 2022-2023 fiscal year,~~ Space Florida may not expend any funds, whether appropriated by the Legislature or from income earned by Space Florida, on travel and entertainment expenses for the fiscal year in excess of an amount equal to 4 percent of the amount appropriated to Space Florida in the General Appropriations Act. No funds may be expended on any recreational activities for any Space Florida board member, staff, employee, business client, or guest.

(b) ~~For the 2022-2023 fiscal year,~~ Lodging expenses for a board member, staff, or employee of Space Florida may not exceed $150 per day, excluding taxes, unless Space Florida is participating in a negotiated group rate discount or Space Florida provides documentation of at least three comparable alternatives demonstrating that such lodging at the required rate is not available. However, a board member, staff, or employee of Space Florida may expend his or her own funds for any lodging expenses in excess of $150 per day.

~~(c) This subsection expires July 1, 2023.~~

Section 9. Section 331.312, Florida Statutes, is amended to read:

331.312 Furnishing facilities and services within the spaceport territory.—Space Florida may own, acquire, construct, develop, create, maintain, equip, extend, improve, reconstruct, and operate its projects within the geographical limits of the spaceport territory, including any portions of the spaceport

territory located inside the boundaries of any ~~incorporated municipality or other~~ political subdivision, and offer, supply, maintain, and furnish the facilities and services provided for in this act to, and establish and collect fees, rentals, and other charges from, persons, public or private, within the geographical limits of the spaceport territory and for the use of Space Florida itself.

Section 10. Section 331.313, Florida Statutes, is amended to read:

331.313 Power of Space Florida with respect to roads.—

(1) Within the territorial limits of any spaceport territory, Space Florida may acquire, through purchase or interagency agreement, or as otherwise provided in law, and construct, control, and maintain, roads deemed necessary by Space Florida and connections thereto and extensions thereof now or hereafter acquired, constructed, or maintained in accordance with established highway safety standards. However~~; provided that~~, in the event a road being addressed by Space Florida is owned by another agency or jurisdiction, Space Florida, before proceeding with the proposed project or work activity, must consult with ~~shall have either coordinated the desired work with~~ the ~~owning~~ agency or jurisdiction that owns the road ~~or shall have successfully executed an interagency agreement with the owning agency or jurisdiction~~.

(2) Space Florida shall advise the Department of

Transportation of any determination Space Florida makes to construct or maintain a road or bridge within its territory; provide the department with complete copies of all documents, agreements, resolutions, contracts, and instruments relating thereto; and, if necessary, request the department to conduct such construction or maintenance work, including the acquisition of necessary rights-of-way, planning, surveying, and actual construction of the project. Space Florida shall transfer to the department any funds provided for such construction or maintenance. The department is authorized to proceed with such construction or maintenance and to use such funds for such work in the same manner that the department is authorized to use the funds otherwise provided by law for use in construction of roads and bridges.

Section 11. Section 331.324, Florida Statutes, is amended to read:

331.324 Contracts, grants, and contributions.—

(1) Space Florida may make and enter all contracts and agreements necessary or incidental to the performance of the functions of Space Florida and the execution of its powers, and contract with, and accept and receive grants or loans of money, material, or property from, any person, private or public, as the board shall determine to be necessary or desirable to carry out the purposes of this act, and, in connection with any such contract, grant, or loan, stipulate and agree to such covenants,

terms, and conditions as the board shall deem appropriate.

(2) A proposed contract with a total cost of $10 million or more is subject to the notice and review procedures of s. 216.177. If the chair and vice chair of the Legislative Budget Commission or the President of the Senate and the Speaker of the House of Representatives timely advises Space Florida in writing that such proposed contract is contrary to legislative policy and intent, Space Florida may not execute the contract. Space Florida may not enter into multiple related contracts to avoid the requirements of this subsection.

(3)(a) After execution of a contract with a service organization, Space Florida shall make and obtain independent and periodic assessments of the effectiveness of the executed contract document, the service organization, and any other providers relevant to the contract, to ensure that adequate internal controls are in place for complying with the terms and conditions of the contract, for the validation and receipt of goods and services, and to determine that the contracted service is cost effective and meets Space Florida's requirements and goals.

(b) A final assessment report shall be submitted to the Space Florida board of directors and the Secretary of Economic Opportunity or his or her designee. Within 30 days after receipt of the final assessment report, the board shall submit to the Department of Economic Opportunity a written statement of

explanation or rebuttal concerning findings requiring corrective action, including corrective action to be taken to preclude a recurrence.

(c) Beginning October 1, 2023, and every 3 years thereafter, Space Florida shall complete a risk-based compliance assessment of all internal contracts executed by Space Florida for the preceding 3 fiscal years. The assessment must include steps to reasonably ensure that contracted service organizations' controls relevant to services provided are suitably designed and operating effectively. The assessment findings must be submitted to the board of directors, the Secretary of Economic Opportunity or his or her designee, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 12. Subsection (4) of section 331.360, Florida Statutes, is renumbered as subsection (5), subsection (3) is amended, and a new subsection (4) is added to that section, to read:

331.360 Joint participation agreement or assistance; spaceport master plan.—

(3) Space Florida shall develop a spaceport master plan for expansion and modernization of space transportation facilities within spaceport territories as defined in s. 331.303. The plan shall contain recommended projects to meet current and future commercial, national, and state space

transportation requirements. Space Florida shall submit the plan to any appropriate metropolitan planning organization for review of intermodal impacts. Space Florida shall submit the spaceport master plan to the Department of Transportation, and such plan may be included within the department's 5-year work program of qualifying aerospace discretionary capacity improvement under subsection (5) ~~(4)~~. The plan shall identify appropriate funding levels and include recommendations on appropriate sources of revenue that may be developed to contribute to the State Transportation Trust Fund.

(4) Space Florida shall solicit input from the National Aeronautics and Space Administration, the United States Department of Defense, and other political subdivisions that own facilities within spaceport territory as Space Florida develops the spaceport master plan.

Section 13. In the event of a conflict of any provision of this act with the provisions of any other act, the provisions of this act shall control to the extent of such conflict.

Section 14. This act shall take effect July 1, 2023.

COMMERCE COMMITTEE

HB 7041 by Rep. Sirois
Space Florida

AMENDMENT SUMMARY
April 10, 2023

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

- Removes the provision from the bill that requires Space Florida contracts over $10 million to be reviewed by the Legislative Budget Commission.
- Removes the provision from the bill that requires Space Florida to solicit input on its plans and activities from the aerospace industry.
- Allows the Department of Economic Opportunity (DEO) to submit a proposed operating budget on behalf of Space Florida, similar to DEO's current requirement for Enterprise Florida.
- Restructures the provision in the bill regarding Space Florida's board of directors to allow more options for appointments.
- Clarifies when audit requirements are applicable for contracts with service organizations.
- Clarifies the definition of "landing area."

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Sirois offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (9) and paragraph (b) of subsection (10) of section 20.60, Florida Statutes, are amended to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(9) The secretary shall:

(b) Serve as the manager for the state with respect to contracts with Space Florida, Enterprise Florida, Inc., and all applicable direct-support organizations. To accomplish the provisions of this section and applicable provisions of chapters ~~chapter~~ 288 and 331, and notwithstanding ~~the provisions of~~ part I of chapter 287, the secretary shall enter into specific

contracts with Space Florida, Enterprise Florida, Inc., and all applicable ~~other appropriate~~ direct-support organizations. Such contracts may be for multiyear terms and must include specific performance measures for each year. For purposes of this section, the Florida Tourism Industry Marketing Corporation and the Institute for Commercialization of Florida Technology are not appropriate direct-support organizations.

(10) The department, with assistance from Enterprise Florida, Inc., shall, by November 1 of each year, submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state.

(b) The report must incorporate annual reports of other programs, including:

1. Information provided by the Department of Revenue under s. 290.014.

2. Information provided by enterprise zone development agencies under s. 290.0056 and an analysis of the activities and accomplishments of each enterprise zone.

3. The Economic Gardening Business Loan Pilot Program established under s. 288.1081 and the Economic Gardening Technical Assistance Pilot Program established under s. 288.1082.

4. A detailed report of the performance of the Black Business Loan Program and a cumulative summary of quarterly report data required under s. 288.714.

5. The Rural Economic Development Initiative established under s. 288.0656.

6. The Florida Unique Abilities Partner Program.

7. A detailed report of the performance of the Florida Development Finance Corporation and a summary of the corporation's report required under s. 288.9610.

8. Information provided by Space Florida under s. 331.3051 and an analysis of the activities and accomplishments of Space Florida.

Section 2. Paragraph (a) 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:

(a) By January 1, 2014, and every 3 years thereafter, an analysis of the following:

1. The capital investment tax credit established under s. 220.191.

2. The qualified target industry tax refund established under s. 288.106.

3. The brownfield redevelopment bonus refund established under s. 288.107.

4. High-impact business performance grants established under s. 288.108.

5. The Quick Action Closing Fund established under s. 288.1088.

6. The Innovation Incentive Program established under s. 288.1089.

7. Enterprise Zone Program incentives established under ss. 212.08(5) and (15), 212.096, 220.181, and 220.182.

8. The New Markets Development Program established under ss. 288.991-288.9922.

9. Space Florida established under s. 331.302.

Section 3. Subsections (1) and (9) of section 331.303, Florida Statutes, are amended to read:

331.303 Definitions.—

(1) "Aerospace" means the technology and industry related to the design, manufacture, maintenance, repair, and operation of aircraft or any other device intended to be used or designed

for flight or reentry, including ~~that designs and manufactures aircraft,~~ rockets, missiles, spacecraft, satellites, space vehicles, space stations, space and aircraft facilities or components thereof, and related equipment, systems, facilities, simulators, programs, and ~~related~~ activities, including, but not limited to, the application of aerospace and aviation technologies in air-based, land-based, space-based, and sea-based platforms for commercial, civil, and defense purposes.

(9) "Landing area" means the geographical area designated by Space Florida, or another appropriate entity, within the spaceport territory, or another appropriate area, used for or intended to be used for the landing, controlling, assisting, flying, navigating, piloting, maintenance, construction, and surface maneuvering of any launch or other space vehicle or aerospace technology or craft.

Section 4. Subsection (13) of section 331.305, Florida Statutes, is amended to read:

331.305 Powers of Space Florida.—Space Florida may:

(13) Own, acquire, construct, reconstruct, equip, operate, maintain, extend, or improve electric power plants, transmission lines and related facilities, gas mains and facilities of any nature for the production or distribution of natural gas, transmission lines and related facilities and plants and facilities for the generation and transmission of power through traditional and new and experimental sources of power and

energy; purchase electric power, natural gas, and other sources of power for distribution within any spaceport territory; develop and operate water and sewer systems and waste collection and disposal consistent with chapter 88-130, Laws of Florida; and develop and operate such new and experimental public utilities, including, but not limited to, centrally distributed heating and air-conditioning facilities and services, closed-circuit television systems, and computer services and facilities, as the board may from time to time determine. However, Space Florida may not construct any system, work, project, or utility authorized to be constructed under this subsection ~~paragraph~~ in the event that a system, work, project, or utility of a similar character is being actually operated by a municipality or private company in the municipality or territory adjacent thereto, unless such municipality or private company consents to such construction.

Section 5. Subsection (11) of section 331.3051, Florida Statutes, is renumbered as subsection (14), subsections (2), (3), and (6), paragraph (e) of subsection (7), and present subsection (11) of that section are amended, and a new subsection (11) and subsections (12) and (13) are added to that section, to read:

331.3051 Duties of Space Florida.—Space Florida shall:

(2) Enter into agreement with the Department of Education, the Department of Transportation, the Department of Economic

Opportunity ~~Enterprise Florida, Inc.~~, and CareerSource Florida, Inc., for the purpose of implementing this act.

(3) In cooperation with the Department of Economic Opportunity ~~Enterprise Florida, Inc.~~, develop a plan to retain, expand, attract, and create aerospace industry entities, public or private, which results in the creation of high-value-added businesses and jobs in this state. By August 15 of each fiscal year, the Department of Economic Opportunity shall submit a proposed operating budget for Space Florida which includes amounts to be expended on incentives, advertising, events, other operating capital outlay, and salaries and benefits for each employee to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(6) Develop, in cooperation with the Department of Economic Opportunity ~~Enterprise Florida, Inc.~~, a plan to provide financing assistance to aerospace businesses. The plan may include the following activities:

(a) Assembling, publishing, and disseminating information concerning financing opportunities and techniques for aerospace projects, programs, and activities; sources of public and private aerospace financing assistance; and sources of aerospace-related financing.

(b) Organizing, hosting, and participating in seminars and other forums designed to disseminate information and technical assistance regarding aerospace-related financing.

(c) Coordinating with programs and goals of the Department of Defense, the National Aeronautics and Space Administration, the Export-Import Bank of the United States, the International Trade Administration of the United States Department of Commerce, the Foreign Credit Insurance Association, and other private and public programs and organizations, domestic and foreign.

(d) Establishing a network of contacts among those domestic and foreign public and private organizations that provide information, technical assistance, and financial support to the aerospace industry.

(e) Financing aerospace business development projects or initiatives using funds provided by the Legislature.

(7) Carry out its responsibilities for spaceport operations by:

(e) Consulting regularly~~, as necessary,~~ with the appropriate federal, state, and local authorities, including the National Aeronautics and Space Administration, the Federal Aviation Administration, the Department of Defense, the Department of Transportation, the Florida National Guard, and industry on all aspects of establishing and operating spaceport infrastructure and related aerospace facilities within the state.

(11) Partner with the Board of Governors to foster technological advancement and economic development for spaceport

activities by strengthening higher education programs and supporting aerospace activities.

(12) Partner with the Division of Workforce Services of the Department of Economic Opportunity, CareerSource Florida, Inc., and local workforce development boards to support initiatives that address the high technology skills and staff resources needed to better promote the state's efforts in becoming the nation's leader in aerospace and space exploration.

(13) Partner with the Metropolitan Planning Organization Advisory Council to coordinate and specify how aerospace planning and programming will be part of the state's cooperative transportation planning process.

(14)(a) ~~(11)~~ In addition to the reporting requirements in chapter 189, annually by October 1 report on its performance during the previous fiscal year with respect to its business plan, to include finance, spaceport operations, research and development, workforce development, and education. Space Florida shall submit the report to the Department of Economic Opportunity for inclusion in the annual report required under s. 20.60 ~~Governor, the President of the Senate, and the Speaker of the House of Representatives by November 30 for the previous fiscal year~~.

(b) The annual report must include:

1. Operations information as required under s. 331.310(2)(e).

2. Activities, accomplishments, and progress concerning the implementation of the spaceport master plan and other measurable goals, and any updates to such plan and measurable goals.

3. Data on the economic impact of the aerospace industry in this state during the previous year, including, but not limited to, the amount and sources of capital investment, the number of jobs created and retained, and annualized average wages, listed by geographic areas within this state as specified by the board.

4. Any other information required by the Department of Economic Opportunity.

(c) Space Florida shall provide a copy of the special district public facilities report required under s. 189.08 to Space Florida's property owners, project owners, and users.

Section 6. Section 331.3081, Florida Statutes, is amended to read:

331.3081 Board of directors; officers and employees of Space Florida.—

(1) Space Florida shall be governed by an ~~a 13-member~~ independent board of directors composed of ~~that consists of the members appointed to the board of directors of Enterprise Florida, Inc., by the Governor, the President of the Senate, and the Speaker of the House of Representatives pursuant to s. 288.901(5)(a)8. and~~ the Governor, who shall serve ex officio, or

who may appoint a designee to serve, as the chair and a voting member of the board, and the following appointed members:

(a) The Secretary of Transportation or his or her designee.

(b) Five members appointed by the Governor.

(c) One member appointed by the President of the Senate.

(d) One member appointed by the Speaker of the House of Representatives.

(e) Three representatives appointed by the Governor, who shall serve ex officio as nonvoting members of the board, one each from the following entities:

1. An airport authority with the capability for horizontal launches, such as the Jacksonville Aviation Authority or Titusville-Cocoa Airport Authority.

2. Operations or management of a port district or port authority, as defined in s. 315.02(2).

3. Operations or management of a spaceport territory, as identified in s. 331.304.

(2)(a) The appointing officials may only consider for appointment to the board individuals who have at least 5 years of experience in at least one of the following areas:

1. Bond financing;

2. Study of aerospace, aviation, or a relevant science within academia;

3. Management or operation of aircraft facilities, fixed-base operations, or commercial airport operations;

4. Management or finance of a technology or manufacturing startup business or international business; or

5. Experience advocating for the state's interests in the aerospace industry or representing the intent, duties, goals and purpose of Space Florida.

(b) Each appointee must be a resident of this state or have a business enterprise in this state.

(3) Appointed members shall serve 4-year terms, except that initially, to provide for staggered terms, the Governor shall appoint two members to serve 2-year terms and two members to serve 3-year terms. All subsequent appointments shall be for 4-year terms.

(4) Initial appointments must be made by October 1, 2023. Terms end on September 30 of the last year of the member's term.

(5) Any member is eligible for reappointment, except that a member may not serve more than two 4-year terms.

(6) A vacancy on the board of directors must be filled for the remainder of the unexpired term in the same manner as the original appointment.

(7) Appointed members may be removed by the appointing official for cause. Absence from three consecutive meetings is cause for removal.

(8) Board members shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061. Such expenses must be paid out of Space Florida funds.

(9)(a) The board of directors shall meet at least quarterly, upon the call of the chairperson, or at the request of a majority of the membership.

(b) A majority of the total number of current voting members constitutes a quorum. The board of directors may take official action by a majority vote of the members present at any meeting at which a quorum is present.

(c) Meetings may be held via teleconference or other electronic means.

(10) In addition to the requirements in chapter 189, open meeting and public records requirements of chapter 119 and s. 286.011 apply to Space Florida and its board of directors.

(11) The board shall conduct education programs for newly appointed board members as provided by the Department of Economic Opportunity in accordance with s. 189.063.

(12) Space Florida may not endorse any candidate for elected public office or contribute moneys to the campaign of any such candidate.

Section 7. Members appointed to the board of directors of Space Florida before July 1, 2023, may continue to serve on the board until October 1, 2023. All new appointments to the board

of directors as required in s. 331.3081, Florida Statutes, as amended by this act, shall take effect on October 1, 2023.

Section 8. Paragraphs (e) and (f) of subsection (2) of section 331.310, Florida Statutes, are amended to read:

331.310 Powers and duties of the board of directors.—

(2) The board of directors shall:

(e) Prepare an annual report of operations as a supplement to the annual report required under s. 331.3051(14) ~~s. 331.3051(11)~~. The report must include, but not be limited to, a balance sheet, an income statement, a statement of changes in financial position, a reconciliation of changes in equity accounts, a summary of significant accounting principles, the auditor's report, a summary of the status of existing and proposed bonding projects, comments from management about the year's business, and prospects for the next year.

(f) Establish a personnel management system and appropriate security controls, including access privileges and other measures to protect the confidentiality, integrity, and availability of data and resources.

Section 9. Subsections (5) and (6) of section 331.3101, Florida Statutes, are amended to read:

331.3101 Space Florida; travel and entertainment expenses.—

(5) In addition to the requirements set forth for the annual report under subsection (3), the 2022 annual report by Space Florida must also:

(a) Provide an itemized accounting, by date of travel, of all travel, entertainment, and incidental expenses incurred;

(b) To the extent such expenses exceed the generally allowable expense limits under s. 112.061, provide reasons behind the need to exceed the statutory expense limits in s. 112.061;

(c) Categorize expenses for Space Florida board members, staff, employees, and business clients. The report must also set forth any expenses authorized by the board or its designee for a guest; and

(d) Include information related to corrective actions and steps taken by Space Florida to address the findings in Auditor General Report No. 2022-049. This paragraph expires July 1, 2024 ~~This subsection expires July 1, 2023~~.

(6) Notwithstanding the provisions of this section, travel and entertainment expenses incurred by Space Florida may only be for expenses that are solely and exclusively incurred in connection with the performance of its statutory duties and made in accordance with this subsection.

(a) ~~For the 2022-2023 fiscal year,~~ Space Florida may not expend any funds, whether appropriated by the Legislature or from income earned by Space Florida, on travel and entertainment

expenses for the fiscal year in excess of an amount equal to 4 percent of the amount appropriated to Space Florida in the General Appropriations Act. No funds may be expended on any recreational activities for any Space Florida board member, staff, employee, business client, or guest.

(b) ~~For the 2022-2023 fiscal year,~~ Lodging expenses for a board member, staff, or employee of Space Florida may not exceed $150 per day, excluding taxes, unless Space Florida is participating in a negotiated group rate discount or Space Florida provides documentation of at least three comparable alternatives demonstrating that such lodging at the required rate is not available. However, a board member, staff, or employee of Space Florida may expend his or her own funds for any lodging expenses in excess of $150 per day.

~~(c) This subsection expires July 1, 2023.~~

Section 10. Section 331.312, Florida Statutes, is amended to read:

331.312 Furnishing facilities and services within the spaceport territory.—Space Florida may own, acquire, construct, develop, create, maintain, equip, extend, improve, reconstruct, and operate its projects within the geographical limits of the spaceport territory, including any portions of the spaceport territory located inside the boundaries of any ~~incorporated municipality or other~~ political subdivision, and offer, supply, maintain, and furnish the facilities and services provided for

in this act to, and establish and collect fees, rentals, and other charges from, persons, public or private, within the geographical limits of the spaceport territory and for the use of Space Florida itself.

Section 11. Section 331.313, Florida Statutes, is amended to read:

331.313 Power of Space Florida with respect to roads.—

(1) Within the territorial limits of any spaceport territory, Space Florida may acquire, through purchase or interagency agreement, or as otherwise provided in law, and construct, control, and maintain, roads deemed necessary by Space Florida and connections thereto and extensions thereof now or hereafter acquired, constructed, or maintained in accordance with established highway safety standards. However~~; provided that~~, in the event a road being addressed by Space Florida is owned by another agency or jurisdiction, Space Florida, before proceeding with the proposed project or work activity, must consult ~~shall have either coordinated the desired work~~ with the ~~owning~~ agency or jurisdiction that owns the road ~~or shall have successfully executed an interagency agreement with the owning agency or jurisdiction~~.

(2) Space Florida shall advise the Department of Transportation of any determination Space Florida makes to construct or maintain a road or bridge within its territory; provide the department with complete copies of all documents,

agreements, resolutions, contracts, and instruments relating to such construction or maintenance; and, if necessary, request the department to perform such construction or maintenance work, including the acquisition of necessary rights-of-way, planning, surveying, and actual construction of the project. Space Florida shall transfer to the Department of Transportation any funds provided for such construction or maintenance. The Department of Transportation is authorized to proceed with such construction or maintenance and to use funds for such work in the same manner that the department is authorized to use the funds otherwise provided by law for construction of roads and bridges.

Section 12. Section 331.324, Florida Statutes, is amended to read:

331.324 Contracts, grants, and contributions.—

(1) Space Florida may make and enter all contracts and agreements necessary or incidental to the performance of the functions of Space Florida and the execution of its powers, and contract with, and accept and receive grants or loans of money, material, or property from, any person, private or public, as the board shall determine to be necessary or desirable to carry out the purposes of this act, and, in connection with any such contract, grant, or loan, stipulate and agree to such covenants, terms, and conditions as the board shall deem appropriate.

(2)(a) A contract with a service organization for services which exceeds $250,000 and is for a period of 12 months or

longer must include provisions requiring an auditor report to provide periodic assessments of the effectiveness of the executed contract document, the service organization, and any other providers relevant to the contract, to ensure that the service organization maintains adequate internal controls to comply with the terms and conditions of the contract, to validate and receive goods and services, and to determine whether the contracted service is cost-effective and meets Space Florida's requirements and goals.

(b) Space Florida shall submit the auditor's final report to the Space Florida board of directors and the Secretary of Economic Opportunity or his or her designee. Within 30 days after receipt of the final report, the board shall submit to the Department of Economic Opportunity a written statement of explanation or rebuttal concerning findings requiring corrective action, including corrective action to be taken to preclude a recurrence of such findings.

Section 13. In the event of a conflict of any provision of this act with the provisions of any other act, this act shall control to the extent of such conflict.

Section 14. This act shall take effect July 1, 2023.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to Space Florida; amending s. 20.60, F.S.; requiring the Secretary of Economic Opportunity to serve as the manager for the state with respect to contracts with Space Florida; requiring that an annual report submitted by the Department of Economic Opportunity include specified information provided by Space Florida and a certain analysis; amending s. 288.0001, F.S.; requiring the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability to provide to the Governor and the Legislature an analysis of Space Florida; amending s. 331.303, F.S.; revising definitions; amending s. 331.305, F.S.; making a technical change; amending s. 331.3051, F.S.; revising the duties of Space Florida; requiring the Department of Economic Opportunity to annually submit a proposed operating budget by a specified date; requiring Space Florida to annually report on its performance by a specified date; amending s. 331.3081, F.S.; revising membership of the board of directors of Space Florida; providing for staggered terms, reappointments, filling of vacancies, and removal of members; providing that members serve without compensation but may receive reimbursement for per diem and travel expenses;

providing that open meeting and public records apply to Space Florida and its board of directors; requiring the board to conduct certain education programs for new board members; prohibiting Space Florida from endorsing a candidate for elected public office or contributing moneys to such candidate's campaign; specifying that certain members of the board may serve until a specified date; requiring that the appointments of certain board members take effect on a specified date; amending s. 331.310, F.S.; conforming a cross-reference; revising the powers and duties of the board of directors of Space Florida; amending s. 331.3101, F.S.; revising the scheduled expiration of provisions requiring certain information in an annual report; deleting the scheduled expiration of provisions relating to the expenditure of certain funds; amending s. 331.312, F.S.; expanding the authority Space Florida may exercise within certain geographical limits; amending s. 331.313, F.S.; requiring Space Florida to consult with certain agencies and jurisdictions regarding certain roads; requiring Space Florida to advise the Department of Transportation of certain determinations and take certain actions relating to certain construction projects; requiring Space Florida to transfer certain

funds to the Department of Transportation; authorizing the Department of Transportation to proceed with certain construction or maintenance in a certain manner; amending s. 331.324, F.S.; requiring that certain contracts include provisions requiring a auditor report to provide certain periodic assessments; requiring Space Florida to submit the auditor's final assessment report to specified entities; requiring the board of directors to submit a certain statement to the Department of Economic Opportunity within a specified timeframe; providing construction; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 23-03 Natural Emergencies
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS SB 250

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

The bill:

- Requires the Division of Emergency Management (DEM) to post on its website a model debris removal contract for the benefit of local governments.
- Encourages local governments to create emergency financial plans in preparation for major natural disasters.
- Provides that counties and municipalities cannot prohibit a resident from placing a temporary residential structure on their property for up to 36 months following a natural emergency under certain circumstances.
- Authorizes local governments to create specialized building inspection teams following a natural disaster and encourages interlocal agreements for additional building inspection services during a state of emergency.
- Requires local governments to expedite the issuance of permits following a natural disaster.
- Increases the extension of certain building permits following a declaration of a state of emergency from 6 to 24 months and caps such extension at 48 months in the event of multiple natural emergencies.
- Prohibits counties and municipalities within the disaster declaration for Hurricane Ian or Hurricane Nicole from increasing building fees until October 1, 2024.
- Allows registered contractors to engage in contracting for the types of work covered by their registration within areas for which a state of emergency has been declared.
- Prohibits counties and municipalities within the disaster declaration for Hurricane Ian or Hurricane Nicole from adopting more restrictive or burdensome procedures to its comprehensive plan or land development regulations concerning review, approval, or issuance of a site plan, development permit, or development order before October 1, 2024.
- Amends the Consultants' Competitive Negotiation Act to allow for additional disaster-related construction projects relating to Hurricane Ian to utilize the "continuing contracts" provision through December 31, 2023.
- Provides clarification regarding abandoned vessels and their destruction.
- Directs DEM to administer a revolving loan program for local government hazard mitigation projects, and appropriates $1,000,000 in nonrecurring funds from the General Revenue Fund and $10,000,000 in nonrecurring funds from the Federal Grants Trust Fund for such activity. Such funds will be held in reserve, contingent upon FEMA approval and release by the Legislative Budget Commission.
- Makes the Local Government Emergency Bridge Loan Program a revolving program and makes funds available for local governments impacted by federally declared disasters until July 1, 2038. Additionally, the bill appropriates $50 million in nonrecurring funds from the General Revenue Fund to the program.

The bill has a significant fiscal impact on state government and an may have an insignificant fiscal impact on local governments. See II. FISCAL ANALYSIS AND ECONOMIC IMPACT STATEMENT for further discussion.

The bill has an effective date of July 1, 2023, unless otherwise expressly provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Emergency Management – Current Situation

The State Emergency Management Act, ch. 252, F.S., was enacted to be the legal framework for this state's emergency management activities, recognizing the state's vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters.[1] In order to reduce the state's vulnerability to these circumstances and to prepare to respond to them, the act promotes the state's emergency readiness through enhanced coordination, long-term planning, and adequate funding.[2]

The act creates the Division of Emergency Management (DEM) within the Executive Office of the Governor and grants DEM with powers and duties necessary to mitigate the vulnerability of life, property, and economic prosperity due to natural and manmade disasters.[3] The responsibilities of DEM include:

- Carrying out the State Emergency Management Act;
- Maintaining a comprehensive statewide program of emergency management; and
- Coordinating with efforts of the federal government with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management. [4]

The act also delineates the Governor's authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. If the Governor finds that an emergency[5] has occurred or is imminent, he or she must declare a state of emergency.[6] An executive order or proclamation of a state of emergency shall identify whether the state of emergency is due to a minor,[7] major,[8] or catastrophic[9] disaster.[10] The state of emergency must continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.[11] Additionally, the Legislature may end a state of emergency by passing a concurrent resolution.[12]

In a state of emergency, the Governor has broad power to perform necessary actions to ensure Floridians' health, safety, and welfare. A state of emergency provides the governor with additional authority not otherwise present, such as the ability to impose curfews, order evacuations, determine means of ingress and egress to and from affected areas, and commandeer or utilize private property

[1] S. 252.311(1), F.S.
[2] S. 252.311(2), F.S.
[3] S. 252.32(1)(a) and 252.34(3), F.S.
[4] S. 252.35(1) and (2), F.S.
[5] "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. *See* s. 252.34(4), F.S.
[6] S. 252.36(2), F.S.
[7] "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance. *See* s. 252.34(2)(c), F.S.
[8] "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance. *See* s. 252.34(2)(b), F.S.
[9] "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement. *See* s. 252.34(2)(a), F.S.
[10] S. 252.36(4)(c), F.S.
[11] *Supra* note 6.
[12] S. 252.36(3), F.S.

subject to compensation.[13] To effectively facilitate emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which have the force and effect of law.[14]

Through this emergency power, the Governor can suspend the provisions of any regulatory statute if compliance would prevent, hinder, or delay necessary action to deal with the emergency. Further, as designated by the Governor or in emergency management plans, state agencies, local governments, and others can make, amend, and rescind orders and rules as necessary for emergency management purposes. However, these orders and rules cannot conflict with orders of the Governor, DEM, or other state agencies delegated emergency powers by the Governor.

When there is a disaster in the United States, the Governor of an affected state must request an emergency and major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.[15] All emergency and disaster declarations are made at the discretion of the President of the United States.[16] There are two types of disaster declarations, emergency declarations and major disaster declarations.[17] Both declarations allow for federal assistance to states and local governments, however they differ in scope, types, and amount of assistance available.[18] Primary federal disaster assistance administered by the Federal Emergency Management Agency (FEMA) is provided via the Individual Assistance Program and the Public Assistance Grant Program. The scope of an event will determine which categories within each program are available to affected states.

One component of the Public Assistance Grant Program is the provision of direct assistance or reimbursement to state and local governments for the costs of removing debris and wreckage from public and private property.

Emergency Management – Effect of Bill

Temporary Shelters

The bill provides that a county and a municipality must allow for a resident to place a temporary structure on residential property if the permanent residential structure was damaged and rendered uninhabitable during a natural emergency[19] for which the Governor declared a state of emergency. A temporary structure includes, but is not limited to, a recreational vehicle, trailer, or similar structure. A county or a municipality may not prohibit the placement of a temporary structure on the property for up to 36 months after the date of the declaration of emergency or until a certificate of occupancy is issued for the permanent residential structure, whichever occurs first, if all the following circumstances apply:

- The resident makes a good faith effort to rebuild or renovate the damaged permanent residential structure, including, but not limited to, applying for a building permit, submitting a plan or design to the county, or obtaining a construction loan;
- The temporary shelter is connected to the water and electric utilities and does not present a threat to health and human safety; and
- The resident lives in the temporary structure.

Local Emergency Financial Plans

The bill encourages local governmental entities to develop an emergency financial plan for major natural disasters that may impact its jurisdiction. Each financial plan should be based off the likelihood of each disaster's occurrence and should also include an estimated cost of the impact and evaluation of available financial help to the local government, including backup plans to address any gaps in funding

[13] *See* s. 252.36(6), F.S.
[14] S. 252.36(1)(b), F.S.
[15] 2 U.S.C. §§ 5121-5207
[16] FEMA, *How a Disaster Gets Declared*, https://www.fema.gov/disaster/how-declared (last visited April 4, 2023.)
[17] *Id.*
[18] *Id.*
[19] "Natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. *See* s. 252.34(8), F.S.

during the event of a natural disaster. Local governmental entities should annually review their emergency financial plans to address changes in conditions.

Division of Emergency Management Requirements – Model Contracts, Technical Assistance, Hazard Mitigation Projects

The bill requires DEM to:

- Post an initial model of a local government contract for debris removal to their website no later than June 1, 2023, and to post an updated model no later than June 1 of each subsequent year.
- Prioritize technical assistance and training to fiscally constrained counties[20] as defined in s. 218.67, F.S., on aspects of safety measures, preparedness, prevention, response, recovery, and mitigation relating to natural disasters and emergencies.

In addition, the bill requires DEM to administer a revolving loan program for local government hazard mitigation projects. This provision will allow DEM to receive grant funding from FEMA to administer the Safeguarding Tomorrow Revolving Loan Fund Program, described in more detail below.

This section is effective upon becoming law.

Safeguarding Tomorrow Revolving Loan Fund Program – Current Situation

The Safeguarding Tomorrow through Ongoing Risk Mitigation ("STORM") Act, which became federal law on January 1, 2021, authorizes FEMA to provide capitalization grants to states and federally recognized tribes to establish revolving loan programs for hazard mitigation. The revolving loan funds will be used by local governments to fund projects to increase resiliency and mitigate the impacts of natural hazards including drought; severe storms, hurricanes, tornadoes, windstorms, cyclones, and severe winter; storms; wildfires; earthquakes; flooding; shoreline erosion; high water levels; and storm surges.[21]

Under STORM, local governments can apply to the state entity for such loans with an interest rate of no more than 1 percent, which must be repaid by the local government no later than 20 years after the date the project is completed, or 30 years for projects in low-income areas.[22] STORM represents the first time that a revolving loan fund has been set up to fund hazard mitigation.

In December 2022, FEMA released the Notice of Funding Opportunity making available $50 million for revolving loan program funding.[23] DEM intends to apply to FEMA by April 29, 2023, for a capitalization grant to establish a revolving loan program for the state of Florida.[24] DEM issued a public notice seeking proposals from communities to develop a project proposal list to accompany its application to FEMA.[25]

Safeguarding Tomorrow Revolving Loan Fund Program – Effect of Bill

[20] Each county that is entirely within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than $5 million in revenue, based on the taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1, shall be considered a fiscally constrained county. There are currently 29 fiscally constrained counties.
[21] Division of Emergency Management, *STORM Revolving Loan Fund - FAQ*, https://www.floridadisaster.org/globalassets/dem/mitigation/storm/storm-rlf-faq-3-13-2023.pdf (last visited April 4, 2023)
[22] *Id*
[23] Division of Emergency Management, *STORM Revolving Loan Fund*, https://www.floridadisaster.org/dem/mitigation/safeguarding-tomorrow-through-ongoing-risk-mitigation-storm-revolving-loan-fund/ (last visited April 4, 2023).
[24] *Id.*
[25] Division of Emergency Management, *Public Notice RE Safeguarding Tomorrow Revolving Loan Fund*, https://www.floridadisaster.org/globalassets/dem/mitigation/storm/storm-rlf-public-notice-3-13-2023.pdf (last visited April 4, 2023).

The bill appropriates $1,000,000 in nonrecurring funds from the General Revenue Fund and $10,000,000 in nonrecurring funds from the Federal Grants Trust Fund to DEM to fund the Safeguarding Tomorrow Revolving Loan Program. DEM may submit a budget amendment to the Legislative Budget Commission to release the funds, which is contingent upon documentation of an award or other approval by FEMA and DEM's approved intended use plan for the funds.

Registered Contractors – Current Situation

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation (DBPR).[26] The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.[27] The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[28]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[29]

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[30]

"Registered contractors" are individuals who have taken and passed a local competency examination and may practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.[31]

Registered Contractors – Effect of Bill

The bill allows registered contractors to engage in contracting for the types of work covered by their registration within any area for which a state of emergency has been declared for a natural emergency. This authorization will end 24 months after the expiration of the declared state of emergency. The local jurisdiction that licenses the registered contractor may discipline the contractor for violations occurring outside the licensing jurisdiction under these circumstances.

This section is effective upon becoming law.

Building Permits and Inspections – Current Situation

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[32]

Every local government must enforce the Florida Building Code and issue building permits.[33] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit.[34]

[26] *See* ss. 489.105, 489.107, and 489.113, F.S.
[27] S. 489.107(1), F.S.
[28] S. 489.107, F.S.
[29] *See* ss. 489.105(6)-(8) and (11), F.S.
[30] *See* ss. 489.108, 489.113, 489.117, and 489.131, F.S.
[31] S. 489.117, F.S.
[32] S. 553.72, F.S.
[33] Ss.125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[34] Ss.125.56(4)(a), 553.79(1), F.S.

A local government may charge reasonable fees as set forth in a schedule of fees adopted by the enforcing agency for the issuance of a building permit.[35] Such fees shall be used solely for carrying out the local government's responsibilities in enforcing the Building Code.[36] Enforcing the Building Code includes the direct costs and reasonable indirect costs associated with training, review of building plans, building inspections, re-inspections, building permit processing, and fire inspections.[37] Local governments must post all building permit and inspection fee schedules on their website.[38]

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections.[39] Construction work may not be done beyond a certain point until it passes an inspection.

Current law provides a set of deadlines for ordinary processing of a building permit, chief among them that a local government must approve, approve with conditions, or deny an application for a building permit within 120 days following receipt of a completed application.[40] Various laws require or encourage local governments to further expedite the permitting process in certain situations, such as for the construction of public schools, state colleges and universities[41] and affordable housing.[42]

In addition to the inspections required by the Building Code, a building official may require other inspections of any construction work to ascertain compliance with the provisions of the Building Code and other laws that are enforced by the government entity.[43]

Building Permits and Inspections – Effect of Bill

The bill authorizes local governments to create inspection teams to review and approve expedited permits for temporary housing solutions, repairs, and renovations following a natural disaster.

The bill encourages municipalities and counties to establish interlocal agreements with other jurisdictions to provide additional inspection services during a state of emergency. The bill also encourages municipalities and counties to adopt plans to provide temporary accommodations to contractors, utility workers, first responders, and others dispatched to aid in hurricane recovery efforts. The bill provides that public areas such as fairgrounds and parking lots may be used for tents and trailers for temporary accommodations.
The bill requires local governments to approve special processing procedures to expedite the issuance of permits following a natural emergency for which the Governor has declared a state of emergency. Permits to be expedited are those which do not require technical review, including, but not limited to permits for:

- roof repairs;
- reroofing;
- electrical repairs;
- service changes; or
- the replacement of one window or door.

Local governments are also permitted to waive application and inspection fees for the expedited permits.

[35] S. 553.80 F.S.
[36] *Id.*
[37] S. 553.80 (7)(a)(1)
[38] S.125.56 (4)(c) F.S., Section 166.222(2) F.S.
[39] S. 110 of the Seventh edition of the Florida Building Code (Building).
[40] S. 553.792(1)(a), F.S.
[41] S. 553.80(6)(b)2., F.S.
[42] *See* ss. 403.973(3), 420.5087(6)(c)8., and 553.80(6)(b)1., F.S.
[43] S. 110.3.10 of the Seventh Edition of the Florida Building Code (Building).

The bill provides that effective January 1, 2023, local governments located in areas with FEMA disaster declarations during Hurricane Ian or Hurricane Nicole may not raise building inspection fees until October 1, 2024. This section expires on June 30, 2025, and is effective upon becoming law.

Suspension of Expiration Dates for Permits During Emergencies – Current Situation

When the Governor declares a state of emergency for a natural emergency, the period to exercise rights under a permit or other government authorization is suspended or tolled for the duration of the emergency. The period remaining to exercise rights in accordance with such permits is extended for 6 months in addition to the suspended or tolled period.

The emergency suspension and extension provisions expressly apply to the following permits and authorizations:

- Expiration of a development order issued by a local government;
- Expiration of a building permit;
- Expiration of an environmental resource permit issued by the Department of Environmental Protection (DEP) or a water management district under ch. 373, part IV, F.S.;
- Expiration of consumptive use permits issued by DEP or a water management district under Part II of ch. 373, F.S., related to land subject to a development agreement in which the permittee and developer are the same or a related entity;
- The buildout date for a development of regional impact or any extension of such date under s. 380.06(7)(c), F.S.; and
- Expiration of development permits and development agreements authorized by state law, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental entity.[44]

To receive the benefit of such provisions, the holder must follow the procedure outlined in s. 252.363(1)(b), F.S. Specifically, within 90 days after the emergency declaration's termination, the permit holder must provide written notice of the intent to exercise the right to toll or extend such permit. The written notice must identify the specific permit or authorization qualifying for the extension to the issuing authority. Once the permitholder has satisfied this procedure, the tolling and extension are granted automatically or as a matter of law, and no further action on the part of the issuing authority is needed.[45]

The tolling and extension of permits and other authorizations does not apply to the following:

- A permit or other authorization for a building, improvement, or development located outside the geographic area for which the declaration of a state of emergency applies;
- A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers;
- The holder of a permit or other authorization who is determined by the authorizing agency to be in significant noncompliance with the conditions of the permit or other authorization through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or an equivalent action; and
- A permit or other authorization that is subject to a court order specifying an expiration date or buildout date that would conflict with the extensions granted due to a state of emergency.[46]

Suspension of Expiration Dates for Permits During Emergencies – Effect of Bill

[44] S. 252.363(1)(a), F.S.

[45] "Nothing in the statute imposes an obligation on the municipality to take any action extending development orders, rather, it appears that the Legislature intended to place that burden on the holder of the permit who must provide written notification to the issuing authority of his or her intent to exercise the tolling and extension of the statute." *See* Op. Att'y Gen. Fla. 12-13 (2012), http://www.myfloridalegal.com/ago.nsf/Opinions/0DF58A091F0DDBEC852579EB00743D48 (last visited April 4, 2023).

[46] S. 252.363(1)(d), F.S.

The bill increases the extension of applicable building permits following a declaration of a state of emergency from 6 to 24 months. The extension is capped at 48 months in the event of multiple natural emergencies.

Consultants' Competitive Negotiation Act – Current Situation

In 1972, Congress passed the Brooks Act,[47] which requires federal agencies to use a qualifications-based selection process for architectural, engineering, and associated services, such as mapping and surveying. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price. In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA),[48] which is modeled after the Brooks Act. The CCNA requires state and local government agencies to procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process.[49]

The CCNA establishes a three-phase process for procuring professional services:
- Phase 1 – Public announcement and qualification.
- Phase 2 – Competitive selection.
- Phase 3 – Competitive negotiation.

During Phase 1, the public announcement and qualification phase, state and local agencies must publicly announce each occasion when professional services will be purchased for one of the following:
A project, when the basic construction cost is estimated by the agency to exceed $325,000; or
A planning or study activity, when the fee for professional services exceeds $35,000.[50]

During Phase 2, the competitive selection phase, an agency must evaluate the qualifications and past performance of interested consultants and select at least three consultants, ranked in order of preference, that it considers the most highly qualified to perform the required services. During this phase, the CCNA prohibits the agency from requesting, accepting, or considering proposals for the compensation to be paid.

During Phase 3, the competitive negotiation phase, an agency must first negotiate compensation with the highest ranked consultant. If the agency is unable to negotiate a satisfactory contract with that consultant at a price the agency determines to be fair, competitive, and reasonable, negotiations with the consultant must be formally terminated. The agency must then negotiate with the remaining ranked consultants, in order of rank, and follow the same process until an agreement is reached. If the agency is unable to negotiate a satisfactory contract with any of the ranked consultants, the agency must select additional consultants, ranked in the order of competence and qualification without regard to price, and continue negotiations until an agreement is reached.[51]

The CCNA explicitly states it does not prohibit a continuing contract[52] between a firm and an agency.[53] A continuing contract is a contract for professional services entered into in accordance with the CCNA between an agency and a firm whereby the firm provides professional services to the agency for projects.[54] The CCNA prohibits firms that are parties to a continuing contract from being required to bid against one another.[55]

[47] Public Law 92-582, 86 Stat. 1278 (1972).
[48] Chapter 73-19, Laws of Fla., codified as s. 287.055, F.S.
[49] S. 287.055, F.S.
[50] S. 287.055(3)(a)1., F.S.
[51] S. 287.055(5), F.S.
[52] S. 287.055(2)(g), F.S.
[53] S. 287.055(4)(d), F.S.
[54] S. 287.055(2)(g), F.S.
[55] *Id.*

Current law authorizes the use of a continuing contract for construction projects in which the estimated construction cost of each project does not exceed $4 million, for study activities if the fee for professional services for each study does not exceed $500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except the contract must include a termination clause.[56]

Consultants' Competitive Negotiation Act – Effect of Bill

The bill authorizes "continuing contracts" for construction projects in which the estimated construction cost of each project does not exceed $15 million, if such contracts relate to repairs and remediation due to damage caused by Hurricane Ian if executed through December 31, 2023.

This section is effective upon becoming law.

The bill provides that these changes expire on January 1, 2024 and the statute reverts back to the current law limits on the expiration date. Contracts entered into prior to December 31, 2023 will be permitted to be completed after such date.

Community Planning – Current Situation

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.[57] Each county and municipality must maintain a comprehensive plan to guide future development.[58]

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.[59] A comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of 10 required elements, each laying out regulations for a different facet of development.[60]

A comprehensive plan is implemented through the adoption of land development regulations[61] that are consistent with the plan, and which contain specific and detailed provisions necessary to implement the plan.[62] Substantially affected persons have the right to maintain administrative actions which assure that land development regulations implement and are consistent with the comprehensive plan.[63]

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. State law requires a

[56] S. 287.055(2)(g), F.S.
[57] S. 163.3167(1), F.S.
[58] S. 163.3167(2), F.S.
[59] S. 163.3194(3), F.S
[60] S. 163.3177(6), F.S. The 10 required elements include capital improvements; future land use plan; transportation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; housing; coastal management; intergovernmental coordination; and property rights. Throughout statutes exist plans and programs that may be added as optional elements.
[61] "Land development regulations" means ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, except that this definition does not apply in s. 163.3213. See s. 163.3164(26), F.S.
[62] S. 163.3202, F.S.
[63] S. 163.3213, F.S.

proposed comprehensive plan amendment to receive two public hearings, the first held by the local planning board, and subsequently by the governing board.[64]

The Community Planning Act defines "development" as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels."[65] When a party wishes to engage in development activity, they must seek a development permit from the appropriate local government having jurisdiction. Under the Community Planning Act, a development permit includes "any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land."[66] Once a local government has officially granted or denied a development permit, the official action constitutes a development order.[67] A development order vests certain rights related to the land.[68]

Community Planning – Effect of Bill

The bill provides:

> "A county or municipality located entirely or partially within 100 miles of where either Hurricane Ian or Hurricane Nicole[69] made landfall shall not propose or adopt more restrictive or burdensome amendments to its comprehensive plan or land development regulations, nor propose or adopt more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or development order, to the extent that those terms are defined by s. 163.3164, F.S., before October 1, 2024, and any such restrictive or burdensome comprehensive plan amendment, land development regulation, or procedure shall be null and void ab initio."[70]

This subsection applies retroactively to September 28, 2022 (the date of Hurricane Ian landfall in Florida). However, the bill provides that any comprehensive plan amendment, land development regulation amendment, site plan, development permit, or development order approved or adopted by a county or municipality before or after the effective date of this section may be enforced if:

- The associated application is initiated by a private party other than the county or municipality; and
- The property that is the subject of the application is owned by the initiating private party.

The section takes effect upon becoming a law and expires on June 30, 2025.

[64] Ss. 163.3174(4)(a) and 163.3184, F.S.
[65] S. 163.3164(14), F.S.
[66] S. 163.3164(16), F.S.
[67] *See* S. 163.3164(15), F.S.
[68] *See* s. 163.3167(3), F.S.
[69] All 67 counties in Florida were designated within the federal disaster declaration for Hurricane Ian, and 61 counties for Hurricane Nicole.
[70] Void ab initio means something was void from the beginning.

Derelict Vessels – Current Situation

Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is the agency responsible for regulating boating in the state.[71] Through its Division of Law Enforcement, FWC works to enforce a variety of state and federal boating laws, including regulations related to boating safety, waterway management, vessel maintenance, and marine sanitation. FWC also exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.[72] These powers include authority with respect to the control and management of nonnative plant and animal species.

Derelict Vessels

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public state waters; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.[73]

It is unlawful to store, leave, or abandon[74] a derelict vessel in Florida.[75] Violations are punishable by a term of imprisonment of no more than one year and a fine of up to $1,000.[76] State law further provides that a violation of derelict vessel laws may also be subject to a civil penalty of up to $75,000 per day.[77] Each day during any portion of which the violation occurs constitutes a separate offense.[78]

At-risk Vessels

Current law also prohibits vessels that are at risk of becoming derelict from anchoring, mooring, or occupying state waters.[79] A vessel is considered at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater.
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods.
- The vessel has broken loose or is in danger of breaking loose from its anchor.
- The vessel is listing due to water intrusion.
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic notice, in-person notice recorded on an agency-approved body camera, or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.[80]

A violation for anchoring, mooring, or occupying a vessel at risk of becoming derelict on state waters is a noncriminal infraction, for which the civil penalty is $100 for a first offense, $250 for a second offense

[71] FWC, *Boating*, available at https://myfwc.com/boating/ (last visited April 7, 2023).
[72] Art. IV, s. 9, FLA. CONST.
[73] S. 823.11(1)(b), F.S.
[74] S. 705.101(3), F.S., defines "abandoned property" as all tangible personal property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner. The term includes derelict vessels.
[75] S. 823.11(2), F.S.
[76] Ss. 775.082(4)(a) and 775.083(1)(d), F.S.
[77] S. 376.16(1), F.S.
[78] *Id.*
[79] S. 327.4107(1), F.S.
[80] S. 327.4107(2), F.S.

occurring 30 days or more after a first offense, and $500 for a third or subsequent offense occurring 30 days or more after a previous offense.[81]

A vessel that has been the subject of three or more at-risk vessel violations within an 18-month period that result in dispositions other than acquittal or dismissal is deemed a public nuisance.[82]

Removal of Derelict and At-risk Vessels

The Division of Law Enforcement within FWC and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.[83]

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs, or threatens to obstruct, navigation or in any way constitutes a danger to the environment, property, or persons.[84] Such law enforcement are also authorized to relocate or remove a vessel declared a public nuisance.[85]

When a law enforcement officer determines that a derelict vessel or a vessel declared a public nuisance is present on state waters, the officer is required to place a notice on the vessel stating the vessel is unlawfully upon state waters and must be removed within 21 days.[86] The notice must also specify that if the vessel is not removed by the owner within 21 days, the vessel will be removed and disposed of and that the owner or party deemed legally responsible for the vessel being in a derelict condition will be liable for costs of removal, destruction, and disposal if not removed.[87]

The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner. A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.[88]

FWC may provide grants to local governments for the removal, storage, destruction, and disposal of derelict vessels from state waters if funds are appropriated for such grants.[89] Grants are awarded based on a set of criteria outlined in FWC rules.[90] Removal or relocation of the vessel on private property is not eligible for grant funding.[91] The grants provided to local governments for the removal, storage, destruction, and disposal of derelict vessels may also be used for the removal, storage, destruction, and disposal of vessels declared a public nuisance.

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[81] S. 327.73(1)(aa), F.S.
[82] *Id.*
[83] S. 943.10(1), F.S., defines “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.
[84] Ss. 376.15(3)(a) and 823.11(3), F.S.
[85] *Id.*
[86] S. 705.103(2)(a)(1)(b), F.S.
[87] *Id.*
[88] S. 705.103(4), F.S.
[89] S. 376.15, F.S.
[90] Rule 68-1.003, F.A.C.
[91] National Oceanic and Atmospheric Association: Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, available at https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida (last visited Nov. 18, 2021).

A person who owns or operates a vessel that becomes derelict upon state waters solely as a result of a boating accident that is reported to law enforcement, a hurricane, or another sudden event outside of his or her control may not be charged with a violation if:[92]

- The individual documents for law enforcement the specific event that led to the vessel being derelict upon state waters; and
- The vessel has been removed from state waters or has been repaired or addressed such that it is no longer derelict upon state waters within 7 days after a boating accident or other sudden event outside of his or her control or within 45 days after a hurricane has passed.

This sudden accident or event exception does not apply to a vessel that was derelict upon state waters before the stated accident or event.

Derelict Vessels – Effect of Bill

The bill clarifies that the FWC, an officer of the FWC, a law enforcement agency, or during a state of an emergency declared by the Governor, DEM or its designee, may immediately begin the procedure,[93] such as posting a notice of removal on the vessel and ascertaining the owner of the vessel. The bill provides that a person who owns or operates a vessel that becomes derelict upon state waters solely as a result of a hurricane, or another sudden event outside of his or her control has an extended 45-day deadline to bring derelict vessels into compliance or remove them from state waters. Final removal and destruction of the vessel may only occur if the vessel remains derelict after the completion of the procedure process and the end of the 45-day grace period.

Local Government Emergency Response Bridge Loan Program – Current Situation

Early in 2023, the Legislature establish the Local Government Emergency Response Bridge Loan Program within the Department of Economic Opportunity (DEO)[94] to provide financial assistance to local governments impacted by Hurricane Ian or Hurricane Nicole. The purpose of the loan program is to assist these local governments in maintaining operations by bridging the gap between the time that the declared disaster occurred and the time that additional funding sources or revenues are secured to provide them with financial assistance.[95] The Legislature appropriated $50 million from the General Revenue Fund to DEO to fund the program.

The loans may be issued during the 2022-2023 fiscal year or the 2023-2024 fiscal year, subject to appropriation.[96] The loans are interest-free with the loan amount determined based upon demonstrated need.[97] The loans must be paid back within one year, unless extended by up to 6 months by the DEO based on the local government's financial condition.[98]

To be eligible, a local government must be a county or municipality located in an area designated in the Federal Emergency Management Agency disaster declarations for Hurricane Ian or Hurricane Nicole.[99] Also, the local government must show that it may suffer or has suffered substantial loss of its tax or other revenues as a result of the hurricane and demonstrate a need for financial assistance to enable it to continue to perform its governmental operations.[100]

A local government may only use loan funds to continue local governmental operations or to expand and modify such operations to meet disaster-related needs.[101] The funds may not be used to finance or

[92] S. 823.11 (2)(b)2.b, F.S.
[93] *See* s. 705.103(2)(a), F.S.
[94] S. 288.066 F.S.
[95] S. 288.066 (1), F.S.
[96] S. 288.066 (6)(a), F.S.
[97] S. 288.066 (3), F.S.
[98] S. 288.066 (3)(c), F.S.
[99] S. 288.066 (2), F.S.
[100] *Id.*
[101] *Id.*

supplant funding for capital improvements or to repair or restore damaged public facilities or infrastructure. The DEO must coordinate with DEM to assess whether such loans would affect reimbursement under federal programs for disaster-related expenses.[102]

This program expires June 30, 2027. As loans are repaid, the DEO will remit the payments back to the General Revenue Fund and upon expiration, the DEO must return all unencumbered funds and loan payments back to the General Revenue Fund.[103]

Local Government Emergency Revolving Bridge Loan Program – Effect of Bill

The bill extends the Local Government Emergency Bridge Loan Program for 11 additional years by making it a revolving program and renaming it the "Local Government Emergency Revolving Bridge Loan Program". The revolving loan program will make funds available for local governments impacted by federally declared disasters until July 1, 2038.

Upon the issuance of a federal disaster declaration, the DEO shall provide notice of application requirements and the total amount of funds available and make loan information available to eligible local governments. The eligible local government must submit a loan application within 12 months from the date that a federal disaster was declared. The section further creates an application process and sets forth the conditions that must be met by a local government in order to receive funds under the program. Reasons for a loan application denial may include, but are not limited to, the loan risk, an incomplete application, failure to demonstrate need, or the fact that receiving a loan may negatively affect the local government's eligibility for other federal programs. Moreover, this section sets forth the obligations of the DEO to administer the program and manage repayments. The bill provides that funds appropriated to the program are not subject to reversion.

The bill appropriates $50 million in nonrecurring funds from the General Revenue Fund to the Economic Development Trust Fund of the DEO for the revolving bridge loan program. This section also directs any funds that have not been loaned to a local government pursuant to a loan agreement as of July 1, 2023, to be transferred to the Economic Development Trust Fund to be used for the Local Government Emergency Revolving Bridge Loan Program established by the bill. Lastly, all loans made pursuant to the existing Local Government Emergency Bridge Loan Program must be repaid into the Economic Development Trust Fund and be made available for loans under the revolving loan program provided in the bill. The cumulative effect of these changes is that $100 million in total will be available for the revolving bridge loan program.

Effective Date

This act will take effect July 1, 2023 unless otherwise expressly provided in the act.

B. SECTION DIRECTORY:

Section 1: Creates 123.023, F.S., relating to temporary shelters.
Section 2: Creates s. 166.0335, F.S., relating to temporary shelters.
Section 3: Amends s. 252.35, F.S., relating to the State Emergency Act.
Section 4: Amends s. 252.363, F.S., relating to the tolling and extension of permits.
Section 5: Creates s. 252.391, F.S., relating to emergency financial plans.
Section 6: Amends s. 252.40, F.S., relating to mutual aid arrangements.
Section 7: Amends s. 287.055, F.S., relating to the Consultants' Competitive Negotiation Act.
Section 8: Reverts sections relating to the Consultants' Competitive Negotiation Act back to current law on January 1, 2024.
Section 9: Amends s. 288.066, F.S., relating to Local Government Emergency Revolving Bridge Loan Program.
Section 10: Amends s. 489.117, F.S., relating to specialty contractors.

[102] S. 288.066 (6)(b), F.S.
[103] S. 288.066(8), F.S.

Section 11: Creates s. 553.7922, F.S., relating to expedited approval of certain permits.
Section 12: Amends s. 553.80, F.S., relating to building inspection fees.
Section 13: Limits comprehensive plan amendments, land development regulations, and development permits and order changes in certain circumstances.
Section 14: Amends s. 823.11, F.S., relating to derelict vessels.
Section 15: Provides appropriations for the Safeguarding Tomorrow Through Risk Mitigation Act Revolving Loan Fund Program.
Section 16: Provides appropriations for the Local Government Emergency Revolving Bridge Loan Program.
Section 17: Provides effective date unless provided otherwise.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill appropriates $1,000,000 in nonrecurring funds from the General Revenue Fund and $10,000,000 in nonrecurring funds from the Federal Grants Trust Fund to DEM for the Safeguarding Tomorrow Through Ongoing Risk Mitigation Act Revolving Loan Program. Such funds will be held in reserve, contingent upon FEMA approval and release by the Legislative Budget Commission.

   The bill appropriates $50 million in nonrecurring funds from the General Revenue Fund to the Economic Development Trust Fund of the DEO for the Local Government Emergency Revolving Bridge Loan Program. The bill also directs any funds that have not been loaned to a local government pursuant to a loan agreement as of July 1, 2023, to be transferred to the Economic Development Trust Fund to be used for the Local Government Emergency Revolving Bridge Loan Program established by the bill. Lastly, all loans made pursuant to the existing Local Government Emergency Bridge Loan Program must be repaid into the Economic Development Trust Fund and be made available for loans under the revolving loan program. The cumulative effect of these appropriations and changes is that $100 million in total will be available for the revolving bridge loan program.

   By allowing the state government to enter into larger contracts for specified disaster relief construction projects under a continuing contract, the state or a local government may save on contractual and workload expenditures associated with the procurement of such projects.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill will likely have an insignificant negative fiscal impact on local governments, as many of the bill provisions are permissive rather than mandatory. Provisions that limit a local government's ability to raise building fees for a defined period of time or that requires local governments to expedite building permits during emergencies may have a negative, but likely insignificant, fiscal impact.

2. Expenditures:

   The bill will likely have an insignificant negative fiscal impact on local governments, as many of the bill provisions are permissive rather than mandatory.

By allowing local governments to enter into larger contracts for specified disaster relief construction projects under a continuing contract, the state or a local government may save on contractual and workload expenditures associated with the procurement of such projects.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive, yet indeterminate fiscal impact on private sector businesses that provide professional services under the CCNA, by allowing those entities to enter into larger contracts for specified disaster relief projects under a continuing contract.

Registered contractors who are able to work outside of their local jurisdiction during a state of emergency may see increased positive fiscal impact due to increased business.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because local governments may have expenditures related to prohibiting certain local governments from raising building inspection fees during a certain timeframe, suspending or extending a permit of a permit for the duration of the emergency, and expediting the approval process of certain permits following a natural disaster. However, an exemption may apply because these expenditures would likely be an insignificant fiscal impact.

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 natural emergencies; creating ss. 125.023 and 166.0335, F.S.; defining the term "temporary shelter"; prohibiting counties and municipalities, respectively, from prohibiting temporary shelters on residential property for a specified timeframe under certain circumstances; amending s. 252.35, F.S.; requiring the Division of Emergency Management to post a model contract for debris removal on its website by a specified date; requiring the model contract to be annually updated by a specified date; requiring the division to prioritize technical assistance and training relating to natural disasters and emergencies to fiscally constrained counties; requiring the division to administer a revolving loan fund for certain local government projects; amending s. 252.363, F.S.; increasing the timeframe to exercise rights under a permit or other authorization; limiting the timeframe to exercise rights under a permit or other authorization to a certain timeframe when multiple natural emergencies occur; creating s. 252.391, F.S.; defining the term "local governmental entity"; encouraging local governmental entities to develop an emergency financial plan for major disasters; providing the

contents of the emergency financial plan; recommending annual review of the emergency financial plan; amending s. 252.40, F.S.; authorizing local governments to create inspection teams for the review and approval of certain expedited permits; encouraging local governments to establish certain interlocal agreements; encouraging local governments to develop plans related to temporary accommodations of certain individuals; amending s. 287.055, F.S.; revising the definition of the term "continuing contract"; providing for the future expiration and reversion of specified statutory text; amending s. 288.066, F.S.; creating the Local Government Emergency Revolving Bridge Loan Program within the Department of Economic Opportunity to provide certain financial assistance to local governments impacted by federally declared disasters; conforming provisions to changes made by the act; providing construction; authorizing the department to provide interest-free loans to eligible local governments through specified means; requiring the department to prescribe a loan application; requiring the department to determine the loan amount based on certain factors; authorizing the department to deny a loan application and providing specified reasons for such denial; requiring the department to

provide certain notice and make loan information available to eligible local governments; requiring loan repayments to be returned to the loan fund; providing that funds appropriated for the program are not subject to reversion; providing for expiration; amending s. 489.117, F.S.; authorizing a registered contractor to engage in contracting under certain circumstances; providing an expiration timeframe for such authorization; authorizing the local jurisdiction to discipline the registered contractor under certain circumstances; creating s. 553.7922, F.S.; requiring local governments impacted by certain emergencies to approve special processing procedures to expedite certain permits; amending s. 553.80, F.S.; prohibiting certain local governments from raising building inspection fees during a certain timeframe; providing for future expiration; prohibiting counties and municipalities located within a certain area from adopting or amending certain amendments or procedures for a specified period; declaring that such amendments or procedures are null and void; providing for retroactive application; providing that certain comprehensive plan amendments, land development regulations, site plans, and development permits or orders may be enforced; providing for expiration;

amending s. 823.11, F.S.; authorizing certain persons to engage in a process relating to the removal and destruction of derelict vessels; providing appropriations; providing for the transfer of certain appropriated funds to the Economic Development Trust Fund of the Department of Economic Opportunity; requiring that loan repayments be repaid to the Economic Development Trust Fund; providing effective dates.

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

Section 1. Section 125.023, Florida Statutes, is created to read:

125.023 Temporary shelter prohibition.—

(1) For the purposes of this section, the term "temporary shelter" includes, but is not limited to, a recreational vehicle, trailer, or similar structure placed on a residential property.

(2) Notwithstanding any other law, ordinance, or regulation to the contrary, following the declaration of a state of emergency issued by the Governor for a natural emergency as defined in s. 252.34(8) during which a permanent residential structure was damaged and rendered uninhabitable, a county may not prohibit the placement of one temporary shelter on the

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residential property for up to 36 months after the date of the declaration or until a certificate of occupancy is issued on the permanent residential structure on the property, whichever occurs first, if all of the following circumstances apply:

(a) The resident makes a good faith effort to rebuild or renovate the damaged permanent residential structure, including, but not limited to, applying for a building permit, submitting a plan or design to the county, or obtaining a construction loan.

(b) The temporary shelter is connected to water and electric utilities and does not present a threat to health and human safety.

(c) The resident lives in the temporary structure.

Section 2. Section 166.0335, Florida Statutes, is created to read:

166.0335 Temporary shelter prohibition.—

(1) For the purposes of this section, the term "temporary shelter" includes, but is not limited to, a recreational vehicle, trailer, or similar structure placed on a residential property.

(2) Notwithstanding any other law, ordinance, or regulation to the contrary, following the declaration of a state of emergency issued by the Governor for a natural emergency as defined in s. 252.34(8) during which a permanent residential structure was damaged and rendered uninhabitable, a municipality may not prohibit the placement of one temporary shelter on the

residential property for up to 36 months after the date of the declaration or until a certificate of occupancy is issued on the permanent residential structure on the property, whichever occurs first, if all of the following circumstances apply:

(a) The resident makes a good faith effort to rebuild or renovate the damaged permanent residential structure, including, but not limited to, applying for a building permit, submitting a plan or design to the municipality, or obtaining a construction loan.

(b) The temporary shelter is connected to water and electric utilities and does not present a threat to health and human safety.

(c) The resident lives in the temporary structure.

Section 3. Effective upon becoming a law, paragraphs (bb), (cc), and (dd) are added to subsection (2) of section 252.35, Florida Statutes, to read:

252.35 Emergency management powers; Division of Emergency Management.—

(2) The division is responsible for carrying out the provisions of ss. 252.31-252.90. In performing its duties, the division shall:

(bb) Post on its website a model of a local government contract for debris removal to be used by political subdivisions. The initial model contract must be posted to the website no later than June 1, 2023, and, thereafter, the model

contract must be annually updated and posted to the website no later than June 1.

(cc) Prioritize technical assistance and training to fiscally constrained counties as defined in s. 218.67(1) on aspects of safety measures, preparedness, prevention, response, recovery, and mitigation relating to natural disasters and emergencies.

(dd) Administer a revolving loan program for local government hazard mitigation projects.

Section 4. Paragraph (a) of subsection (1) of section 252.363, Florida Statutes, is amended to read:

252.363 Tolling and extension of permits and other authorizations.—

(1)(a) The declaration of a state of emergency issued by the Governor for a natural emergency tolls the period remaining to exercise the rights under a permit or other authorization for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 24 ~~6~~ months in addition to the tolled period. The extended period to exercise the rights under a permit or other authorization may not exceed 48 months in total in the event of multiple natural emergencies for which the Governor declares a state of emergency. This paragraph applies to the following:

1. The expiration of a development order issued by a local

government.

2. The expiration of a building permit.

3. The expiration of a permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373.

4. Permits issued by the Department of Environmental Protection or a water management district pursuant to part II of chapter 373 for land subject to a development agreement under ss. 163.3220-163.3243 in which the permittee and the developer are the same or a related entity.

5. The buildout date of a development of regional impact, including any extension of a buildout date that was previously granted as specified in s. 380.06(7)(c).

6. The expiration of a development permit or development agreement authorized by Florida Statutes, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental agency.

Section 5. Section 252.391, Florida Statutes, is created to read:

252.391 Emergency financial plans.—

(1) As used in this section, the term "local governmental entity" means a county, municipality, or district school board.

(2) Each local governmental entity is encouraged to develop an emergency financial plan for major natural disasters

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that may impact its jurisdiction. Disasters include, but are not limited to, hurricanes, tornadoes, floods, and wildfires.

(3) Each emergency financial plan should be based on the likely frequency of the disaster's occurrence. The financial plan should include a calculation of the costs for the natural disaster event and a determination of the financial resources available to the local governmental entity. If insufficient funds are available to address the disaster event, the emergency financial plan should identify strategies to close the gap between the disaster event costs and the local governmental entity's financial capacity. Such strategies may include rainy day funds, reprioritizing its annual budget, and borrowing.

(4) Local governmental entities should annually review their emergency financial plans to address changes in conditions.

Section 6. Subsections (3) and (4) are added to section 252.40, Florida Statutes, to read:

252.40 Mutual aid arrangements.—

(3) Local governments may create inspection teams to review and approve expedited permits for temporary housing solutions, repairs, and renovations after a natural disaster. Local governments are encouraged to establish interlocal agreements with other jurisdictions to provide additional inspection services during a state of emergency.

(4) Municipalities and counties are encouraged to develop

and adopt plans to provide temporary accommodations for contractors, utility workers, first responders, and others dispatched to aid in hurricane recovery efforts. Public areas, including, but not limited to, fairgrounds and parking lots, may be used for tents and trailers for such temporary accommodations.

Section 7. Effective upon becoming a law, paragraph (g) of subsection (2) of section 287.055, Florida Statutes, is amended to read:

287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.—

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

(g) A "continuing contract" is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed $4 million, for study activity if the fee for professional services for each individual study under the contract does not exceed $500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination

clause. Firms providing professional services under continuing contracts shall not be required to bid against one another. The term "continuing contract" includes contracts executed through December 31, 2023, for professional services to the agency for projects related to repairs and remediation to a specific site due to damage caused by Hurricane Ian in which the estimated construction cost for each individual project does not exceed $15 million.

Section 8. The amendments made by this act to s. 287.055(2)(g), Florida Statutes, expire on January 1, 2024, and the text of that paragraph shall revert to that in existence on the day before the date that this act became a law, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of the text which expire pursuant to this section.

Section 9. Section 288.066, Florida Statutes, as created by section 1 of chapter 2023-1, Laws of Florida, is amended to read:

288.066 Local Government Emergency Revolving Bridge Loan Program.—

(1) CREATION.—The Local Government Emergency Revolving Bridge Loan Program is created~~, subject to appropriation,~~ within the department to provide financial assistance to local governments impacted by federally declared disasters ~~Hurricane~~

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~~Ian or Hurricane Nicole~~. The purpose of the loan program is to assist these local governments in maintaining government operations by bridging the gap between the time that the declared disaster occurred and the time that additional funding sources or revenues are secured to provide them with financial assistance.

(2) ELIGIBILITY.—To be eligible for a loan under the program, a local government must be a county or a municipality located in an area designated in a ~~the~~ Federal Emergency Management Agency disaster declaration ~~declarations for Hurricane Ian or Hurricane Nicole~~. The local government must show that it may suffer or has suffered substantial loss of its tax or other revenues as a result of the disaster ~~hurricane~~ and demonstrate a need for financial assistance to enable it to continue to perform its governmental operations. Access to and eligibility for the loan program supersedes any local government charter or borrowing limitations that would otherwise financially constrain the local government's ability to recover from a disaster.

(3) LOAN TERMS.—

(a) The department may provide interest-free loans to eligible local governments through a promissory note or other form of written agreement evidencing an obligation to repay the borrowed funds to the department.

(b) The amount of each loan must be based upon

demonstrated need ~~and must be disbursed to the local government in a lump sum~~.

(c) The term of the loan is up to 24 months ~~1 year, unless otherwise extended by the department~~. However, the department may extend loan terms for up to 6 months based on the local government's financial condition.

(4) APPLICATION.—The department shall prescribe a loan application and may request any other information determined necessary by the department to review and evaluate the application. The eligible local government must submit a loan application within the 12 months after the date that the federal disaster was declared. Upon receipt of an application, the department shall review the application and may request additional information as necessary to complete the review and evaluation. If the loan application is approved, the department shall determine the amount to be loaned, which may be a lower amount than requested, based on the information provided and the total amount of funds available to be loaned and in relation to demonstrated need from other eligible applicants. If the loan application is denied, reasons for the denial may include, but are not limited to, the loan risk, an incomplete application, failure to demonstrate need, or the fact that receiving a loan may negatively affect the local government's eligibility for other federal programs.

(5)~~(4)~~ USE OF LOAN FUNDS.—A local government may use loan

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funds only to continue local governmental operations or to expand or modify such operations to meet disaster-related needs. The funds may not be used to finance or supplant funding for capital improvements or to repair or restore damaged public facilities or infrastructure.

(6) ~~(5)~~ LOAN REPAYMENT.—

(a) The local government may make payments against the loan at any time without penalty. Early repayment is encouraged as other funding sources or revenues become available to the local government.

(b) Loans become due and payable in accordance with the terms of the agreement.

(7) ~~(6)~~ ADMINISTRATION.—

(a) Upon the issuance of a federal disaster declaration, the department shall provide notice of application requirements and the total amount of funds available and shall make loan information available to eligible local governments. Based upon the amount of funds in the Economic Development Trust Fund available to be loaned and anticipated balances, the department may make funds available in an amount reasonably related to the anticipated need, based upon the impacts of the federal disaster, up to the total amount available ~~The department may approve loans in the 2022-2023 fiscal year or the 2023-2024 fiscal year up to the total amount appropriated~~.

(b) The department must coordinate with the Division of

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Emergency Management or other applicable state agencies to assess whether such loans would affect reimbursement under federal programs for disaster-related expenses.

(c) All repayments of principal and interest must be returned to the loan fund and made available as provided in this section. Notwithstanding s. 216.301, funds appropriated for this program are not subject to reversion ~~Upon receipt of any loan payment from a local government, the department shall transfer the funds to the General Revenue Fund~~.

(8) ~~(7)~~ RULES.—The department may adopt rules to implement this section.

(9) ~~(8)~~ EXPIRATION.—This section expires July 1, 2038 ~~June 30, 2027~~. A loan may not be awarded after June 30, 2038. Upon expiration, all unencumbered funds and loan repayments made on or after July 1, 2038, must be transferred ~~revert~~ to the General Revenue Fund.

Section 10. Effective upon becoming a law, subsection (5) is added to section 489.117, Florida Statutes, to read:

489.117 Registration; specialty contractors.—

(5) Notwithstanding paragraph (1)(b), a registered contractor may engage in contracting only for work covered by the registration within an area for which a state of emergency is declared pursuant to s. 252.36 for a natural emergency. This authorization terminates 24 months after the expiration of the declared state of emergency. The local jurisdiction that

licenses the registered contractor may discipline the registered contractor for violations occurring outside the licensing jurisdiction which occur during the period such work is authorized under this subsection.

Section 11. Section 553.7922, Florida Statutes, is created to read:

553.7922 Local government-expedited approval of certain permits.—Following a state of emergency declared pursuant to s. 252.36 for a natural emergency, local governments impacted by the emergency shall approve special processing procedures to expedite permit issuance for permits that do not require technical review, including, but not limited to, roof repairs, reroofing, electrical repairs, service changes, or the replacement of one window or one door. Local governments may waive application and inspection fees for permits expedited under this section.

Section 12. Effective upon becoming a law, present subsections (8) and (9) of section 553.80, Florida Statutes, are redesignated as subsections (9) and (10), respectively, and a new subsection (8) is added to that section, to read:

553.80 Enforcement.—

(8) Effective January 1, 2023, local governments located in areas designated in the Federal Emergency Management Agency disaster declarations for Hurricane Ian or Hurricane Nicole may not raise building inspection fees, as authorized by s.

125.56(2) or s. 166.222 and this section, before October 1, 2024. This subsection expires June 30, 2025.

Section 13. (1) A county or municipality located entirely or partially within 100 miles of where either Hurricane Ian or Hurricane Nicole made landfall shall not propose or adopt more restrictive or burdensome amendments to its comprehensive plan or land development regulations, nor propose or adopt more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or development order, to the extent that those terms are defined by s. 163.3164, Florida Statutes, before October 1, 2024, and any such restrictive or burdensome comprehensive plan amendment, land development regulation, or procedure shall be null and void ab initio. This subsection applies retroactively to September 28, 2022.

(2) Notwithstanding subsection (1), any comprehensive plan amendment, land development regulation amendment, site plan, development permit, or development order approved or adopted by a county or municipality before or after the effective date of this section may be enforced if:

(a) The associated application is initiated by a private party other than the county or municipality; and

(b) The property that is the subject of the application is owned by the initiating private party.

(3) This section shall take effect upon becoming a law and

expires June 30, 2025.

Section 14. Paragraph (d) is added to subsection (2) of section 823.11, Florida Statutes, to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(2)

(d) Notwithstanding the additional 45 days provided in sub-subparagraph (b)2.b. during which an owner or a responsible party may not be charged for a violation of this section, the commission, an officer of the commission, a law enforcement agency or officer specified in s. 327.70, or, during a state of emergency declared by the Governor, the Division of Emergency Management or its designee, may immediately begin the process set forth in s. 705.103(2)(a) and, once that process has been completed and the 45 days provided herein have passed, any vessel that has not been removed or repaired such that it is no longer derelict upon the waters of this state may be removed and destroyed as provided therein.

Section 15. For the 2023-2024 fiscal year, the sums of $1 million in nonrecurring funds from the General Revenue Fund and $10 million in nonrecurring funds from the Federal Grants Trust Fund are appropriated to the Division of Emergency Management to fund the Safeguarding Tomorrow Through Ongoing Risk Mitigation Act Revolving Loan Program. These funds shall be placed in reserve. The division is authorized to submit a budget amendment for release of the funds held in reserve for approval by the

Legislative Budget Commission pursuant to chapter 216, Florida Statutes. Release is contingent upon documentation of an award or other approval by the Federal Emergency Management Agency and the division's approved intended use plan for the funds.

Section 16. (1) For the 2023-2024 fiscal year, the sum of $50 million in nonrecurring funds is appropriated from the General Revenue Fund to the Economic Development Trust Fund of the Department of Economic Opportunity to fund the Local Government Emergency Revolving Bridge Loan Program.

(2) Funds appropriated in section 3 of chapter 2023-1, Laws of Florida, for the Local Government Emergency Bridge Loan Program which have not been loaned to a local government pursuant to a loan agreement as of July 1, 2023, shall be transferred by nonoperating budget authority to the Economic Development Trust Fund of the Department of Economic Opportunity to be used for the Local Government Emergency Revolving Bridge Loan Program.

(3) Notwithstanding sections 1 and 3 of chapter 2023-1, Laws of Florida, all loan repayments for loans made under the Local Government Emergency Bridge Loan Program shall be repaid into the Economic Development Trust Fund and be made available for loans under the Local Government Emergency Revolving Bridge Loan Program.

Section 17. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon

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becoming a law, this act shall take effect July 1, 2023.

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COMMERCE COMMITTEE

PCB COM 23-03 by Rep. Giallombardo
Natural Emergencies

AMENDMENT SUMMARY
April 10, 2023

Amendment 1 by Rep. Giallombardo (between lines 473 and 474):

- Extends the date for certain fire control districts to submit the statutorily-required performance reviews until January 1, 2024, because of delays caused by Hurricane Ian.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Between lines 473 and 474, insert:

Section 17. Notwithstanding the timeframe specified in s. 189.0695 (2)(c) and (d), an independent special fire control district located entirely or partially within 50 miles of where Hurricane Ian made landfall that was required to submit its final report of the performance review by July 1, 2023, may file such report no later than January 1, 2024.

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

Remove lines 83-84 and insert:

Economic Development Trust Fund; authorizing independent special fire control districts to file a specified report on an alternative schedule under certain circumstances; providing effective dates.

PCB COM 23-04

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB COM 23-04 Insurer Accountability
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes various changes designed to increase insurer accountability in the following ways:

- **Agent Licensing:** allows the Department of Financial Services (DFS) to deny licensure to an applicant who violated of the Florida Insurance Code (Insurance Code).
- **Examination of Insurers:** requires a risk-based assessment for scheduling Office of Insurance Regulation (OIR) financial examinations and of market conduct examinations of insurers following a hurricane.
- **Insurance Policy/Claims Handling:** identifies two new acts that constitute unfair methods of competition or unfair or deceptive acts by an insurer or agent; prohibits Citizens Property Insurance Corporation from declaring a property ineligible if the property has unrepaired damage that is the subject of a claim being serviced by the Florida Insurance Guaranty Association; clarifies that if a roof deductible is applied to a loss under a residential property insurance policy, no other deductible may be applied; provides a tolling of time applicable to a servicemember who is deployed to a combat zone or combat support posting; clarifies that nothing in the Bill SB 2A (2022A) impairs insurance contract rights in existence when the bill became law.
- **Fines:** increases the maximum fines for failure to timely respond to consumer complaints; increases the maximum fines that OIR may assess if an insurer violates the Insurance Code; creates fines for insurer violations of the Insurance Code related to a declared state of emergency; increases the maximum fines that may be assessed for unfair methods of competition or unfair or deceptive acts or practices by any individual or company engaged in the transaction of insurance.
- **Reporting:** requires OIR to create annual and quarterly reports of its actions to enforce insurer compliance with the Insurance Code; requires DFS Division of Investigative and Forensic Services to create an annual report regarding investigations and prosecutions of insurance fraud.
- **Rates/Premiums:** requires residential property insurers to post hurricane mitigation discount information on their websites; requires OIR to reevaluate fixtures or construction techniques demonstrated to reduce windstorm losses, and associated insurance premium discounts every five years.
- **Agency Staffing:** appropriates positions to DFS and OIR to implement the bill.

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

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

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Insurance Agent Licensing

Background

The Department of Financial Services (DFS) has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner.[1] DFS has a number of regulatory responsibilities over the Florida insurance market. DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters and conducts insurance-related consumer outreach through its Division of Consumer Services (Consumer Services). The Division of Workers' Compensation within DFS administers the workers' compensation system through enforcement of coverage requirements,[2] administration of workers' compensation health care delivery system,[3] data collection,[4] and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities.[5] DFS also administers the rehabilitation and liquidation of insolvent insurers.

Effect of the Bill – Licensure

The bill provides that DFS may deny licensure to an applicant who, within seven years of application, has been found guilty of, or pleaded guilty or nolo contendere to a misdemeanor that is also a violation of the Florida Insurance Code (Insurance Code).

Examination of Insurers

Background

The Office of Insurance Regulation (OIR) provides oversight for specified insurance products, insurers and other risk bearing entities in Florida.[6] The Financial Services Commission (FSC), composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of the Office of Insurance Regulation for purposes of rulemaking. Further, the FSC appoints the commissioner of the Florida Office of Insurance Regulation.

As part of their regulatory oversight, OIR may suspend or revoke an insurer's certificate of authority under certain conditions.[7] OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.[8] As part of the examination process, all persons being examined must make available to OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.[9] OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.[10]

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[1] *See*, e.g., Florida Department of Financial Services, *What is the Purpose of the Department*, https://oppaga.fl.gov/ (last visited Apr. 2, 2023).
[2] S. 440.107(3), F.S.
[3] S. 440.13, F.S.
[4] Ss. 440.185 and 440.593, F.S.
[5] S. 440.191, F.S.
[6] S. 20.121(3)(a), F.S.
[7] S. 624.418, F.S.
[8] S. 624.316(1)(a), F.S.
[9] S. 624.318(2), F.S.
[10] S. 624.3161, F.S.

Financial Examinations

OIR is responsible for all activities concerning insurers and other risk-bearing entities such as licensing, solvency, rates, and policy forms. The law requires OIR to conduct financial examinations of insurers. The scope of the financial examination includes a review of the affairs, records, transactions, accounting procedures and financial condition of an insurer.[11] OIR is charged with conducting an exam once every five years, with the exception of domestic insurers that have held a certificate of authority for less than three years, which are required to be examined on an annual basis.[12] OIR is required to examine an insurer applying for an initial certificate of authority prior to issuing the certificate of authority.[13]

Effect of the Bill – Financial Examinations

The bill changes OIR's mandatory financial examination schedule to the following risk-based schedule:

- High-risk insurers must be examined at least once every three years.
- Average-risk insurers must be examined at least once every five years.
- Low-risk insurers must be examined at least once every seven years.

Financial examinations must cover the preceding fiscal years since the last examination, except for examinations of low-risk insurers, in which case the examination must cover the preceding five fiscal years. The bill requires that OIR create, and that FSC must adopt by rule, a risk-based selection methodology for scheduling and conducting financial exams, which much include:

- Use of required risk-based capital reports to prioritize financial examinations.[14]
- Consideration of financial strength ratings, downgrades, or threatened downgrades.
- Prioritization of property insurers for which OIR identifies significant solvency concerns.
- Any other conditions OIR deems necessary for the protection of the public.

In addition to the methodology, the rule must include a plan to implement the risk-based examination schedule. OIR must present the proposed rule to the FSC no later than October 1, 2023.

Market Conduct Exams

OIR is authorized to perform a market conduct examination of insurers and other related entities.[15] The purpose of the examination is to determine the entity's compliance with Florida law.[16] The costs of the examination are paid by the subject entity.[17] OIR is may conduct a market conduct of any authorized insurer after a hurricane, if the insurer:

- Is among the top 20 percent of insurers based upon the ratio of hurricane-related claims to the property insurance policies in force;
- Is among the top 20 percent of insurers based upon of the ratio of consumer complaints to hurricane-related claims;
- Has made significant payments to its managing general agent since the hurricane; or
- As determined by OIR for any other reason.

During a market conduct examination, OIR may examine the affairs, records, transactions, accounting procedures and financial condition of an insurer as relevant to the actions that gave rise to the examination.[18] The market conduct examination, when conducted post hurricane, must be started

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[11] S. 624.316, F.S.
[12] *Id.*
[13] *Id.*
[14] Risk-based capital is a statutory minimum level of capital that is based on tan insurance company's size and the inherent riskiness of its financial assets and operations. NAIC, *Risk-based Capital*, https://content.naic.org/cipr-topics/risk-based-capital (last visited Apr. 7, 2023).
[15] S. 624.3161(1), F.S.
[16] *Id.*
[17] S. 624.3161(4), F.S.
[18] *See* ss. 624.316 and 624.3161, F.S.

within 18 months after the storm's landfall. The insurer's managing general agent must be included in the market conduct examination, as if it were the insurer.

If a market conduct examination reveals that the "insurer has exhibited a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling which caused harm to policyholders," OIR may order the insurer to file its claims-handling practices and procedures with OIR for review and inspection.[19] The practices and procedures are to be held by OIR for 36 months and are considered public records, not trade secrets, during such period.[20] The term "claims-handling practices and procedures" is defined as "any policies, guidelines, rules, protocols, standard operating procedures, instructions, or directives that govern or guide how and the manner in which an insured's claims for benefits under any policy will be processed."[21]

Effect of the Bill – Market Conduct Examinations

The bill removes OIR's discretion to conduct post-hurricane market conduct examinations that was established in SB 2A (2022A). Instead, OIR must conduct post-hurricane market conduct examinations if, at any time more than 90 days after the end of a hurricane, an insurer meets the post-hurricane examination criteria.

The office must create, and the FSC must adopt by rule, a risk-based selection methodology for scheduling and conducting market conduct examinations. Under this methodology, OIR must initiate a market conduct examination against an insurer if the following conditions exist:

- An insurance regulator in another state has initiated or taken regulatory action against the insurer or entity.
- DFS and OIR have received a disproportionate number of certain claims-handling complaints against the insurer based on its market share.
- The results of a National Association of Insurance Commissioners (NAIC) Market Conduct Annual Statement indicate the insurer is a negative outlier with regard to particular metrics.[22]
- There is evidence the insurer is engaged in a pattern or practice of violations of the Unfair Insurance Trade Practices Act.
- Any other conditions that OIR deems necessary for the protection of the public.

In addition to the methodology, the rule must provide criteria for how OIR will determine that it has received a disproportionate number of claims-handling complaints. OIR must present the proposed rules to the FSC no later than October 1, 2023.

Insurance Policy/Claims Handling

Background

Florida law prohibits a person from engaging in an unfair or deceptive act or practice involving the business of insurance.[23] The definition of unfair or deceptive acts or practices includes, in part, the following unfair claim settlement practices:

- Attempting to settle claims on the basis of a document that was altered without knowledge or consent of the insured;
- A material misrepresentation made to an insured for the purpose and with the intent of effecting settlement on less favorable terms than provided under the contract or policy;
- Committing or performing with such frequency as to indicate a general business practice certain acts, such as failing to adopt and implement standards for the proper investigation of claims;
- Failing to pay undisputed amounts of partial or full benefits owed under first-party property insurance policies within 90 days after an insurer received notice of a residential property

[19] S. 624.3161(6), F.S.
[20] *Id.*
[21] *Id.*
[22] See drafting comment.
[23] S. 626.9521(1), F.S.

insurance claim, determines the amounts of partial or full benefits, and agrees to coverage, unless payment of the undisputed benefits is prevented by "an act of God, prevented by the impossibility of performance, or due to actions by the insured or claimant that constitute fraud, lack of cooperation, or intentional misrepresentation regarding the claim for which benefits are owed."[24]

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[25] Citizens is not a private insurance company.[26] It was statutorily created in 2002 when the Florida Legislature combined the state's two property insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).[27] Citizens offers property insurance through three different accounts: a personal lines account, a commercial lines account, and a coastal account.

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an nine-member Board of Governors (Board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[28] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the Board.[29] Citizens is subject to regulation by OIR in the same fashion as other insurers.

Under federal law, insurance companies cannot file for bankruptcy.[30] Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers[31] in Florida and sets up guaranty payments where necessary.[32] Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[33]

A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to the insolvency of an insurer.[34] Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA)[35] and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA).[36]

FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid" delay and financial loss due to the financial insolvency of an insurer.[37] It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.[38] When a Florida property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left

[24] S. 626.9541(1)(i), F.S.
[25] The term "admitted market" means insurance companies licensed to transact insurance in Florida.
[26] S. 627.351(6)(a)1., F.S.
[27] S. 2, ch. 2002-240, Laws of Fla.
[28] S. 627.351(6)(a)2., F.S.
[29] S. 627.351(6)(c)4.a., F.S.
[30] 11 U.S.C. § 109(b)(2).
[31] An "insolvent insurer" means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. S. 631.904(4), F.S.
[32] Ch. 631, F.S.
[33] *Id.*
[34] *See e.g.,* ss. 631.51 and 631.902, F.S.
[35] Ch. 631, part II, F.S.
[36] Ch. 631, part V, F.S.
[37] S. 631.51, F.S.
[38] S. 631.52, F.S.

with unpaid claims. FIGA obtains funds to pay the claims of insolvent insurers located in Florida from the liquidation of the assets of insolvent insurers by the Division of Rehabilitation and Liquidation within DFS and from the liquidation of assets of insolvent insurers located outside Florida that transact insurance business in Florida.[39] If an insurer's assets are insufficient to pay all claims, FIGA can also issue post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.[40]

An insurer issuing a personal lines residential property insurance policy may include in such policy a separate roof deductible that meets all of the following requirements:[41]

- Allows property insurers to include in the policy a separate roof deductible of up to two percent of the Coverage A limit of the policy or 50 percent of the cost to replace the roof. The policyholder must also be offered the option to decline the roof deductible by signing a form approved by the OIR. If a roof deductible is added to the policy at renewal, the insurer must provide a notice of change in policy terms and allow the policyholder to decline the separate roof deductible.
- Requires that policyholders that select a roof deductible must receive an actuarially sound premium credit or discount.
- Provides that the roof deductible does not apply to:
    - A total loss to the primary structure in accordance with the valued policy law,[42] which is caused by a covered peril.
    - A loss caused by a hurricane.
    - A roof loss resulting from a tree fall or other hazard that damages the roof and punctures the roof deck.
    - A roof loss requiring the repair of less than 50 percent of the roof.
- Specifies that when a roof deductible is applied, no other deductibles under the policy may be applied.
- Specifies that a roof deductible only applies to a claim adjusted on a replacement cost basis.
- Authorizes an insurer to limit the claim payment for a roof to the actual cash value of the loss to the roof until the insurer receives reasonable proof of payment by the policyholder of the roof deductible.
- Requires a roof deductible provision to be clear and unambiguous.
- Requires the inclusion of the following disclosures:
    - On the page immediately behind the declarations page, notice that a roof deductible may result in high out-of-pocket expenses to the policyholder.
    - On the policy declarations page, prominent display of the actual dollar value of the roof deductible at issuance and renewal.
- Allows an insurer to limit payment on a roof claim to actual cash value until the policyholder pays the roof deductible.

Law requires insureds to notify an insurer of a claim or reopened claim,[43] within 1 year after the date of loss.[44] Notice of a supplemental claim[45] must be given to the insurer within 18 months of the date of loss or such claim is barred. Insureds are also required to notify an insurer of a claim, supplemental claim, or reopened sinkhole claim within 2 years after the insured knew or reasonably should have

[39] *See* s. 631.061, F.S. for grounds for liquidation. *See* s. 631.025, F.S., for an overview of persons subject to proceedings initiated by the Division.
[40] S. 631.57, F.S.
[41] S. 672.701(10), F.S.
[42] S. 627.702, F.S.
[43] S. 627.70132(1)(a), F.S., defines "reopened claim" as a claim that an insurer has previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to the insurer.
[44] S. 627.702(3), F.S., provides that the date of loss for claims resulting from specified and other weather-related events, such as hurricanes and tornadoes, is the date that the hurricane made landfall or the other weather-related event is verified by the National Oceanic and Atmospheric Administration.
[45] S. 627.70132(1)(b), F.S., defines "supplemental claim" as a claim for additional loss or damage from the same peril which the insured has previously adjusted or for which costs have been incurred while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.

known about the loss.[46] The law does not currently contain any tolling of these time limits for military service members.

Effect of the Bill – Insurance Policy/Claims Handling

The bill adds two new acts that constitute unfair methods of competition or unfair or deceptive acts by an insurer or agent. They are:

- Altering or amending an insurance adjuster's report without including:
  - A detailed lists of all changes made to the report.
  - The identity of the person who ordered each change.
  - A detailed explanation of why a change was made if the change reduces an estimate of a loss.
- Authorizing or permitting an insurer to pay a bonus to an officer or director of an insurer while the insurer is impaired or insolvent, regardless of whether delinquency proceedings have been, or will be, initiated.

The bill prohibits Citizens from determining that a property risk is ineligible for coverage solely because the property risk has unrepaired damage that is the subject of a claim being serviced by the Florida Insurance Guaranty Association (FIGA). This prohibition applies to a property until the earlier of 36 months from the date FIGA starting servicing the claim or the date that FIGA closes the claim.

The bill clarifies that if a roof deductible is applied to a loss that is the subject of a claim under a residential property insurance policy, no other deductible may be applied to any other loss to the property caused by the same covered peril.

The bill provides tolling of the time limitations for providing notice of a property insurance claim to an insurer during any term of deployment to a combat zone or combat support posting which materially affects the ability of a servicemember[47] to file a claim.

The bill clarifies that nothing in SB 2A (2022A) shall be construed to impair any right under any insurance contract in effect on or before that bill became law. [48]

Fines Against Insurers, Agencies, and Agents

Background

DFS provides education, information, and assistance to consumers for all products or services regulated by DFS or FSC.[49] DFS' duties specifically include:

- Receiving consumer questions and complaints;
- Educating the public about insurance-related topics;
- Providing mediation of consumer and insurance company disputes; and
- Serving as a conduit for referrals for further legal action by DFS.[50]

DFS may impose an administrative penalty on a person who holds a license or certificate of authority from DFS if that person fails to respond to DFS' request for information within 20 days.[51] A licensed

[46] S. 627.706(5), F.S.
[47] A servicemember is defined in s. 250.01(19), F.S., as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.
[48] SB 2A was the property insurance bill that was passed during the 2022A Special Session. It became ch. 2022-271, Laws of Fla. This provision applies to SB 2A from the date it became law. See drafting comments.
[49] Florida Department of Financial Services, *Department of Financial Services Long Range Program Plan: Fiscal Years 2023-24 through 2027-28*, 15 (Oct. 17, 2022), available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=24407&DocType=PDF (last visited Apr. 2, 2023). *See also*, Florida Department of Financial Services, Consumer Guides, https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/Default.htm (last visited Apr. 2, 2023).
[50] S. 624.307(10)(a), F.S.
[51] S. 624.307(10)(b), F.S.

individual must produce any requested documents not subject to attorney-client or work product privilege.

OIR, through its ongoing oversight and examination process, determines whether insurance companies are operating in compliance with the Insurance Code. OIR is authorized to impose administrative fines in lieu of suspension or revocation if it finds that one or more grounds exist for the discretionary revocation or suspension of the certificate of authority.[52] OIR may impose an administrative fine as follows:

- A maximum of $5,000, per non-willful violation, with an aggregate limit of $20,000 for all non-willful violations arising out of the same action.
- A maximum of $40,000 per violation, with a $200,000 aggregate limit for all willful violations arising out of the same action.
- If an insurer owes restitution due to a violation, the insurer must provide the restitution and include 12 percent interest from the date of the violation or the inception of the insured's policy.

The Insurance Code also authorizes fines for engaging in an unfair or deceptive act or practice involving the business of insurance.[53] An insurer that commits such violations is subject to a fine of:

- A maximum of $5,000 for each non-willful violation, not to exceed an aggregate amount of $20,000.
- A maximum of $40,000 for each willful violation arising from the same action, not to exceed an aggregate amount of $200,000.[54]

Effect of the Bill – Fines

Consumer Services – Fines

The bill reduces the time that insurers and agents have to respond to Consumer Services regarding consumer complaints from 20 days to 14 days, but allows them to respond electronically instead of solely in writing. It also increases the fines for an insurer's failure to respond to such complaints from $2,500 per violation to $5,000 per violation.

OIR – Fines

The bill creates the following fines for violations of the Insurance Code by an insurer related to a covered loss or claim related to a declared a state of emergency:

- $25,000 per violation, up to an aggregate amount of $100,000 for all nonwillful violations arising out of the same action.
- $200,000 per violation, up to an aggregate amount of $1,000,000 for all willful violations arising out of the same action.

The bill increases the current maximum fines for all other violations of the Insurance Code by an insurer, as follows:

Type of Violation	Current Fine Individual Violation	Increased Fine Individual Violation	Current Fine Aggregate Violations	Increased Fine Aggregate Violations
Non-willful	$5,000	$12,500	$20,000	$50,000
Willful	$40,000	$100,000	$200,000	$500,000

Unfair Methods of Competition or Unfair or Deceptive Acts or Practices – Fines

[52] S. 624.4211, F.S.
[53] S. 626.9521, F.S.
[54] S. 626.9521(2), F.S.

The bill establishes that anyone who engages in an unfair method of competition or unfair or deceptive act or practice related to a covered loss or claim caused by a declared state of emergency is subject to the following fines:

- For any person,[55] up to $25,000 for each nonwillful violation and $200,000 for each willful violation.
- For an insurer, an aggregate maximum of $100,000 for all nonwillful violations and $1,000,000 for all willful violations arising out of the same action.

The maximum fine for engaging in twisting,[56] churning,[57] or willfully submitting fraudulent signatures on an application or policy-related document are increased from $5,000 to $12,500 for each nonwillful violation and from $75,000 to $187,500 for each willful violation. The aggregate maximum fines for this conduct are increased from $50,000 to $125,000 for all nonwillful violations and from $250,000 to $625,000 for all willful violations arising out of the same actions.

The bill increases the maximum fines for all other instances of unfair methods of competition or unfair or deceptive acts or practices by a person as follows:

Type of Violation	Current Fine Individual Violation	Increased Fine Individual Violation	Current Fine Aggregate Violations by an Insurer	Increased Fine Aggregate Violations by an Insurer
Non-willful	$5,000	$12,500	$20,000	$50,000
Willful	$40,000	$100,000	$200,000	$500,000

Reporting Requirements

Background

OIR is required to submit an annual report to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, the chairs of the legislative committees with jurisdiction over matters of insurance, and the Governor.[58] The report is to cover the following information from the preceding calendar year:

- Names of the authorized insurers transacting insurance in this state, with abstracts of their financial statements including assets, liabilities, and net worth.
- Names of insurers whose business was closed during the year, the cause thereof, and amounts of assets and liabilities as ascertainable.
- Names of insurers against which delinquency or similar proceedings were instituted and related information.
- The receipts and estimated expenses of OIR.
- Other pertinent information as OIR deems to be in the public interest.
- A compilation of the laws passed by the Legislature relating to insurance.
- An analysis and summary report of the state of the insurance industry in Florida.

[55] Person in connection with unfair methods of competition and unfair or deceptive acts or practices means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, or business trust or any entity involved in the business of insurance. S. 626.9511(1), F.S.

[56] Twisting is defined as knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer. S. 626.9541(1)(l), F.S.

[57] Churning is a practice whereby policy values in an existing life insurance policy or annuity contract, including, but not limited to, cash, loan values, or dividend values, and in any riders to that policy or contract, are directly or indirectly used to purchase another insurance policy or annuity contract with that same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation. S. 626.9541(1)(aa).

[58] S. 624.315, F.S. As of the date of this analysis, OIR has not provided its annual report to the Legislature since its 2021 Annual Report, which contained data from calendar year 2020.

The Division of Investigative and Forensic Services (DIFS) investigates various types of insurance fraud including Personal Injury Protection fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's insurance fraud, and healthcare fraud.[59] DIFS is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act,[60] false and fraudulent insurance claims,[61] and willful violations of the Florida Insurance Code and rules adopted pursuant to the code.[62] DIFS includes a Bureau of Insurance Fraud (Bureau) and employs sworn law enforcement officers to investigate insurance fraud.

Effect of the Bill – Reporting

The bill requires OIR to provide an annual report by February 15 each year to the Governor, President of the Senate, and Speaker of the House on its actions to enforce insurer compliance with the Insurance Code during the previous year (annual compliance report). OIR must also publish the annual compliance report on its website. The annual compliance report must contain information regarding:

- Revocation, denial, or suspension of any license or registration issued by OIR.
- Fines imposed by OIR for violations of the Insurance Code.
- Consent orders entered into by OIR.
- Examinations and investigations conducted and completed for which OIR found violations of law or rule, but did not take enforcement action.

OIR must also create quarterly reports detailing all actions to enforce insurer compliance with the Insurance Code during the previous quarter. The quarterly reports must be submitted to the FSC, President of the Senate, Speaker of the House, and legislative committees with jurisdiction over insurance matters. They must contain the same information as the annual compliance report.

The bill requires that the Bureau submit a performance report to the President of the Senate and Speaker of the House by January 1 each year, which includes at least the following information:

- Total number of initial referrals received, cases opened, cases presented for prosecution, cases closed, and convictions resulting from cases presented for prosecution by the Bureau.
- Number of referrals received from insurers, OIR, and Consumer Services, and the outcome of those referrals.
- Number of investigations undertaken by the Bureau which were not the result of a referral from an insurer and the outcome of those investigations.
- Number of investigations that resulted in a referral to a regulatory agency and the disposition of those referrals.
- Number of cases presented by the Bureau which local or statewide prosecutors declined to prosecute with the reasons why they declined.
- A summary of the annual report containing the data collected from fraud prosecutors.[63]
- The total number of employees assigned to the Bureau, broken down by location.
- Average caseload and turnaround time for each investigator.

The bill clarifies that, in addition to reporting to other agencies, DIFS may report alleged insurance-related crimes that impact two or more Florida judicial circuits to the statewide prosecutor.

Rates/Premiums

Background

[59] *See* https://myfloridacfo.com/Division/DIFS/ (last visited Apr. 2, 2023).
[60] S. 626.9541, F.S.
[61] S. 817.234, F.S.
[62] S. 624.15, F.S.
[63] S. 626.9896, F.S. requires such a report be prepared annually by the Bureau and presented to the Governor, President of the Senate, and Speaker of the House of Representatives.

Residential property insurance rate filings must account for mitigation measures undertaken by policyholders to reduce hurricane losses.[64] Specifically, the rate filings must include actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties.[65] Upon their filing by an insurer or rating organization, OIR determines the discounts, credits, other rate differentials and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation,[66] which in turn may be used in rate filings under the rating law. Windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength.[67]

Effect of the Bill – Rates/Premiums

The bill requires all residential property insurers to provide information on their websites describing hurricane mitigation premium discounts available to policyholders. Additionally, beginning on January 1, 2025, and every five years thereafter, OIR must reevaluate the fixtures or construction techniques demonstrated to reduce windstorm losses, and the discounts, credits, other rate differentials, and reductions in deductibles that correspond to these fixtures and techniques.

Agency Staffing

Background

DFS and OIR have both expressed to the Legislature that they have difficulty recruiting and retaining qualified staff due to their inability to compete with the salaries paid by the private sector for similar work. During a presentation to the Senate Banking and Insurance Committee on March 29, 2023, the Director of DFS Consumer Services explained that there is currently a 55 percent vacancy rate in the positions for the telephone helpline.[68]

Effect of the Bill – Agency Staffing

The bill appropriates recurring and nonrecurring funds from the Insurance Regulatory Trust Fund to create the following full-time positions to implement this bill:

- Five positions within DFS.
- Fourteen positions within OIR.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.307, F.S., relating to general powers; duties.

Section 2. Amends s. 624.3152, F.S., relating to annual report.

Section 3. Creates s. 624.3152, F.S., relating to quarterly report of enforcement activity.

Section 4. Amends s. 624.316, F.S., relating to examination of insurers.

Section 5. Amends s. 624.3161, F.S., relating to market conduct examinations.

Section 6. Amends s. 624.4211, F.S., relating to administrative fine in lieu of suspension or revocation.

[64] S. 627.062(2)(j), F.S.
[65] S. 627.0629(1), F.S.
[66] *Id.*
[67] *Id.*
[68] Senate Committee on Banking and Insurance, *Presentation by Greg Thomas from DFS*, https://www.flsenate.gov/media/videoplayer?EventID=1_nty0d3lq-202303290830&Redirect=true (last visited Apr. 8, 2023).

Section 7. Amends s. 626.207, F.S., relating to disqualification of applicants and licensees; penalties against licensees; rulemaking authority.

Section 8. Amends s. 626.9521, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices prohibited; penalties.

Section 9. Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 10. Amends s. 626.989, F.S., relating to investigation by department of Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.

Section 11. Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

Section 12. Amends s. 627.31, F.S., relating to insurance risk apportionment plans.

Section 13. Amends s. 627.701, F.S., relating to liability of insureds; coinsurance; deductibles.

Section 14. Amends s. 627.70132, F.S., relating to notice of property insurance claim.

Section 15. Provides uncoded directory language.

Section 16. Provides an appropriation of funds for DFS.

Section 17. Provides an appropriation of funds for OIR.

Section 18. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   If the bill results in DFS and OIR assessing newly created or increased fine amounts against insurers, insurance agents and agencies, or others, it may result in additional revenues for the state.

2. Expenditures:

   The bill provides for appropriation of funds from the Insurance Regulatory Trust Fund for:
   - $494,774 in recurring funds and $23,410 in nonrecurring funds for five additional full-time positions within DFS.
   - $1,301,672 in recurring funds and $65,548 in nonrecurring funds for fourteen additional full-time positions within OIR.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in a negative economic impact on insurers if they are assessed new or increased fine amounts and if they have to expend additional funds to pay for more frequent examinations by OIR.[69]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides OIR and the FSC with the authority necessary to implement rules and forms to administer the portions of the bill where rulemaking and form creation are required, including risk-based selection methods for financial and market conduct examinations of insurers and mitigation discounts for residential property insurance policies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 148-271: These lines contain errors in coding. Certain lines of new statutory language lack underlining and should be amended to correct the coding.

Lines 256-258: These lines require consideration of particular metrics from a NAIC Market Conduct Annual Statement in determining whether a market conduct examination is necessary, but the metrics are not defined. The bill should be amended to provide the metrics that must be considered.

Lines 684-691: Chapter 2022-271, Laws of Fla., (SB 2A (2022A)) contains multiple effective dates, so the language in this section of the bill may cause confusion about what date applies in the event of a dispute under an insurance contract that went into effect after the bill was approved by the Governor, but before the applicable effective date specified within the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[69] Insurers are responsible for paying OIR for the cost of their examinations. S. 624.320, F.S.

A bill to be entitled

An act relating to insurer accountability; amending s. 624.307, F.S.; authorizing electronic responses to certain requests from the Division of Consumer Services of the Department of Financial Services concerning consumer complaints; revising the timeframe in which responses must be made; revising administrative penalties; amending s. 624.315, F.S.; specifying reporting requirements for the Office of Insurance Regulation's internal auditor in the office's annual report relating to the enforcement of insurer compliance; creating s. 624.3152, F.S.; specifying requirements for the office to report quarterly to the Legislature relating to the enforcement of insurer compliance; amending s. 624.316, F.S.; requiring the office to create a specified methodology for scheduling examinations of insurers; specifying requirements for such methodology; providing construction; amending s. 624.3161, F.S.; providing that authorized property insurers must, rather than may, be subject to an additional market conduct examination after a hurricane if specified conditions are met; revising the applicability of such conditions; requiring the office to create, and the Financial Services

Commission to adopt by rule, a specified methodology for scheduling examinations of insurers; specifying requirements for such methodology; providing construction; amending s. 624.4211, F.S.; revising administrative fines the office may impose in lieu of revocation or suspension; amending s. 626.207, F.S.; revising a condition for disqualification of an insurance representative applicant or licensee; amending s. 626.9521, F.S.; revising and specifying applicable fines for unfair methods of competition and unfair or deceptive acts or practices; amending s. 626.9541, F.S.; adding an unfair claim settlement practice by an insurer; prohibiting an officer or a director of an impaired insurer to authorize or permit the insurer to pay a bonus to any officer or director of the insurer; defining the term "bonus"; providing a criminal penalty; amending s. 626.989, F.S.; revising a reporting requirement for the department's Division of Investigative and Forensic Services; requiring the division to submit an annual performance report to the Legislature; specifying requirements for the report; amending s. 627.0629, F.S.; specifying requirements for residential property insurers in providing certain hurricane mitigation discount information to policyholders in a specified manner; specifying

requirements for the office in reevaluating and updating certain fixtures and construction techniques; deleting obsolete dates; amending s. 627.351, F.S.; prohibiting Citizens Property Insurance Corporation from determining that a risk is ineligible for coverage solely on a specified basis; amending s. 627.701, F.S.; providing that if a roof deductible is applied under a personal lines residential property insurance policy, no other deductible under the policy may be applied to any other loss to the property caused by the same covered peril; amending s. 627.70132, F.S.; providing for the tolling of certain timeframes for filing notices of property insurance claims for servicemembers; providing appropriations; providing an effective date.

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

Section 1. Paragraph (b) of subsection (10) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(10)

(b) Any person licensed or issued a certificate of authority by the department or the office shall respond, in writing or electronically, to the division within 14 ~~20~~ days

after receipt of a written request for documents and information from the division concerning a consumer complaint. The response must address the issues and allegations raised in the complaint and include any requested documents concerning the consumer complaint not subject to attorney-client or work-product privilege. The division may impose an administrative penalty for failure to comply with this paragraph of up to $5,000 ~~$2,500~~ per violation upon any entity licensed by the department or the office ~~and $250 for the first violation, $500 for the second violation, and~~ up to $1,000 per ~~for the third or subsequent~~ violation by ~~upon~~ any individual licensed by the department or the office.

Section 2. Present subsection (4) of section 624.315, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

624.315 Annual report.—

(4) The office shall detail all actions to enforce insurer compliance during the previous year. For each of the following, the report must detail the insurer or other licensee or registrant against whom such action was taken; whether the office found any violation of law or rule by such party, and, if so, detail such violation; and the resolution of such action, including any penalties imposed by the office. The report must be published on the website of the office and submitted to the Governor, the President of the Senate, and the Speaker of the

House of Representatives on or before February 15 of each year. The report must include, but need not be limited to:

(a) The revocation, denial, or suspension of any license or registration issued by the office.

(b) All actions taken pursuant to s. 624.310.

(c) Fines imposed by the office for violations of this code.

(d) Consent orders entered into by the office.

(e) Examinations and investigations conducted and completed by the office pursuant to ss. 624.316 and 624.3161.

(f) Investigations conducted and completed, by line of insurance, for which the office found violations of law or rule but did not take enforcement action.

Section 3. Section 624.3152, Florida Statutes, is created to read:

624.3152 Quarterly report of enforcement activity.—Each quarter, the office shall create a report detailing all actions of the office to enforce insurer compliance. The report must be submitted to the commission, the President of the Senate, the Speaker of the House of Representatives, and the legislative committees with jurisdiction over matters of insurance. For each of the following, the report must detail the insurer or other licensee or registrant against whom such action was taken; whether the office found any violation of law or rule by such party, and, if so, detail such violation; and the resolution of

such action, including any penalties imposed by the office. The report is due on or before April 30, July 31, October 31, and January 31, respectively, for the immediately preceding quarter. The report must include, but need not be limited to:

(1) The revocation, denial, or suspension of any license or registration issued by the office.

(2) All actions taken pursuant to s. 624.310.

(3) Fines imposed by the office for violations of this code.

(4) Consent orders entered into by the office.

(5) Examinations and investigations conducted and completed by the office pursuant to ss. 624.316 and 624.3161.

(6) Investigations conducted and completed, by line of insurance, for which the office found violations of law or rule but did not take enforcement action.

Section 4. Subsection (2) is amended and subsection (3) is added to section 624.316, Florida Statutes, to read:

624.316 Examination of insurers.—

(2)(a) Except as provided in paragraph (f), the office may examine each insurer as often as may be warranted for the protection of the policyholders and in the public interest, but must, at a minimum, examine insurers as follows:

1. High-risk insurers not less frequently than once every 3 years.

2. Average-risk insurers not less frequently than once

every 5 years.

3. Low-risk insurers not less frequently than once every 7 years ~~and shall examine each domestic insurer not less frequently than once every 5 years~~.

The examination shall cover the preceding ~~5~~ fiscal years since the last examination of the insurer, except for low-risk insurers, in which case the examination shall cover the preceding 5 fiscal years, and shall be commenced within 12 months after the end of the most recent fiscal year being covered by the examination. The examination may cover any period of the insurer's operations since the last previous examination. The examination may include examination of events subsequent to the end of the most recent fiscal year and the events of any prior period that affect the present financial condition of the insurer.

(3) The office shall create, and the commission shall adopt by rule, a risk-based selection methodology for scheduling and conducting examinations of insurers and other entities subject to this section. This requirement does not restrict the authority of the office to conduct market conduct examinations as often as it deems advisable. Such methodology must include:

(a) Use of currently required risk-based capital reports to prioritize financial examinations of insurers when such reporting indicates a decline in the insurer's financial

condition.

(b) Consideration of any downgrade or threatened downgrade in the insurer's financial strength rating.

(c) Prioritization of property insurers for which the office identifies significant concerns about an insurer's solvency pursuant to s. 627.7154.

(d) Any other conditions the office deems necessary for the protection of the public.

The office shall present the proposed rule required by this subsection to the commission no later than October 1, 2023. In addition to the methodology required by this subsection, the rule must include a plan to implement the examination schedule in subsection (2).

Section 5. Subsection (7) of section 624.3161, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

624.3161 Market conduct examinations.—

(7) Notwithstanding subsection (1), any authorized insurer transacting property insurance business in this state must ~~may~~ be subject to an additional market conduct examination after a hurricane if, at any time more than 90 days after the end of the hurricane, the insurer:

(a) Is among the top 20 percent of insurers based upon a calculation of the ratio of hurricane-related property insurance

claims filed to the number of property insurance policies in force;

(b) Is among the top 20 percent of insurers based upon a calculation of the ratio of consumer complaints made to the department to hurricane-related claims;

(c) Has made significant payments to its managing general agent since the hurricane; or

(d) Is identified by the office as necessitating a market conduct exam for any other reason.

All relevant criteria under this section and s. 624.316 shall be applied to the market conduct examination under this subsection. Such an examination must be initiated within 18 months after the landfall of a hurricane that results in an executive order or a state of emergency issued by the Governor. This requirement does not limit in any way the authority of the office to conduct at any time a market conduct examination of a property insurer in the aftermath of a hurricane. An examination of an insurer under this subsection must also include an examination of its managing general agent as if it were the insurer.

(8) The office shall create, and the commission shall adopt by rule, a risk-based selection methodology for scheduling and conducting market conduct examinations of insurers and other entities regulated by the office. This requirement does not restrict the authority of the office to conduct market conduct

examinations as often as it deems necessary. Under such selection methodology, the office must initiate a market conduct examination if any of the following conditions exist relating to an insurer or other entity regulated by the office:

(a) An insurance regulator in another state has initiated or taken regulatory action against the insurer or entity, including, but not limited to:

1. A licensure denial, suspension, or revocation;

2. Imposition of administrative fines; or

3. Issuance of a cease and desist order, consent order, or other order regarding actions or omissions of the insurer or entity.

(b) Given the insurer's market share in this state, the department or the office has received a disproportionate number of the following types of claims-handling complaints against the insurer:

1. Failure to timely communicate with respect to claims;

2. Failure to timely pay claims;

3. Untimely payments giving rise to the payment of statutory interest;

4. Failure to adjust and pay claims in accordance with the terms and conditions of the policy or contract and in compliance with state law;

5. Violations of the Unfair Insurance Trade Practices Act in part IX of chapter 626;

6. Failure to use licensed and duly appointed claims adjusters;

7. Failure to maintain reasonable claims records; or

8. Failure to adhere to the company's claims-handling manual.

(c) The results of a National Association of Insurance Commissioners Market Conduct Annual Statement indicate the insurer is a negative outlier with regard to particular metrics.

(d) There is evidence the insurer is engaged in a pattern or practice of violations of the Unfair Insurance Trade Practices Act.

(f) Any other conditions the office deems necessary for the protection of the public.

The office shall present the proposed rule required by this subsection to the commission no later than October 1, 2023. In addition to the methodology required by this subsection, the rule must provide criteria for how the office will determine that it has received a disproportionate of the claims-handling complaints described in paragraph (b).

Section 6. Section 624.4211, Florida Statutes, is amended to read:

624.4211 Administrative fine in lieu of suspension or revocation.—

(1) If the office finds that one or more grounds exist for the discretionary revocation or suspension of a certificate of authority issued under this chapter, the office may, in lieu of such revocation or suspension, impose a fine upon the insurer.

(2)(a) With respect to a ~~any~~ nonwillful violation, such fine may not exceed:

1. Twenty-five thousand dollars per violation, up to an aggregate amount of $100,000 for all nonwillful violations arising out of the same action, related to a covered loss or claim caused by an emergency for which the Governor declared a state of emergency pursuant to s. 252.36.

2. Twelve thousand five hundred dollars ~~$5,000~~ per violation, up to~~. In no event shall such fine exceed~~ an aggregate amount of $50,000 ~~$20,000~~ for all other nonwillful violations arising out of the same action.

(b) If an insurer discovers a nonwillful violation, the insurer shall correct the violation and, if restitution is due, make restitution to all affected persons. Such restitution shall include interest at 12 percent per year from either the date of the violation or the date of inception of the affected person's policy, at the insurer's option. The restitution may be a credit against future premiums due provided that interest accumulates until the premiums are due. If the amount of restitution due to any person is $50 or more and the insurer wishes to credit it against future premiums, it shall notify such person that she or

he may receive a check instead of a credit. If the credit is on a policy that is not renewed, the insurer shall pay the restitution to the person to whom it is due.

(3)(a) With respect to a ~~any~~ knowing and willful violation of a lawful order or rule of the office or commission or a provision of this code, the office may impose a fine upon the insurer in an amount not to exceed:

1. Two hundred thousand dollars for each such violation, up to an aggregate amount of $1 million for all knowing and willful violations arising out of the same action, related to a covered loss or claim caused by an emergency for which the Governor declared a state of emergency pursuant to s. 252.36.

2. One hundred thousand dollars ~~$40,000~~ for each such violation, up to~~. In no event shall such fine exceed~~ an aggregate amount of $500,000 ~~$200,000~~ for all other knowing and willful violations arising out of the same action.

(b) In addition to such fines, the insurer shall make restitution when due in accordance with subsection (2).

(4) The failure of an insurer to make restitution when due as required under this section constitutes a willful violation of this code. However, if an insurer in good faith is uncertain as to whether any restitution is due or as to the amount of such restitution, it shall promptly notify the office of the circumstances; and the failure to make restitution pending a determination thereof shall not constitute a violation of this

code.

Section 7. Paragraph (c) of subsection (3) of section 626.207, Florida Statutes, is amended to read:

626.207 Disqualification of applicants and licensees; penalties against licensees; rulemaking authority.—

(3) An applicant who has been found guilty of or has pleaded guilty or nolo contendere to a crime not included in subsection (2), regardless of adjudication, is subject to:

(c) A 7-year disqualifying period for all misdemeanors directly related to the financial services business or any violation of the Florida Insurance Code.

Section 8. Subsections (2) and (3) of section 626.9521, Florida Statutes, are amended to read:

626.9521 Unfair methods of competition and unfair or deceptive acts or practices prohibited; penalties.—

(2) Except as provided in subsection (3), any person who violates any provision of this part is subject to a fine in an amount not greater than $12,500 ~~$5,000~~ for each nonwillful violation and not greater than $100,000 ~~$40,000~~ for each willful violation. Fines under this subsection imposed against an insurer may not exceed an aggregate amount of $50,000 ~~$20,000~~ for all nonwillful violations arising out of the same action or an aggregate amount of $500,000 ~~$200,000~~ for all willful violations arising out of the same action. The fines may be imposed in addition to any other applicable penalty.

(3)(a) If a person violates s. 626.9541(1)(l), the offense known as "twisting," or violates s. 626.9541(1)(aa), the offense known as "churning," the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082, and an administrative fine not greater than $12,500 ~~$5,000~~ shall be imposed for each nonwillful violation or an administrative fine not greater than $187,500 ~~$75,000~~ shall be imposed for each willful violation. To impose an administrative fine for a willful violation under this paragraph, the practice of "churning" or "twisting" must involve fraudulent conduct.

(b) If a person violates s. 626.9541(1)(ee) by willfully submitting fraudulent signatures on an application or policy-related document, the person commits a felony of the third degree, punishable as provided in s. 775.082, and an administrative fine not greater than $12,500 ~~$5,000~~ shall be imposed for each nonwillful violation or an administrative fine not greater than $187,500 ~~$75,000~~ shall be imposed for each willful violation.

(c) If a person violates any provision of this part and such violation is related to a covered loss or covered claim caused by an emergency for which the Governor declared a state of emergency pursuant to s. 252.36, such person is subject to a fine in an amount not greater than $25,000 for each nonwillful violation and not greater than $200,000 for each willful violation. Fines under this paragraph imposed against an insurer

may not exceed an aggregate amount of $100,000 for all nonwillful violations arising out of the same action or an aggregate amount of $1 million for all willful violations arising out of the same action.

(d) Administrative fines under paragraphs (a) and (b) ~~this subsection~~ may not exceed an aggregate amount of $125,000 ~~$50,000~~ for all nonwillful violations arising out of the same action or an aggregate amount of $625,000 ~~$250,000~~ for all willful violations arising out of the same action.

Section 9. Paragraphs (i) and (w) of subsection (1) of section 626.9541, Florida Statutes, are amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(i) *Unfair claim settlement practices.*—

1. Attempting to settle claims on the basis of an application, when serving as a binder or intended to become a part of the policy, or any other material document which was altered without notice to, or knowledge or consent of, the insured;

2. A material misrepresentation made to an insured or any other person having an interest in the proceeds payable under such contract or policy, for the purpose and with the intent of

effecting settlement of such claims, loss, or damage under such contract or policy on less favorable terms than those provided in, and contemplated by, such contract or policy;

3. Committing or performing with such frequency as to indicate a general business practice any of the following:

a. Failing to adopt and implement standards for the proper investigation of claims;

b. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

c. Failing to acknowledge and act promptly upon communications with respect to claims;

d. Denying claims without conducting reasonable investigations based upon available information;

e. Failing to affirm or deny full or partial coverage of claims, and, as to partial coverage, the dollar amount or extent of coverage, or failing to provide a written statement that the claim is being investigated, upon the written request of the insured within 30 days after proof-of-loss statements have been completed;

f. Failing to promptly provide a reasonable explanation in writing to the insured of the basis in the insurance policy, in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement;

g. Failing to promptly notify the insured of any additional information necessary for the processing of a claim;

h. Failing to clearly explain the nature of the requested information and the reasons why such information is necessary; ~~or~~

i. Failing to pay personal injury protection insurance claims within the time periods required by s. 627.736(4)(b). The office may order the insurer to pay restitution to a policyholder, medical provider, or other claimant, including interest at a rate consistent with the amount set forth in s. 55.03(1), for the time period within which an insurer fails to pay claims as required by law. Restitution is in addition to any other penalties allowed by law, including, but not limited to, the suspension of the insurer's certificate of authority; or

j. Altering or amending an insurance adjuster's report without including on the report or as an addendum to the report a detailed list of all changes made to the report and the identity of the person who ordered each change. Any change that has the effect of reducing the estimate of the loss must include a detailed explanation why such change was made; or

4. Failing to pay undisputed amounts of partial or full benefits owed under first-party property insurance policies within 60 days after an insurer receives notice of a residential property insurance claim, determines the amounts of partial or full benefits, and agrees to coverage, unless payment of the undisputed benefits is prevented by factors beyond the control of the insurer as defined in s. 627.70131(5).

(w) *Soliciting or accepting new or renewal insurance risks or payment of certain bonuses by insolvent or impaired insurer prohibited; penalty.—*

1. Whether or not delinquency proceedings as to the insurer have been or are to be initiated, but while such insolvency or impairment exists, no director or officer of an insurer, except with the written permission of the office, shall authorize or permit the insurer to solicit or accept new or renewal insurance risks in this state after such director or officer knew, or reasonably should have known, that the insurer was insolvent or impaired.

2. Regardless of whether delinquency proceedings as to the insurer have been or are to be initiated, but while such insolvency or impairment exists, a director or an officer of an impaired insurer may not authorize or permit the insurer to pay a bonus to any officer or director of the insurer.

3. As used in this paragraph, the term:

a. "Bonus" means a payment, in addition to an officer's or a director's usual compensation, that is in addition to any amounts contracted for or otherwise legally due.

b. "Impaired" includes impairment of capital or surplus, as defined in s. 631.011(12) and (13).

4.~~2.~~ Any such director or officer, upon conviction of a violation of this paragraph, commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s.

775.083, or s. 775.084.

Section 10. Subsection (6) of section 626.989, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

626.989 Investigation by department or Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.—

(6)(a) Any person, other than an insurer, agent, or other person licensed under the code, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being or has been committed may send to the Division of Investigative and Forensic Services a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may request. Any professional practitioner licensed or regulated by the Department of Business and Professional Regulation, except as otherwise provided by law, any medical review committee as defined in s. 766.101, any private medical review committee, and any insurer, agent, or other person licensed under the code, or an employee thereof, having knowledge or who believes that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the

code, or under s. 817.234, is being or has been committed shall send to the Division of Investigative and Forensic Services a report or information pertinent to such knowledge or belief and such additional information relative thereto as the department may require.

(b) The Division of Investigative and Forensic Services shall review such information or reports and select such information or reports as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or a misdemeanor under the code, or under s. 817.234, is being committed.

(c) The Division of Investigative and Forensic Services shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and state attorney or other prosecuting agency having jurisdiction, including, but not limited to, the statewide prosecutor for crimes that impact two or more judicial circuits in this state, with respect to any such violation, as provided in s. 624.310. If prosecution by the state attorney or other prosecuting agency having jurisdiction with respect to such violation is not begun within 60 days of the division's report, the state attorney or other prosecuting agency having jurisdiction with respect to

such violation shall inform the division of the reasons for the lack of prosecution.

(10) The Division of Investigative and Forensic Services Bureau of Insurance Fraud shall prepare and submit a performance report to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The annual report must include, but need not be limited to:

(a) The total number of initial referrals received, cases opened, cases presented for prosecution, cases closed, and convictions resulting from cases presented for prosecution by the Bureau of Insurance Fraud, by type of insurance fraud and circuit.

(b) The number of referrals received from insurers, the office, and the Division of Consumer Services of the department, and the outcome of those referrals.

(c) The number of investigations undertaken by the Bureau of Insurance Fraud which were not the result of a referral from an insurer and the outcome of those referrals.

(d) The number of investigations that resulted in a referral to a regulatory agency and the disposition of those referrals.

(e) The number of cases presented by the Bureau of Insurance Fraud which local prosecutors or the statewide prosecutor declined to prosecute and the reasons provided for declining prosecution.

(f) A summary of the annual report required under s. 626.9896.

(g) The total number of employees assigned to the Bureau of Insurance Fraud, delineated by location of staff assigned; and the number and location of employees assigned to the Bureau of Insurance Fraud who were assigned to work other types of fraud cases.

(h) The average caseload and turnaround time by type of case for each investigator.

(i) The training provided during the year to insurance fraud investigators.

Section 11. Subsections (1), (3), and (4) of section 627.0629, Florida Statutes, are amended to read:

627.0629 Residential property insurance; rate filings.—

(1) It is the intent of the Legislature that insurers provide savings to consumers who install or implement windstorm damage mitigation techniques, alterations, or solutions to their properties to prevent windstorm losses. A rate filing for residential property insurance must include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The fixtures or construction techniques must include, but are not limited to, fixtures or construction

techniques that enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength. Credits, discounts, or other rate differentials, or appropriate reductions in deductibles, for fixtures and construction techniques that meet the minimum requirements of the Florida Building Code must be included in the rate filing. The office shall determine the discounts, credits, other rate differentials, and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation, which may be used by insurers in rate filings. Effective July 1, 2023, each insurer subject to the requirements of this section must provide information on the insurer's website describing the hurricane mitigation discounts available to policyholders. Such information must be accessible on, or through a hyperlink located on, the home page of the insurer's website or the primary page of the insurer's website for property insurance policyholders or applicants for such coverage in this state. On or before January 1, 2025, and every 5 years thereafter, the office shall reevaluate and update the fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm and the discounts, credits, other rate differentials, and appropriate reductions in deductibles that reflect the full actuarial value of such fixtures or construction techniques. The office shall adopt rules and forms necessitated by such

reevaluation.

(3) A rate filing ~~made on or after July 1, 1995,~~ for mobile home owner insurance must include appropriate discounts, credits, or other rate differentials for mobile homes constructed to comply with American Society of Civil Engineers Standard ANSI/ASCE 7-88, adopted by the United States Department of Housing and Urban Development on July 13, 1994, and that also comply with all applicable tie-down requirements provided by state law.

(4) The Legislature finds that separate consideration and notice of hurricane insurance premiums will assist consumers by providing greater assurance that hurricane premiums are lawful and by providing more complete information regarding the components of property insurance premiums. ~~Effective January 1, 1997,~~ A rate filing for residential property insurance shall be separated into two components, rates for hurricane coverage and rates for all other coverages. A premium notice reflecting a rate implemented on the basis of such a filing shall separately indicate the premium for hurricane coverage and the premium for all other coverages.

Section 12. Paragraph (ll) is added to subsection (6) of section 627.351, Florida Statutes, to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(ll) The corporation may not determine that a risk is

ineligible for coverage with the corporation solely because such risk has unrepaired damage caused by a covered loss that is the subject of a claim that is being serviced by the Florida Insurance Guaranty Association. This paragraph applies to a risk until the earlier of 36 months from the date the Florida Insurance Guaranty Association began servicing such claim or the Florida Insurance Guaranty Association closes the claim.

Section 13. Paragraph (a) of subsection (10) of section 627.701, Florida Statutes, is amended to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(10)(a) Notwithstanding any other provision of law, an insurer issuing a personal lines residential property insurance policy may include in such policy a separate roof deductible that meets all of the following requirements:

1. The insurer has complied with the offer requirements under subsection (7) regarding a deductible applicable to losses from perils other than a hurricane.

2. The roof deductible may not exceed the lesser of 2 percent of the Coverage A limit of the policy or 50 percent of the cost to replace the roof.

3. The premium that a policyholder is charged for the policy includes an actuarially sound credit or premium discount for the roof deductible.

4. The roof deductible applies only to a claim adjusted on a replacement cost basis.

5. The roof deductible does not apply to any of the following events:

a. A total loss to a primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril.

b. A roof loss resulting from a hurricane as defined in s. 627.4025(2)(c).

c. A roof loss resulting from a tree fall or other hazard that damages the roof and punctures the roof deck.

d. A roof loss requiring the repair of less than 50 percent of the roof.

If a roof deductible is applied, no other deductible under the policy may be applied to the loss or to any other loss to the property caused by the same covered peril.

Section 14. Subsection (2) of section 627.70132, Florida Statutes, is amended to read:

627.70132 Notice of property insurance claim.—

(2) A claim or reopened claim, but not a supplemental claim, under an insurance policy that provides property insurance, as defined in s. 624.604, including a property insurance policy issued by an eligible surplus lines insurer, for loss or damage caused by any peril is barred unless notice of the claim was given to the insurer in accordance with the terms of the policy within 1 year after the date of loss. A

supplemental claim is barred unless notice of the supplemental claim was given to the insurer in accordance with the terms of the policy within 18 months after the date of loss. The time limitations of this subsection are tolled during any term of deployment to a combat zone or combat support posting which materially affects the ability of a servicemember as defined in s. 250.01 to file a claim, supplemental claim, or reopened claim.

Section 15. Chapter 2022-271, Laws of Florida, shall not be construed to impair any right under an insurance contract in effect on or before the effective date of that chapter law. To the extent that chapter 2022-271, Laws of Florida, affects a right under an insurance contract, that chapter law applies to an insurance contract issued or renewed after the effective date of that chapter law. This section is intended to clarify existing law and is remedial in nature.

Section 16. For the 2023-2024 fiscal year, five positions with associated salary rate of 325,000 and the sum of $494,774 in recurring funds and $23,410 in nonrecurring funds is appropriated from the Insurance Regulatory Trust Fund to the Department of Financial Services to implement this act.

Section 17. For the 2023-2024 fiscal year, 14 positions with associated salary rate of 840,000 and the sum of $1,301,672 in recurring funds and $65,548 in nonrecurring funds is appropriated from the Insurance Regulatory Trust Fund to the

Office of Insurance Regulation to implement this act.

Section 18. This act shall take effect July 1, 2023.

PCS for CS/HB 677

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 677 Electronic Payment Transactions
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Sellas	Hamon

SUMMARY ANALYSIS

Electronic payments through either a debit card or credit card involve many parties to authorize, settle, and fund the transaction between customer and merchant. A merchant will pay part of the transaction proceeds to these parties. This amount is known as a merchant discount fee, and typically amounts to 1-3% of the total transaction amount. The largest portion of the merchant discount fee is the interchange fee which is a fee charged by an issuing bank to the merchant bank. The interchange fee allows for card benefits to the cardholder but also reflects the risk of nonpayment from a cardholder as issuing banks will send out payments to merchant banks before the cardholder pays the issuing bank.

The bill prohibits the charge of interchange fees on the taxes and tips that are charged paid by a consumer through an electronic payment transaction. This applies to such transactions paid via debit card, credit card, or any other payment device and approved through a payment card network. A payment card network can comply with this prohibition by deducting the tax and tip portion of a transaction before calculating the interchange fee or by rebating the portion of the interchange fee attributable to taxes and tips.

Violations related to interchange fee amounts are subject to a $1,000 civil penalty per violation. Additionally, the improper fee amount must be refunded.

The bill also prohibits entities involved in facilitating or processing an electronic payment transaction from utilizing or exchanging the information collected except to facilitate the electronic payment transaction or as required by law. Violation of this provision will constitute a violation of the Florida Deceptive and Unfair Trade Practices Act and is enforceable by the Attorney General or local State Attorneys.

The bill has an indeterminate negative impact on state expenditures and no impact on state revenues and local government. It also has indeterminate negative impacts on the private sector.

The bill has an effective date of October 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Consumer Protection and the Florida Deceptive and Unfair Trade Practices Act

Generally, consumer protection laws focus on guarding against unfair and predatory trade practices that harm, or have the potential to harm, consumers in the marketplace.[1] Certain consumer protection laws are codified under ch. 501, F.S., which governs the regulation of trade, commerce, investments, and solicitations. It also regulates the sale and advertising of goods, services, and consumer financial products, such as credit cards, auto loans, and mortgages in the state. It includes several parts providing to consumer protections to Floridians and visitors, such as the Florida Deceptive and Unfair Trade Practices Act (FDUTPA),[2] the Aftermarket Crash Parts Act,[3] the Florida Telemarketing Act,[4] the Antifreeze Act of 1978,[5] and the Patent Troll Prevention Act.[6]

FDUTPA protects consumers from deceptive acts that mislead consumers, and protects the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce and broadly declares unlawful any unfair or deceptive acts or practices committed in the conduct of any trade or commerce. FDUTPA provides enforcement authority to either the office of the state attorney or to the DLA depending on the circumstances of the violation.[7] The applicable enforcing authority may bring an action to obtain a declaratory judgment, to enjoin any violator of FDUTPA, or on behalf of consumers or government entities for the actual damages caused by a violator of FDUTPA.[8]

Florida Attorney General

The Attorney General is the chief legal enforcement officer of the State and, absent express legislative restriction, may exercise such power and authority as the public interest may require. The Attorney General is a member of the Cabinet. As chief legal officer of the State, the Attorney General must be noticed in certain proceedings under Florida law and may bring actions on behalf of citizens of the state as provided for by law.[9]

The Attorney General is also the head of the Department of Legal Affairs (DLA). The DLA is responsible for providing all legal services required by any executive department unless otherwise provided by law. The Attorney General, however, may authorize other counsel where emergency circumstances exist and must authorize other counsel when a conflict of interest exists.

Electronic Payment Transactions and Interchange Fees

Even the smallest credit or debit card transactions involve a host of parties that facilitate the exchange between the merchant and customer.

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[1] Georgetown Law, *Consumer Protection*, https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-areas/consumer-protection/ (last visited Apr. 7, 2023).
[2] Ch. 501, part II, F.S.
[3] Ch. 501, part III, F.S.
[4] Ch. 501, part IV, F.S.
[5] Ch. 501, part V, F.S.
[6] Ch. 501, part VII, F.S.
[7] s. 501.203(2), F.S.
[8] s. 501.207, F.S.
[9] *See e.g.*, s. 501.207.

These parties include the cardholder, merchant, merchant bank, payment processor, issuing bank, and card association.[10] In a typical transaction, a cardholder will purchase a good or service from a merchant through the use of a credit or debit card. At this time the merchant will send a payment authorization request to the merchant's payment processor who in turn submits the transaction to the correct card association.[11] The card association will then send this authorization request to the issuing bank where the transaction will either be approved or denied.[12] The issuing bank's response will then be sent back to the card association which sends the information to the merchant bank who sends the information to the merchant.[13]

The parties:

- The cardholder is the buyer in the transaction and has a line of credit or a debit account with an issuing bank.
- The merchant is the seller in the transaction and in choosing to accept debit card and credit card purchases will partner with a payment processor.
- A payment processor sends payment information to the customer's card association.
- A card association[14] acts as an intermediary between the issuing bank (customer's bank) and the merchant bank as they relay both payment information to the issuing bank and the issuing bank's response to the merchant bank.
- The issuing bank receives purchase information from the card association and either approves or denies the transaction. It will inform the card association of its determination. Upon determination from the issuing bank for a transaction the card association will inform the merchant bank.
- The merchant bank is the bank of the merchant and will inform the merchant of the issuing bank's determination.[15]

A credit card transaction is made up of three processes, the authorization process, the settlement process, and the funding process.[16] The authorization process happens near instantaneously and results in either approval or denial.[17] The authorization process reflects the issuing bank's approval or denial of a transaction which is then relayed through the card association's payment network to the merchant, as described above.

The settlement and funding process reflect the movement of funds from the issuing bank to the merchant.[18] Here, the merchant will send authorized transactions to their payment processor who sends this information to the card association, who in turn sends this information to the issuing bank.[19] The issuing bank then charges the cardholder for the amount of the transaction.[20] At this time the issuing bank transfers the transaction amount to the merchant bank, minus the interchange fee.[21] Finally, the merchant bank deposits the transaction amount (minus interchange fees and other service fees) into the merchant's account.[22]

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[10] FIS Global, *How Credit Card Processing Works*, https://www.fisglobal.com/en/insights/merchant-solutions-worldpay/article/how-credit-card-processing-works (last visited Mar. 7, 2023).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Card associations are also referred to as card networks. Examples of card associations include Visa, Mastercard, and Discover.
[15] *Id.*
[16] *Id.*
[17] This process plays out in full when a debit or credit card is either accepted or rejected at a payment terminal.
[18] FIS Global, *How Credit Card Processing Works*, https://www.fisglobal.com/en/insights/merchant-solutions-worldpay/article/how-credit-card-processing-works (last visited Mar. 7, 2023).
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*

In a debit or credit card transaction, a merchant will pay a portion of their sales to the various parties that facilitate the use of the card. This payment is known as a merchant discount fee and is made of three parts; the interchange fee, the acquirer fee, and the network processing fee.[23] The:

- Interchange fee is paid to the issuing bank of the card in the transaction,
- Acquirer fee is paid to the merchant's bank, and
- Network processing fee is paid to the card association.[24]

The interchange fee is charged against the merchant bank by the issuing bank, but the merchant bank will typically pass this cost onto the merchant.[25] The default interchange fee amount is set by the card association,[26] but issuing and merchant banks can negotiate rates that differ from the default amount.[27] The interchange fee is typically a percentage of the underlying transaction amount, a flat fee, or a combination of both.[28] Typically, interchange fees will vary from 1-3% of the total transaction amount.[29] Interchange fees cover the cost and risks that issuing banks face in facilitating the transaction as well as funding the issuing bank's cardholder reward programs.[30]

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. An amendment to this act, the Durbin Amendment, was adopted which mandated the Federal Reserve Board of Governors (the Board) to reduce debit card interchange fees.[31] Following this mandate the Board issued Regulation II (Debit Card Interchange Fees and Routing) which established a cap on the debit card interchange fees certain financial institutions can charge a merchant bank.[32] Regulation II limited the debit card interchange fee for these financial institutions to a base fee of $0.21, per transaction, to cover the issuer's processing cost, 0.05% of the transaction cost as a fee to cover fraud losses, as well as a $0.01 fee, per transaction, to cover fraud prevention costs.[33] On average, this regulation cut the debit card interchange fee rate in half.[34]

While the Durbin Amendment reduced the interchange fee rate it is unclear what the overall effect was on merchants.[35] An unintended effect of this bill was that small value transactions, that had been charged a reduced rate in order to incentivize debit card adoption amongst merchants, now had their rates raised to the maximum amount allowed to offset the amount lost due to reduced fees on large value transactions.[36] This led to interchange fee cost increasing for merchants with small value transactions such as the fast food and delivery service industry.[37] Generally, it is unclear whether the Durbin Amendment reduced debit card interchange fee costs on merchants in more than just a limited manner.[38]

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[23] Electronic Payments Coalition, *Overview of Interchange and its Value*, https://electronicpaymentscoalition.org/resources/overview-of-interchange-and-its-value/ (last visited Mar. 7, 2023).
[24] *Id.*
[25] Testimony from Sarah Bloom Raskin, Governor, Board of Governors of the Federal Reserve System, Testimony regarding Interchange fees from Feb. 17, 2011, https://www.federalreserve.gov/newsevents/testimony/raskin20110217a.htm (last visited Mar. 7, 2023).
[26] *Id.*
[27] Electronic Payments Coalition, *Overview of Interchange and its Value*, https://electronicpaymentscoalition.org/resources/overview-of-interchange-and-its-value/ (last visited Mar. 7, 2023).
[28] Julia Kagan, *Interchange Rate: Definition, calculation Factors, Examples*, https://www.investopedia.com/terms/i/interchange-rate.asp#:~:text=Interchange%20rates%20are%20set%20by%20credit%20card%20companies%20such%20as,might%20set%20their%20rates%20annually. (last visited Mar. 7, 2023).
[29] *Id.*
[30] Payment Depot, *A Practical Guide to Understanding Interchange Fees*, https://paymentdepot.com/blog/interchange-fees/ (last visited Mar. 7, 2023).
[31] Renee Haltom and Zhu Wang, *Did the Durbin Amendment Reduce Merchant Costs? Evidence from Survey Results*, Federal Reserve Bank of Richmond, Dec. 2015, at 1.
[32] *Id.* This restriction applies to financial institutions with more than $10 billion in assets.
[33] *Id.* at 2.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.* at 3.
[38] *Id.* at 2.

Effect of the Bill

The bill prohibits payment card networks from charging interchange fees on tips and fees on taxes levied under s. 125.0104 and Chapter 212, F.S.[39]

The payment card network must deduct the applicable tip and tax amount from the calculation of the interchange fee or rebate the amount attributable to the tip and tax amount. The deduction or rebate must occur at the time of the settlement when the merchant submits the relevant tip and tax information at the time of sale. If the merchant is unable to transmit the relevant tip and tax information at the time of sale, the bill provides a merchant 180 days after the time of sale to submit tip amounts and proof of tax amounts to the payment card network for the rebate. The payment card network must rebate the amount of interchange fee attributable to the tip and tax amount to the merchant or credit the merchant's settlement account within 30 days of the merchant submitting the proof of the tip and tax amount.

The bill creates a civil penalty of up to $1,000, per violation, for violations of the bill's requirements. In addition, the payment card network must refund the portion of the interchange fee derived from the tip and tax portion of the electronic payment transaction.

The bill also prohibits entities that facilitate or process an electronic payment transaction from utilizing or exchanging the information collected except to facilitate the electronic payment transaction or as required by law. Violation of this provision will constitute a violation of the Florida Deceptive and Unfair Trade Practices Act and is subject to civil actions by the enforcing authority under the Act.[40]

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

B. SECTION DIRECTORY:

Section 1: Creates s. 501.0119, F.S., relating to restrictions on electronic payment transactions.

Section 2: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has an indeterminate, negative fiscal impact on DLA for possible enforcement of the bill's requirements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[39] Chapter 212, F.S., establishes the tax on sales, use, and other transactions, while s. 125.0104, F.S., establishes the tourist development tax.

[40] This does not include the private right of action otherwise authorized by FDUPTA.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may require the implementation of new point of sale hardware and software and transaction processing software by the various participants in the transaction process to implement the bills requirements.

D. FISCAL COMMENTS:

State and local government, when making purchases or processing payments using credit or debit cards will be impacted in the same fashion as the general public.

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 electronic payment transactions; creating s. 501.0119, F.S.; defining terms; requiring that certain amounts listed on evidences of sales must be excluded from the amount on which an interchange fee is charged for that electronic payment transaction; specifying requirements for payment card networks in deducting or rebating amounts; requiring merchants and sellers to provide to payment card networks proof of certain amounts or sales data within a specified timeframe under certain circumstances; specifying requirements for payment card networks if a merchant or seller is unable to capture and transmit specified amounts relevant to the sale at the time of sale; providing a penalty; limiting use of data in certain circumstances; providing for enforcement; providing an effective date.

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

Section 1. Section 501.0119, Florida Statutes, is created to read:

501.0119 Restrictions on Electronic Payment Transactions.—

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

(a) "Acquirer bank" means a member of a payment card

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

network which contracts with a merchant for the settlement of electronic payment transactions. An acquirer bank may contract directly with merchants or indirectly through a processor to process electronic payment transactions.

(b) "Authorization" means the process through which a merchant requests approval for an electronic payment transaction from the issuer.

(c) "Clearance" means the process of transmitting final transaction data from a merchant to an issuer for posting to the cardholder's account and the calculation of fees and charges, including interchange fees, which apply to the issuer and merchant.

(d) "Credit card" means a card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(e) "Debit card":

1. Means a card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account, regardless of the purpose for which the account is established, whether authorization is based on a signature, a personal identification number, or other means;

2. Includes a general-use prepaid card, as defined in 15 U.S.C. s. 1693l-1; and

3. Excludes paper checks.

(f) "Electronic payment transaction" means a transaction

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in which a person uses a debit card, credit card, or other payment code or device issued or approved through a payment card network to debit a deposit account or use a line of credit, whether authorization is based on a signature, a personal identification number, or other means.

(g) "Tip" means a sum of money paid in addition to the payment obligation for the good or service obtained, including, but not limited to, a payment for the benefit one or more individuals who facilitate the provision of a good or service.

(h) "Interchange fee" means a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.

(i) "Issuer" means a person issuing a debit card or credit card or the issuer's agent.

(j) "Merchant" has the same meaning as the term "dealer" in s. 212.06(2).

(k) "Payment card network" means an entity:

1. That directly or through licensed members, processors, or agents provides the proprietary services, infrastructure, and software that route information and data to conduct electronic payment transaction authorization, clearance, and settlement; and

2. That a merchant uses to accept as a form of payment a brand of debit card, credit card, or other device that may be

used to carry out electronic payment transactions.

(l) "Processor" means an entity that facilitates, services, processes, or manages the debit or credit authorization, billing, transfer, payment procedures, or settlement with respect to any electronic payment transaction.

(m) "Settlement" means the process of transmitting sales information to the issuing bank for collection and reimbursement of funds to the merchant and calculating and reporting the net transaction amount to the issuer and merchant for an electronic payment transaction that is cleared.

(n) "Tax" means all taxes and fees levied under chapter 212 and s. 125.0104.

(o) "Tax documentation" means documentation sufficient for the payment card network to determine the total amount of the electronic payment transaction and the tax amount of such transaction. Tax documentation may be related to a single electronic payment transaction or multiple electronic payment transactions aggregated over a period of time. Examples of tax documentation include, but are not limited to, invoices, receipts, journals, ledgers, and tax returns filed with the Department of Revenue or local taxing authorities.

(2) This section does not apply to an electronic payment transaction in which the tax or tip amount is not separately stated on the consumer's payment invoice, sales slip, or other evidence of sale as required under s. 212.07(2).

(3) This section does not create liability for payment card network regarding the accuracy of the tax or tip data reported by the merchant.

(4) Except as provided in subsection (2), an issuer, a payment card network, an acquirer bank, or a processor may not receive or charge the merchant any interchange fees on the tax or tip amount of an electronic payment transaction if the merchant informs the acquirer bank or its designee of such tax or tip amount as part of the authorization process for the electronic payment transaction. A merchant must transmit the tax or tip amount data as part of the authorization process to avoid being charged interchange fees on the tax or tip amount of an electronic payment transaction.

(5) A merchant that does not transmit the tax or tip amount data in accordance with subsection (3) may submit tax documentation or tip amount data for the electronic payment transaction to the acquirer bank or its designee no later than 180 days after the date of the electronic payment transaction, and within 30 days, the issuer must credit to the merchant the amount of interchange fees charged on the tax or tip amount of the electronic payment transaction.

(6) An issuer, a payment card network, an acquirer bank, a processor, or other designated entity that has received the tax or tip amount data and violates this section is subject to a civil penalty of $1,000 per electronic payment transaction, and

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the issuer must refund the merchant the interchange fee calculated on the tax or tip amount relative to the electronic payment transaction.

(7) An entity involved in facilitating or processing an electronic payment transaction, other than the merchant, including, but not limited to, an issuer, a payment card network, an acquirer bank, or a processor may not distribute, exchange, transfer, disseminate, or utilize the electronic payment transaction data except to facilitate or process the electronic payment transaction or as required by law. A violation of this subsection constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act under part II of this chapter. Notwithstanding s. 501.211, violations must be enforced only by the enforcing authority, as defined in s. 501.203(2), and subject the violator to the sanctions and penalties provided for in that part. If such action is successful, the enforcing authority is entitled to reasonable attorney fees and costs.

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

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COMMERCE COMMITTEE

PCS for CS/HB 677 by Rep. Caruso
Relating to Interchange Fees on Taxes

AMENDMENT SUMMARY
April 7, 2023

Amendment 1 by Rep. Tant (Strike-all): The amendment permits any person or entity who has an annual revenue of $1 million or less and meets certain requirements to be given the entire amount of the tax due and remitted as a deduction, not to exceed $2,400. This doubles the allowed deduction. The amendment also changes the “act relating to” clause of the title.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) of section 212.12, Florida Statutes, is amended to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; rounding; records required.—

(1)(a)1. Except as provided in subparagraph 2., and notwithstanding any other law and for the purpose of compensating persons granting licenses for and the lessors of real and personal property taxed hereunder, for the purpose of compensating dealers in tangible personal property, for the purpose of compensating dealers providing communication services

and taxable services, for the purpose of compensating owners of places where admissions are collected, and for the purpose of compensating remitters of any taxes or fees reported on the same documents utilized for the sales and use tax, as compensation for the keeping of prescribed records, filing timely tax returns, and the proper accounting and remitting of taxes by them, such seller, person, lessor, dealer, owner, or ~~and~~ remitter who files the return required pursuant to s. 212.11 only by electronic means and who pays the amount due on such return only by electronic means shall be allowed 2.5 percent of the amount of the tax due, accounted for, and remitted to the department in the form of a deduction. However, if the amount of the tax due and remitted to the department by electronic means for the reporting period exceeds $1,200, an allowance is not allowed for all amounts in excess of $1,200. For purposes of this paragraph, the term "electronic means" has the same meaning as provided in s. 213.755(2)(c).

2. Notwithstanding subparagraph 1., any seller, person, lessor, dealer, owner, or remitter described in subparagraph 1. who has an annual revenue of $1 million or less, who files the return required pursuant to s. 212.11 only by electronic means, and who pays the amount due on such return only by electronic means shall be allowed the entire amount of the tax due, accounted for, and remitted to the department in the form of a deduction. However, if the amount of the tax due and remitted to

the department by electronic means for the reporting period exceeds $2,400, an allowance is not allowed for all amounts in excess of $2,400.

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

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to credits for tax remittance by electronic means; amending s. 212.12, F.S.; increasing the allowance authorized for the amounts of taxes due, accounted for, and remitted to the Department of Revenue under certain circumstances; providing exceptions; providing an effective date.