

Regulatory Reform & Economic Development Subcommittee

Tuesday, February 6, 2024
8:00 AM - 11:00 AM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Tyler Sirois
Chair

The Florida House of Representatives

Commerce Committee

Regulatory Reform & Economic Development Subcommittee

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Meeting Agenda

Tuesday, February 6, 2024
8:00 am – 11:00 am
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

Consideration of the following bill(s):

- HB 141 Regional Rural Development Grants Program by Abbott
- HB 207 Social Media Protection for Minors by Rayner
- HB 497 Continuing Education Requirements by Melo
- HB 785 Limited Barbering by Valdés
- HB 1049 Flood Disclosure in the Sale of Real Property by Hunschofsky
- HB 1081 Tourist Development by Porras
- HB 1123 Unlawful Sale Of Alcoholic Beverages by Bankson, Yarkosky
- HB 1185 Thermal Efficiency Standards for Unvented Attic and Unvented Enclosed Rafter Assemblies by
- Griffitts
- HB 1189 Corporate Actions by Abbott
- HB 1217 Florida Homeowners' Construction Recovery Fund by Daniels
- HB 1289 Verification of Reemployment Assistance Benefit Eligibility by Abbott
- HB 1311 Office of the Blue Economy by LaMarca, Skidmore
- HB 1541 Transparency In Social Media by Fine

Consideration of the following proposed committee substitute(s):

- PCS for HB 1099 -- Food Delivery Platforms

Panel Discussion and Presentations on Construction Mining Activities

IV. Closing Remarks

V. Adjournment

HB 141

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 141 Regional Rural Development Grants Program
SPONSOR(S): Abbott
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 196

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

SUMMARY ANALYSIS

Under Florida law, a "rural community," as the term relates to counties, means a county with a population of 75,000 or fewer, or a county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer. The Florida Department of Commerce (DOC) Regional Rural Development Grant Program encourages rural communities to leverage limited resources to develop and implement strategies to help attract new businesses.

The bill specifies that funding under the Regional Rural Development Grants Program are not matching grants and eliminates several requirements:

- Removes the requirements for grant funds received by a regional development organization to be matched each year by nonstate resources in an amount equal to 25 percent of the state contributions;
- Removes the requirement for local governments and private businesses to make financial or in-kind commitments to the regional organization; and
- Removes the requirement that the DOC consider the demonstrated need of the applicant for assistance when approving participants for the program.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Regional Rural Development Grants Program

The Regional Rural Development Grants Program was established to provide funding, through matching grants, to build the professional capacity of regionally based economic development organizations located in rural communities. The concept of building the "professional capacity" of an economic development organization includes hiring professional staff to develop, deliver, and provide economic development professional services. Professional services include technical assistance, education and leadership development, marketing, and project recruitment.[1]

Applications submitted to the Department of Commerce (DOC) for funding through this program must provide proof:[2]

- Of official commitments of support from each of the units of local government represented by the regional organization;
- That each local government has made a financial or in-kind commitments to the regional organization;
- That the private sector has made financial or in-kind commitment to the regional organization;
- That the regional organization is in existence and actively involved in economic development activities serving the region; and
- Of the manner in which the organization coordinates its efforts with those other local and state organizations.

An organization may receive up to $50,000 a year or $250,000 if located in a rural area of opportunity (RAO).[3] Grants must be matched by an amount of non-state resources equal to 25 percent of the state contribution. The DOC is authorized to spend up to $750,000 each fiscal year from funds appropriated to the Rural Community Development Revolving Loan Fund to carry out this program.[4]

Rural Areas of Opportunity

A (RAO) is a rural community,[5] or region comprised of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster.[6] An area may also be designated as a RAO if it presents a unique economic development opportunity of regional impact. The designation of a RAO must be agreed upon by the Department of Commerce (DOC), as well as the county and municipal governments to be included in the RAO.[7]

Based on recommendations of the Rural Economic Development Initiative (REDI),[8] the Governor may designate up to three RAOs by executive order.[9] This designation establishes these areas as priority

[1] S. 288.018(1)(b), F.S.
[2] S. 288.018(2), F.S.
[3] S. 288.018(1)(c), F.S.
[4] S. 288.018(4), F.S.
[5] Section 288.0656(2)(e), F.S., defines a "rural community" as any county with a population of 75,000 or fewer, any county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer, a municipality in a county that meets either of the aforementioned criteria, or an unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors.
[6] S. 288.0656(2)(d), F.S.
[7] S. 288.0656(7)(b), F.S.
[8] S. 288.0656(1), F.S. REDI was established by the Legislature to encourage and facilitate the location and expansion of major economic development projects of significant scale in rural communities.
[9] S. 288.0656(7)(a), F.S.

assignments for REDI and allows the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development initiative.

Currently, there are three designated RAO areas:

- Northwest RAO: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and portions of Walton County (the City of Freeport and lands north of the Choctawhatchee Bay and intercoastal waterway).
- South Central RAO: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay in Palm Beach County and the city of Immokalee in Collier County.
- North Central RAO: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.[10]

Effect of the Bill

The bill specifies that funding under the Regional Rural Development Grants Program are not matching grants and eliminates several requirements:

- Removes the requirements for grant funds received by a regional development organization to be matched each year by nonstate resources in an amount equal to 25 percent of the state contributions;
- Removes the requirement for local governments and private businesses to make financial or in-kind commitments to the regional organization; and
- Removes the requirement that the DOC consider the demonstrated need of the applicant for assistance when approving participants for the program.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 288.018, F.S., relating to the Regional Rural Development Grants Program.

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.

[10] Department of Commerce, *Rural Areas of Opportunity*, https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited Feb. 2, 2023). The economic development organizations for these RAOs are named Opportunity Florida, Florida's Heartland Regional Economic Development Initiative, and the North Florida Economic Development Partnership, respectively.

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

Not applicable.

A bill to be entitled

An act relating to the Regional Rural Development Grants Program; amending s. 288.018, F.S.; removing the requirement that certain grants received by a regional economic development organization must be matched in a certain manner; removing a provision requiring a certain consideration; removing certain demonstration requirements of program applicants; providing an effective date.

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

Section 1. Paragraphs (b), (c), and (d) of subsection (1) and subsection (2) of section 288.018, Florida Statutes, are amended to read:

288.018 Regional Rural Development Grants Program.—

(1)

(b) The department shall establish a ~~matching~~ grant program to provide funding to regional economic development organizations for the purpose of building the professional capacity of those organizations. Building the professional capacity of a regional economic development organization includes hiring professional staff to develop, deliver, and provide needed economic development professional services, including technical assistance, education and leadership

development, marketing, and project recruitment. ~~Matching~~ Grants may also be used by a regional economic development organization to provide technical assistance to local governments, local economic development organizations, and existing and prospective businesses.

(c) A regional economic development organization may apply annually to the department for a ~~matching~~ grant. The department is authorized to approve, on an annual basis, grants to such regional economic development organizations. The maximum amount an organization may receive in any year will be $50,000, or $250,000 for any three regional economic development organizations that serve an entire region of a rural area of opportunity designated pursuant to s. 288.0656(7) if they are recognized by the department as serving such a region.

~~(d) Grant funds received by a regional economic development organization must be matched each year by nonstate resources in an amount equal to 25 percent of the state contribution.~~

(2) In approving the participants, the department shall ~~consider the demonstrated need of the applicant for assistance and~~ require the following:

(a) Documentation of official commitments of support from each of the units of local government represented by the regional organization.

~~(b) Demonstration that each unit of local government has~~

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

~~made a financial or in-kind commitment to the regional organization.~~

~~(c) Demonstration that the private sector has made financial or in-kind commitments to the regional organization.~~

(b) ~~(d)~~ Demonstration that the organization is in existence and actively involved in economic development activities serving the region.

(c) ~~(e)~~ Demonstration of the manner in which the organization is or will coordinate its efforts with those of other local and state organizations.

Section 2. This act shall take effect July 1, 2024.

HB 207

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 207 Social Media Protection for Minors
SPONSOR(S): Rayner
TIED BILLS: **IDEN./SIM. BILLS:** SB 1430

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

SUMMARY ANALYSIS

Social media platforms are a computer-based technology that facilitate the sharing of ideas, thoughts, and information through virtual communities to allow electronic communication of content. Social media use by children can have positive and negative influences, and providing them with information and external controls can help prevent harmful effects.

The bill defines “social media platform” as a digital platform operating in the state mainly accessed by children under the age of 18 that offers forms of electronic communication through which users are permitted to create online communities to share information, ideas, personal messages, and other content.

Beginning January 1, 2025, the bill requires social media platforms to:

- Disclose policies, using clear language suited to children, related to:
  - Content moderation;
  - Addictive design or deceptive pattern features, including autoplay or infinite scroll;
  - Manipulated photographs or digital images;
  - Consideration of best interests of minors when designing, developing, and providing services;
  - Protections against harmful behaviors, such as bullying and threats of violence; and
  - Collection or sale of personal information of children, including biometrics and geolocation data.
- Provide clear access to the following:
  - Resources for law enforcement, suicide prevention, and domestic violence prevention services;
  - Protective measures such as screen time limitations and other parental settings; and
  - Reporting mechanisms related to harmful behaviors, such as bullying and threats of violence.
- Require children to read and accept a disclaimer on the potential harms of using social media at log in.

The bill requires the above operating requirements to be on the social media platform’s Internet homepage, platform user login page, or in a clearly labeled, conspicuous, and readily accessible link contained on such page.

The bill allows social media platforms to post a statement on their website confirming that it has complied with the operating requirements. If a social media platform does not have such a statement on their website, then all K-12 schools operating in the state that accept state funding may not use or have an account on such platform.

The bill prohibits a public K-12 school from requiring students to participate in social media platforms related to school-sponsored educational activities. Schools may still require student use of portal, email, and message board accounts used for official business with the school, and allow classroom information, materials, or resources to be viewed in a classroom on one screen controlled by instructional or administrative personnel of the school.

The bill will have no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Social Media Platforms

Generally, a social media platform is a computer-based technology that facilitates the sharing of ideas, thoughts, and information through virtual networks and communities. Social media is Internet-based and gives users quick electronic communication of content, such as personal information, videos, and photos. Users engage with social media via a computer, tablet, or smartphone via web-based software or applications.[1]

Effects of Social Media on Children

Social media has become an important aspect of a minor's digital interactions, as they use it for entertainment and communication purposes.[2] Adolescents are constantly in touch with their peers via social media accounts. However, social media has the potential to have both positive and negative effects on their health.[3] Some potential safety risks of social media use include:[4]

- Exposure to harmful or inappropriate content.
- Exposure to dangerous people.
- Cyberbullying.
- Oversharing personal information.
- Exposure to excessive advertisements.
- Privacy concerns, including the collection of data about minors.
- Identity theft or being hacked.
- Interference with sleep, exercise, homework, or family activities.

In May 2023, U.S. Surgeon General Dr. Vivek Murthy released an Advisory to call attention to the effects of social media on youth mental health. The Advisory noted that at crucial periods of adolescent brain development, social media use is predictive of decreases in life satisfaction, as well as additional concerns around body image, sleep issues, and much more.[5] He has also concluded that 13 years old is "too early" for children to use social media, despite most social media companies allowing 13-year-olds to use their platforms. In early adolescence, kids are still "developing their identity, their sense of self."[6]

Other experts agree. For example, psychologist David Greenfield said the platforms lure users with powerful tactics. One is "intermittent reinforcement," which creates the idea that a user could get a reward at any time, but when the reward comes is unpredictable. Adults are susceptible, but young people are particularly at risk, because the brain regions that are involved in resisting temptation and reward are not nearly as developed in children and teenagers as in adults.[7]

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[1] Maya Dollarhide, *Social Media: Definition, Effects, and List of Top Apps*, Investopedia.com (Aug. 31, 2023), https://www.investopedia.com/terms/s/social-media.asp (last visited Jan. 31, 2024).
[2] Andrea Irmer & Florian Schmiedek, *Associations between youth's daily social media use and well-being are mediated by upward comparisons*, Communications Psychology (Aug. 22, 2023), https://www.nature.com/articles/s44271-023-00013-0#citeas (last visited Jan. 31, 2024).
[3] Dollarhide, *supra* note 1.
[4] Loyola Medicine, *Social Media Safety for Kids and Teens*, https://www.loyolamedicine.org/about-us/blog/social-media-safety-kids-teens (last visited Jan. 31, 2024)
[5] "Social Media and Youth Mental Health," The U.S. Surgeon General's Advisory, May 2023, *available at* https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf?ref=broadband-breakfast.ghost.io.
[6] Lauraine Langreo, *Surgeon General: Kids Under 14 Should Not Use Social Media,* EducationWeek (Feb. 2, 2023), https://www.edweek.org/leadership/surgeon-general-kids-under-14-should-not-use-social-media/2023/02 (last visited Jan. 31, 2024).
[7] Matt Richtel, *Is Social Media Addictive? Here's What the Science Says*, New York Times (Oct. 25, 2023), https://www.nytimes.com/2023/10/25/health/social-media-addiction.html (last visited Jan. 31, 2024).

Numerous studies and reports have demonstrated the dangers of social media use by children and teens. For example:

- One study conducted by social media and psychology scholars found a link between social media use and poor mental health, especially among girls. The study demonstrated that girls experience a consistent and substantial association between mental health and social media, and such associations were stronger than links between mental health and binge drinking, sexual assault, obesity, and hard drug use.[8]
    - Dr. Jean Twenge, a generational trends scholar, saw the beginning of a mental health crisis starting in 2012 when reviewing mental health metrics that showed rates of depression, anxiety and loneliness were rising, which she points out coincides with the fast rise in use of smartphones in 2012 and all the social media that comes along with them.[9]
- Another study found that social media use causes children to be more sensitive to anticipating social risks. While children generally become more attuned to social interactions as they enter adolescence, those who are frequent, early social media users become particularly sensitive to anticipating social risks and rewards from their peers.[10]
    - The researchers found that "habitual" social media users, or those who checked their social feeds 15 times a day or more, responded quicker and more intensely to perceived good or bad emotions from peers, compared to students who checked once a day or less.[11]
- A study on the effects of social media use on mental health during adolescent development indicates that there are two windows of time when children are most sensitive to detrimental effects of social media, and when higher estimated social media use predicts a decrease in life satisfaction ratings a year later. For girls, the windows occur at ages 11 through 13, and 19; and for boys, the windows occur at ages 14 through 15, and 19.[12]

Social media also provides benefits to teens because it allows them to create online identities, communicate with others, and build social networks, which can provide teens with valuable support, especially helping those who experience exclusion. Social media can expose teens to current events, allow them to interact across geographic barriers, and teach them about a variety of subjects, including healthy behaviors. Also, social media that is humorous or provides a meaningful connection to peers may help teens avoid depression.[13]

According to a study conducted by the Pew Research Center, teens credit social media for helping to build stronger friendships and exposing them to a more diverse world, but they express concern that these sites lead to drama and social pressure.[14]

Safety Measures and Parental Controls

[8] Haidt, J., Rausch, Z., & Twenge, J., *Social Media and Mental Health: A Collaborative Review*, New York University, https://jonathanhaidt.com/reviews/ (last visited Jan. 31, 2024).
[9] Michaeleen Doucleff, *The truth about teens, social media and the mental health crisis*, NPR Health Shots (Apr. 25, 2023), https://www.npr.org/sections/health-shots/2023/04/25/1171773181/social-media-teens-mental-health (last visited Jan. 31, 2024).
[10] Sarah D. Sparks, *Preteens'' Social Media Habits Could Be Changing Their Brains*, Education Week (Jan. 6, 2023), https://www.edweek.org/leadership/preteens-social-media-habits-could-be-changing-their-brains/2023/01 (last visited Jan. 31, 2024); Maria T. Maza et. al., *Association of Habitual Checking Behaviors on Social Media With Longitudinal Functional Brain Development*, JAMA Pediatrics (Jan. 3, 2023), https://jamanetwork.com/journals/jamapediatrics/article-abstract/2799812 (last visited Jan. 31, 2024).
[11] *Id*.
[12] Kirsten Weir, *Social media brings benefits and risks to teens. Here's how psychology can help identify a path forward*, American Psychological Association (Sep. 1, 2023), https://www.apa.org/monitor/2023/09/protecting-teens-on-social-media#:~:text=During%20those%20windows%E2%80%94around%2011,1649%2C%202022) (last visited Jan. 31, 2023).
[13] Mayo Clinic Staff, *Teens and social media use: What's the impact?*, Mayo Foundation for Medical Education and Research, https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437 (last visited Jan. 31, 2024).
[14] Monica Anderson et. al., *Connection, Creativity and Drama, Teen Life on Social Media in 2022,* Pew Research Center (Nov. 16, 2022), https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-social-media-in-2022/ (last visited Jan. 31, 2024).

Providing children with information on ways to more safely use social media may decrease the harm they experience. Having conversations about the benefits and risks of social media may help promote positive social media usage.[15]

Also, parental controls can help protect children from inappropriate content, cyberbullying, and other online safety issues. Generally, parental controls are a group of settings that put a parent in control of what content a child can see.[16] Many websites, games, software, devices, and user interfaces offer the optional use of parental controls. Examples of parental controls include blocking websites, filtering content, imposing limits on screen time, allowing parents to monitor online activity, location tracking, and disabling Wi-Fi.[17]

Laws Protecting Children Online

Children's Online Privacy Protection Act (COPPA)

The Children's Online Privacy Protection Act (COPPA)[18] and its related rules, is a federal law that regulates websites' collection and use of children's information. The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children's personal information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security.[19]

A covered entity may not collect personal information from a child under the age of 13 without the prior, verifiable consent of his or her parent.[20]

COPPA requires covered entities to:[21]

- Give parents direct notice of their privacy policies, including a description of their data collection and sharing practices;
- Post a clear link to their privacy policies on their home page and at each area of their website where they collect personal information from children;
- Institute procedures to protect the personal information that they hold;
- Ensure that any third party with which they share collected personal information implements the same protection procedures; and
- Delete children's personal information after the purpose for its retention has been fulfilled.

Violations of COPPA are deemed an unfair or deceptive act or practice and may therefore be prosecuted by the FTC. COPPA also authorizes state attorneys general to enforce violations that affect residents of their states. There is no criminal prosecution or private right of action provided for under COPPA.[22]

California Age-Appropriate Design Code Act

In 2022, California adopted the California Age-Appropriate Design Code Act (CAADCA),[23] legislation modelled on the United Kingdom's Age Appropriate Design Code,[24] which requires online platforms to

[15] Dan Brennan M.D., *How to Talk to Your Kids About Social Media*, WebMD.com (Apr. 9, 2023), https://www.webmd.com/parenting/how-to-talk-to-kids-about-social-media (last visited Jan. 31, 2024).
[16] Internetmatters.org, *Parental Controls*, https://www.internetmatters.org/parental-controls/ (last visited Jan. 31, 2024).
[17] Caroline Knorr, *Parents' Ultimate Guide to Parental Controls*, Common Sense Media (Mar. 9, 2021), https://www.commonsensemedia.org/articles/parents-ultimate-guide-to-parental-controls (last visited Jan. 31, 2024).
[18] 16 C.F.R. pt. 312.
[19] *See* 15 U.S.C. § 6502.
[20] 15 U.S.C. § 6502(a)-(b).
[21] *See* Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0 (last visited Jan. 31, 2024).
[22] *Id*.
[23] Cal. Civil Code § 1798.99.28-.35
[24] 5Rights Foundation, *California follows UK lead as child data protection law is passed*, https://5rightsfoundation.com/in-action/california-follows-uk-lead-as-child-data-protection-law-is-passed.html (last visited Mar. 22, 2023).

adhere to strict default privacy and safety settings that protect the best interest of children.[25] CAADCA covers children under 18 years of age.[26]

CAADCA requires certain businesses that provide an online service, product, or feature that is likely to be accessed by children to comply with several new requirements and restrictions, including:[27]

- Prohibitions on using any personal information that it knows or should know is materially detrimental to a child's physical or mental health and/or wellbeing; and
- Prohibitions on obscuring user interface features to deliberately defeat consent or manipulate children into providing unnecessary personal information, otherwise called "dark patterns."

Such businesses must complete a Data Protection Impact Assessment for any new feature they wish to offer to the public if it is likely to be accessed by children, which will determine if any dark patterns are employed, if there is an asymmetrical reward, or if targeted advertisements are deployed in a way that could harm or exploit children.[28]

On September 18, 2023, a federal district court enjoined the CAADCA despite the fact that California has a substantial interest in protecting children because the CAADCA did not appropriately address that interest.[29]

Required Instruction in Florida Schools

Under Florida's Constitution, unless otherwise voted upon by electors, each county constitutes a school district.[30] In Florida, there are 67 school districts to match the 67 counties in the state.[31] The Florida Constitution further states that each school district must have a school board composed of five or more members.[32] The school boards operate, control, and supervise all free public schools within the school district and determine the rate of school district taxes within constitutional limits.[33] The powers and duties of the district school board are further set forth in law.[34]

The law requires each district school board to provide all courses required for middle grades promotion, high school graduation, and appropriate instruction designed to ensure that students meet State Board of Education adopted standards[35] in the following subject areas:

- reading and other language arts;
- mathematics;
- science;
- social studies;
- foreign languages;
- health and physical education; and
- the arts.[36]

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[25] Office of Governor Gavin Newsome, *Governor Newsom Signs First-in-Nation Bill Protecting Children's Online Data and Privacy*, https://www.gov.ca.gov/2022/09/15/governor-newsom-signs-first-in-nation-bill-protecting-childrens-online-data-and-privacy/ (last visited Mar. 22, 2023).
[26] Cal. Civil Code § 1798.99.28-.35
[27] Alexander Misakian, *California Enacts the California Age-Appropriate Design Code Act*, Foley Blogs (Sep. 20, 2022), https://www.foley.com/insights/publications/2022/09/california-enacts-age-appropriate-design-code-act/ (last visited Feb. 1, 2024).
[28] *Id*.
[29] *See NetChoice, LLC v. Bonta*, No. 22-CV-0881-BLF, 2023 WL 6135551, at *11-20 (N.D. Cal. Sept. 18, 2023).
[30] Art. IX, s. 4(a), Fla. Const.; s. 1001.30, F.S. Two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district.
[31] Florida Department of Education, *Public Schools/Districts*, https://web03.fldoe.org/Schools/schoolmap_text.asp (last visited Jan. 31, 2024). The Florida School for the Deaf and Blind, the Florida Virtual School, and the university laboratory schools are considered independent school districts but their governing boards are not elected.
[32] Art. IX, s. 4(a), Fla. Const.
[33] Art. IX, s. 4(b), Fla. Const.
[34] Ss. 1001.41–1001.42, F.S.
[35] In 2020, the State Board of Education adopted new standards for English language arts and mathematics, called the Benchmarks for Excellent Student Thinking (B.E.S.T.) Standards. The English language arts standards implementation began with the 2021-2022 school year and implementation of the math standards began in the 2022-2023 school year. Rule 6A-1.09401, F.A.C.
[36] S. 1003.42(1)(a), F.S.

In addition, the law identifies specific topics a teacher must teach.[37] One such topic is comprehensive age-appropriate and developmentally appropriate K-12 instruction on health education that addresses concepts of community health, consumer health, environmental health, and family life, including:

- injury prevention and safety;
- Internet safety;
- nutrition;
- personal health;
- prevention and control of disease;
- substance use and abuse; and
- prevention of child sexual abuse, exploitation, and human trafficking.[38]

Teachers must teach the topics specified in law efficiently and faithfully, using books and materials meeting the highest standards for professionalism and historical accuracy, following the prescribed courses of study, and employing approved methods of instruction.[39] Unless otherwise specified, the law generally does not prescribe grade level, instructional hours, or instructional materials requirements for these topics.

While not required, an elective course on social media[40] is available in CPALMS.[41] A school may offer this social media course to enable students in grades 9 through 12 to develop fundamental skills in the use of social media across print, multimedia, web, and broadcast platforms, including ethical and legal uses. The content of the elective course should include, but not be limited to, the following:[42]

- Demonstrating entry-level skills in digital communication and packaging them across the platforms/mediums of print, multimedia, online, and broadcast;
- Demonstrating fundamental skills in social media platforms and their uses; expressing social connections with maturity and complexity appropriate to writer, audience, purpose, and context;
- Using fundamental research skills and networking formats;
- Collaborating amongst peers; and
- Using effective listening, speaking, and viewing strategies with an emphasis on the use of evidence to support or refute a claim in multimedia presentations, class discussions, and extended text discussions.

Effect of the Bill

The bill defines “social media platform” or “platform” to mean a digital platform operating in the state predominantly accessed by platform users who are under the age of 18 that offers forms of electronic communication through which such platform users are permitted to create online communities to share information, ideas, personal messages, and other content.

Beginning January 1, 2025, the bill requires social media platforms to:

- Disclose the following social media platform policies, in a manner that is clearly, concisely, prominently, and understandably written, using clear language suited to the age of users likely to routinely access the platform without unrelated, confusing, or contradictory materials:
    - The content moderation policies used by the social media platform for content on the platform.
    - Whether the social media platform uses or allows the use of addictive design or deceptive pattern features including autoplay or infinite scroll.
    - Whether the social media platform allows manipulated photographs or digital images to be shared on the platform.

[37] S. 1003.42(2)(a)-(t), F.S.
[38] S. 1003.42(2)(n)1.a.-g., F.S.
[39] S. 1003.42(2), F.S.
[40] CPALMS, Course, *Social Media 1 (#1006375)*, https://www.cpalms.org/PreviewCourse/Preview/17758, (last visited Jan. 31, 2024).
[41] CPALMS is the State of Florida’s official source for standards information and course descriptions. It provides access to thousands of standards-aligned, free, and high-quality instructional/educational resources that have been developed specifically for the standards and vetted through a rigorous review process. CPALMS, *About CPALMS*, http://www.cpalms.org/CPALMS/about_us.aspx, (last visited Jan. 31, 2024).
[42] CPALMS, *supra* note 40.

    - Whether the social media platform considers the best interests of minors when designing, developing, and providing services.
    - The methodology the social media platform uses to consider the best interests of minors when designing, developing, and providing services.
    - The policies and protections used by the social media platform to protect against harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.
    - Whether the platform collects or sells personal information of platform users who are under the age of 18, including personal identifiers, biometrics, and geolocation data. If such personal information is collected, the platform must disclose the type of personal information is collected and the purpose for such, and if such personal information is sold, the platform must disclose to whom the information is sold.
- Provide clear access to the following:
    - Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.
    - Protective measures such as screen time limitations, data usage limitations, content filters, and other parental settings.
    - Reporting mechanisms related to harmful behaviors, such as bullying, harassment, and threats of violence or self-harm

The bill requires the above operating requirements to be on the social media platform's Internet homepage or platform user login page or through a clearly labeled, conspicuous, and readily accessible link contained on such page.

The bill requires, at the time of log in, and before obtaining access to the platform, a social media platform to require platform users who are under the age of 18 to read and accept a disclaimer which must be in substantially the following form:

> This application may be harmful to your mental health and may use design features that have addictive qualities or present unverified information, or that may be manipulated by [insert platform name] or others for your viewing. This application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

The bill prohibits a public K-12 school from:

- Using or having an account on a social media platform that does not have a compliance statement on its Internet homepage or platform user login page.
- Requiring students, regardless of age, to register, enroll, or participate in a social media platform as a means to access information, materials, or resources related to school-sponsored educational activities.

Schools may still require student use of portal, email, and message board accounts used for official business with the school, and classroom information, materials, or resources viewed in a classroom on one screen controlled by instructional or administrative personnel of the school.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 501.174, F.S.; providing a definition; requiring social media platforms to disclose specified policies and provide specified resources, measures, and disclaimers; authorizing social media platforms to post specified compliance statements on their Internet homepage or platform user login page; prohibiting certain schools from using or having an account on certain social media platforms and from requiring students to register, enroll, or participate in social media platforms for educational purposes; providing applicability.

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 require social media platforms to expend resources to develop standards and mechanisms to comply with 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 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:

   State Authority to Regulate to Protect Minors

   Commercial speech is expressions related solely to the economic interests of the speaker and its audience.[43] The Constitution accords a lesser protection to commercial speech than to other constitutionally guaranteed expression,[44] and permit governments to require warnings or disclaimers in order to dissipate the possibility of consumer confusion or deception.[45] Under the standard for commercial speech scrutiny, if a regulation restricts speech that is neither misleading nor related to unlawful activity, the State must show "at least that the statute directly advances a substantial government interest and that the measure is drawn to achieve that interest."[46] The U.S. Supreme

[43] *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 561 (1980).
[44] *Id*. at 557.
[45] *Bates v. State Bar of Arizona*, 433 U.S. 350, 384 (1977).
[46] *Sorrell v. IMS Health Inc.,* 564 U.S. 552, 572 (2011).

Court has determined that the state has a "compelling interest in protecting the physical and psychological well-being of minors." [47] In doing so, however, a restriction must "directly advance the state interest involved" and cannot be "more extensive than is necessary to serve that interest."[48] A restriction "directly and materially advances" the government's interests if the government can show "the harms it recites are real and that its restriction will in fact alleviate them to a material degree."[49]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[47] *Sable Commc's of California, Inc. vs. F.C.C. ,* 492 U.S. 115, 126 (1989).
[48] *Cent. Hudson*, 447 U.S. at 564-66 (1980).
[49] *Fla. Bar v. Went For It, Inc.,* 515 U.S. 618, 626 (1995).

A bill to be entitled

An act relating to social media protection for minors; creating s. 501.174, F.S.; providing a definition; requiring social media platforms to disclose specified policies and provide specified resources, measures, and disclaimers; authorizing social media platforms to post specified compliance statements on their Internet homepage or platform user login page; prohibiting certain schools from using or having an account on certain social media platforms and from requiring students to register, enroll, or participate in social media platforms for educational purposes; providing applicability; providing an effective date.

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

Section 1. Section 501.174, Florida Statutes, is created to read:

501.174 Social media protection for minors.-

(1) As used in this section, the term "social media platform" or "platform" means a digital platform operating in the state predominantly accessed by platform users who are under the age of 18 that offers forms of electronic communication through which such platform users are permitted to create online communities to share information, ideas, personal messages, and

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

other content.

(2) Beginning January 1, 2025, a social media platform, on its Internet homepage or platform user login page or through a clearly labeled, conspicuous, and readily accessible link on such homepage or login page, must:

(a) Disclose the following social media platform policies in a manner that is clearly, concisely, prominently, and understandably written using language suited to the age of users who are under the age of 18 likely to routinely access the platform without unrelated, confusing, or contradictory materials:

1. The content moderation policies the social media platform uses for content on the platform.

2. Whether the social media platform uses or allows the use of addictive design or deceptive pattern features, including autoplay or infinite scroll.

3. Whether the social media platform allows manipulated photographs or digital images to be shared on the platform.

4. Whether the social media platform considers the best interests of platform users who are under the age of 18 when designing, developing, and providing services.

5. The methodology the social media platform uses to consider the best interests of platform users who are under the age of 18 when designing, developing, and providing services.

6. The policies and protections the social media platform

uses to protect platform users who are under the age of 18 against harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.

7. Whether the social media platform collects or sells personal information of platform users who are under the age of 18, including personal identifiers, biometrics, and geolocation data. If such personal information is collected, the platform must disclose the type of personal information collected and the purpose of such collection. If such personal information is sold, the platform must disclose to whom the information is sold.

(b) Provide clear access to the following:

1. Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.

2. Protective measures such as screen time limitations, data usage limitations, content filters, and other parental settings.

3. Reporting mechanisms related to harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.

(3) At the time of log in, and before obtaining access to the platform, a social media platform must require platform users who are under the age of 18 to read and accept a disclaimer which must be in substantially the following form:

This application may be harmful to your mental health and may use design features that have addictive qualities or present unverified information or that may be manipulated by [insert platform name] or others for your viewing. This application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

(4) A social media platform that complies with subsections (2) and (3) may post a statement confirming such compliance on its Internet homepage or platform user login page.

(5) A public K-12 school may not:

(a) Use or have an account on a social media platform that does not have a statement pursuant to subsection (4) on its Internet homepage or platform user login page.

(b) Require students, regardless of age, to register, enroll, or participate in a social media platform as a means to access information, materials, or resources related to school-sponsored educational activities. This paragraph does not apply to portal, email, and message board accounts used for official business with the school or to classroom information, materials, or resources viewed in a classroom on one screen controlled by instructional or administrative personnel of the school.

Section 2. This act shall take effect July 1, 2024.

HB 497

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 497 Continuing Education Requirements
SPONSOR(S): Melo and others
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR), through several divisions, regulates and licenses various businesses and professions in Florida. Each profession is regulated by an individual practice act and by ch. 455, F.S., which provide regulatory and licensure authority. Generally, to act as a regulated professional, a person must hold an appropriate license. Applicants for licensure for each profession must meet specific statutory requirements, including education and/or experience requirements, and must pay all applicable licensing and application fees. Licensees who wish to renew their license must pay a license renewal fee and may be subject to continuing education requirements and other conditions in the various practice acts.

A board, or the DBPR in the absence of a board, may provide by rule that distance learning may be used to satisfy continuing education requirements. However, a board or the DBPR must approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements for persons licensed to engage in community association management services, home inspection services, mold-related services, real estate services (i.e., brokers, sales associates, and schools), and real estate appraisal services. In addition, for these specified professions, a board or the DBPR may not require centralized examinations for completion of continuing education requirements.

The bill requires that a board, or DBPR in the absence of a board, allow distance learning as an alternative to classroom courses for satisfying continuing education requirements. However, the bill clarifies that medical boards or departments regulated by the Department of Health are excluded from the application of distance learning for fulfilling continuing education requirements.

Additionally, the bill requires professional boards, or the DBPR if there is no board, to exempt an individual from completing the continuing education required for renewal of a license for a renewal period if:

- The individual holds an active license issued by the board or the DBPR to practice the profession;
- The individual has continuously held the license for at least 10 years; and
- No disciplinary action is imposed on the individual's license.

The bill requires that DBPR and each relevant board adopt rules, as outlined in ss. 120.536(1) and 120.54, F.S., to implement the provisions of this section.

The fiscal impact on state government expenditures and the private sector is indeterminate. There is no fiscal impact expected on local government or state government revenues.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

Professional Licensure

The Department of Business and Professional Regulation (DBPR), through several divisions, regulates and licenses various businesses and professions in Florida.[1]

DBPR has authority over the following professional boards and programs:

- Board of Architecture and Interior Design;
- Board of Auctioneers;
- Barbers' Board;
- Building Code Administrators and Inspectors Board;
- Construction Industry Licensing Board;
- Board of Cosmetology;
- Electrical Contractors' Licensing Board;
- Board of Employee Leasing Companies;
- Board of Landscape Architecture;
- Board of Pilot Commissioners;
- Board of Professional Geologists;
- Board of Veterinary Medicine;
- Home inspection services licensing program;
- Mold-related services licensing program;
- Florida Board of Professional Engineers;
- Board of Accountancy;
- Florida Real Estate Commission; and
- Florida Real Estate Appraisal Board.[2]

Each profession is regulated by an individual practice act and by ch. 455, F.S., which provide regulatory and licensure authority. Generally, to act as a regulated professional, a person must hold an appropriate license. Applicants for licensure for each profession must meet specific statutory requirements, including education and/or experience requirements, and must pay all applicable licensing and application fees.[3] Licensees who wish to renew their license must pay a license renewal fee[4] and may be subject to continuing education requirements[5] and other conditions in the various practice acts.

Powers and Duties of the DBPR

Ch. 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by the [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[6] The chapter also provides the procedural and administrative framework for those divisions and the professional boards within the DBPR.[7]
The term "profession" means any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[8]

[1] S. 20.165, F.S.
[2] S. 20.165(1)-(4), F.S.
[3] S. 455.201, F.S.
[4] S. 455.203, F.S.
[5] S. 455.2123, F.S.
[6] Section 455.01(6), F.S.
[7] *See* s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of the DBPR. *See* s. 455.221(1), F.S.
[8] S. 455.01(6), F.S.

The DBPR's regulation of professions is to be undertaken "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[9] Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[10]

However, the DBPR and its boards may not create a regulation that has an unreasonable effect on job creation or job retention or a regulation that unreasonably restricts the ability of those desiring to engage in a profession or occupation from finding employment.[11]

Ch. 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[12]

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.[13] DBPR has the authority to charge license fees and license renewal fees.[14] Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.[15]

However, the general licensing provisions for professions were revised for Fiscal Years 2023-2024 and 2024-2025,[16] to direct the DBPR to waive a portion of certain license fees for the professions regulated under ch. 455, F.S., as follows:

- 50 percent of the *initial licensing fee* for those applying for an initial license, up to $200 per year per license; and
- 50 percent of the *license renewal fee* for those renewing licenses, up to $200 per year per license.

The fee waivers may not include any applicable unlicensed activity or background check fees.

Continuing Education Course Requirements

A board, or the DBPR in the absence of a board, may provide by rule that distance learning may be used to satisfy continuing education requirements. However, a board or the DBPR must approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements for persons licensed to engage in community association management services,[17] home inspection services,[18] mold-related services,[19] real estate services (i.e., brokers, sales associates, and schools),[20] and real estate appraisal services.[21] In addition, for these specified professions, a board or the DBPR may not require centralized examinations for completion of continuing education requirements.

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[9] S. 455.201(2), F.S.
[10] *Id*.
[11] S. 455.201(4)(b), F.S.
[12] *See* s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. *See* s. 455.221(1), F.S.
[13] S. 455.01(4) and (5), F.S.
[14] S. 455.203 and 455.213, F.S.
[15] S. 455.219(1), F.S.
[16] *See* s. 455.213(15), F.S. For Fiscal Year 2023-2024, the sum of $50 million in nonrecurring funds was appropriated from the General Revenue Fund to the DBPR to implement the fee waiver, with any unexpended funds to be used during Fiscal Year 2024-2025 for the same purpose. *See* ch. 2063-68, Laws of Fla.
[17] *See* part VIII of ch. 468, F.S.
[18] *See* part XV of ch. 468, F.S.
[19] *See* part XVI of ch. 468, F.S.
[20] *See* part I of ch. 475, F.S.
[21] *See* part II of ch. 475, F.S.

However, the following boards have no continuing education requirements[22]:

- Board of Auctioneers[23]
- Talent Agencies[24]
- Athlete Agents[25]
- Board of Employee Leasing Companies[26]
- Board of Professional Geologists[27]

The terms "distance learning" and "distance-learning" are not defined in ch. 455, F.S., or elsewhere in the Florida Statutes as of the date of this analysis. However, a rule adopted by the Florida Real Estate Appraisal Board provides the term "distance education" means "education that takes place when the learner is separated from the source of instruction by time and/or distance."[28]

Renewal and Proration of Continuing Education Courses

A board, or the DBPR in the absence of a board, has the authority to prorate continuing education for new licensees as follows:

- Half of the required continuing education for an applicant who becomes licensed with more than half of the renewal period remaining.
- No continuing education requirement for any applicant who becomes licensed with half or less than half of the renewal period remaining.

Effect of the Bill

The bill requires that a board, or DBPR in the absence of a board, allow distance learning as an alternative to classroom courses for satisfying continuing education requirements. However, the bill clarifies that medical boards or departments regulated by the Department of Health are excluded from the application of distance learning for fulfilling continuing education requirements.

Additionally, the bill requires professional boards, or the DBPR if there is no board, to exempt an individual from completing the continuing education required for renewal of a license for a renewal period if:

- The individual holds an active license issued by the board or the DBPR to practice the profession;
- The individual has continuously held the license for at least 10 years; and
- No disciplinary action is imposed on the individual's license.

The bill requires that DBPR and each relevant board adopt rules, as outlined in ss. 120.536(1) and 120.54, F.S., to implement the provisions of this section

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

[22] DBPR, Agency Analysis of 2024 SB 382, p. 2 (Nov. 21, 2023).
[23] Ch. 468, Part VI, F.S.
[24] Ch. 468, Part VII, F.S.
[25] Ch. 468, Part IX, F.S.
[26] Ch. 468, Part XI, F.S.
[27] Ch. 492, F.S.
[28] In addition, the Florida Real Estate Commission (FREC) has issued its Distance Education Checklist at http://www.myfloridalicense.com/dbpr/re/documents/frec_distance_ed_chk_list.pdf (last visited Jan. 31, 2024), which lists the information required to be submitted by education providers seeking to offer FREC educational courses via distance education. The Checklist provides "[d]istance learning necessitates a high level of self-direction and should, therefore, require students to read, conduct research, complete timed exams and similar assignments, designed to measure the student's competency relative to the required subject matter objectives." *See also* other rules referencing similar but undefined terms, such as Fla. Admin. Code R. 64B15-13.001 (a Board of Osteopathic Medicine rule that provides "CME courses may be obtained in any format, including in a distance learning format, provided that the format includes an ability to interact with the presenter of the course;" and Fla. Admin. Code R. 61G4-18.001, (a Construction Industry Licensing Board rule that requires "at least 14 classroom or interactive distance learning hours of continuing education in one or more courses from a continuing education provider approved by the Board.").

Section 1: Amends s. 455.2123, F.S., relating to continuing education.

Section 2: Amends s. 455.2124, F.S., relating to proration of or not requiring continuing education.

Section 3: Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate effect on state government expenditures because DBPR must assess license holders for disciplinary actions before each profession's renewal cycles to determine which licensees must fulfill continuing education (CE) requirements for renewal. This assessment will influence CE renewal notifications, as well as the functioning of the Versa Regulation (VR) and Versa Online (VO) systems, and renewal processing. However, DBPR believes any potential effects could be managed within existing resources.[29]

   Moreover, the fiscal impact on the service operations division remains indeterminate. The CE exemption for eligible licenses is expected to decrease call volumes to the Customer Contact Center during peak renewal periods. However, the precise number of potentially exempted licensees who historically contacted the Customer Contact Center regarding CE reporting to the department cannot be determined at this time.[30]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact on the private sector is indeterminate. Continuing education providers may experience a decrease in revenue because of licensees being exempt from continuing education requirements if certain requirements are met. While, licensees may experience a decrease in expenditures as a result of being able to complete more continuing education via distance learning, as well as being exempt from continuing education requirements if certain requirements are met.

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.

[29] DBPR, Agency Analysis of 2024 SB 382, p. 7 (Nov. 21, 2023).
[30] *Id*.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires rulemaking by the DBPR and the affected board, and authorizes emergency rulemaking by DBPR pending the adoption of permanent rules to implement the exemption from continuing education requirements granted to eligible licensees.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DBPR recommends that the following professions be excluded from the provisions of the bill, so that the affected licensees will be kept informed of laws, rules, and industry advancements to protect the health, safety, and welfare of the public, and the portability of such licensing for use in other jurisdictions will be maintained[31]:

- Certified Public Accountants[32];
- Veterinary Medicine;
- Landscape Architecture;
- Cosmetology and Barbers;
- Building Code Administrators and Inspectors;
- Community Association Managers; and
- Construction Contractors.

Section 2 of the bill would put the State of Florida's appraisal program out of compliance with federal standards. If Florida's appraisal program is out of compliance with federal standards, the appraisers licensed in Florida may not be able to perform work outside of Florida, and the federal government could potentially impose fines against the State of Florida.[33]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[31] *Id*. at 9.

[32] DBPR's General Counsel's Office indicates that 30 to 40 percent of prosecutions of certified public accountants (CPAs) involve the failure to meet continuing education requirements, so the elimination of the continuing education requirement for CPAs who have held active licenses continuously for at least 10 years with no disciplinary action imposed on the license could result in fewer violations and prosecutions. *Id*. at 10.

[33] *Id*. at 9.

A bill to be entitled

An act relating to continuing education requirements; amending s. 455.2123, F.S.; requiring, rather than authorizing, a board, or the Department of Business and Professional Regulation when there is no board, to provide by rule that distance learning may be used to satisfy continuing education requirements; revising the requirements that such continuing education must satisfy; providing applicability; amending s. 455.2124, F.S.; requiring a board, or the department when there is no board, to exempt certain individuals from completing their continuing education requirements; providing applicability; requiring the department and each affected board to adopt rules; providing an effective date.

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

Section 1. Section 455.2123, Florida Statutes, is amended to read:

455.2123 Continuing education.—A board, or the department when there is no board, shall ~~may~~ provide by rule that distance learning may be used to satisfy continuing education requirements. A board, or the department when there is no board, shall approve distance learning courses as an alternative to

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

classroom courses to satisfy continuing education requirements. A board, or the department when there is no board, ~~provided for in part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter 475 and~~ may not require centralized examinations for completion of continuing education requirements for the professions licensed under part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter 475. This section does not apply to any medical board or department regulated by the Department of Health.

Section 2. Section 455.2124, Florida Statutes, is amended to read:

455.2124 Proration of or not requiring continuing education.—

(1) A board, or the department when there is no board, may:

(a) ~~(1)~~ Prorate continuing education for new licensees by requiring half of the required continuing education for any applicant who becomes licensed with more than half the renewal period remaining and no continuing education for any applicant who becomes licensed with half or less than half of the renewal period remaining; or

(b) ~~(2)~~ Require no continuing education until the first full renewal cycle of the licensee.

These options shall also apply when continuing education is

first required or the number of hours required is increased by law or the board, or the department when there is no board.

(2)(a) A board, or the department when there is no board, shall exempt an individual from completing the continuing education required for renewal of a license for a renewal period if the individual:

1. Holds an active license issued by the board, or the department when there is no board, to practice the profession;

2. Has continuously held the license for at least 10 years; and

3. Has had no disciplinary action imposed on the license.

(b) This subsection does not apply to any medical board or department regulated by the Department of Health.

(3) The department and each affected board shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 3. This act shall take effect July 1, 2024.

REGULATORY REFORM & ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 497 by Rep. Melo
Continuing Education Requirements

AMENDMENT SUMMARY
February 6, 2023

Amendment 1 by Rep. Melo (strike-all): The amendment makes the following changes:

- Removes provisions related to medical boards or departments regulated by the Department of Health.
- Exempts the following professionals from the provisions that allow professional licensees with more than 10 years' experience to skip continuing education requirements:
    - Brokers, broker associates and sales associates, in addition to engineers, CPA's, appraisers, interior designers, and contractors, which are already exempted in this bill.
- Grants DBPR rulemaking authority to adopt emergency rules for the purpose of implementing the amendment made by the bill.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform & Economic Development Subcommittee
Representative Melo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 455.2123, Florida Statutes, is amended to read:

455.2123 Continuing education.—A board, or the department when there is no board, shall allow ~~may provide~~ by rule that distance learning may be used to satisfy continuing education requirements. A board, or the department when there is no board, shall approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements. A board, or the department when there is no board, ~~provided for in part VIII, part XV, or part XVI of chapter 468 or part I or~~

~~part II of chapter 475 and~~ may not require centralized examinations for completion of continuing education requirements for the professions licensed under part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter 475.

Section 2. Section 455.2124, Florida Statutes, is amended to read:

455.2124 Proration of or not requiring continuing education.—

(1) A board, or the department when there is no board, may:

(a) ~~(1)~~ Prorate continuing education for new licensees by requiring half of the required continuing education for any applicant who becomes licensed with more than half the renewal period remaining and no continuing education for any applicant who becomes licensed with half or less than half of the renewal period remaining; or

(b) ~~(2)~~ Require no continuing education until the first full renewal cycle of the licensee.

These options shall also apply when continuing education is first required or the number of hours required is increased by law or the board, or the department when there is no board.

(2)(a) A board, or the department when there is no board, shall exempt an individual from completing the continuing

education required for renewal of a license for a renewal period if:

1. The individual holds an active license issued by the board or department to practice the profession;

2. The individual has continuously held the license for at least 10 years; and

3. No disciplinary action is imposed on the individual's license.

(b) This subsection does not apply to engineers regulated pursuant to chapter 471, certified public accountants regulated pursuant to chapter 473, to brokers, broker associates, and sales associates regulated pursuant to part I of chapter 475, to appraisers or interior designers regulated pursuant to chapter 481, or to contractors regulated pursuant to chapter 489.

(3) The department and each affected board shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 3. (1) The Department of Business and Professional Regulation is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing the amendments made by this act to s. 455.2124, Florida Statutes, including establishing procedures to facilitate the exemption for eligible individuals from completing continuing education.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section expires January 1, 2026.

Section 4. This act shall take effect July 1, 2024.

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

Remove lines 6-15 and insert:

allow by rule that distance learning may be used to satisfy continuing education requirements; revising the requirements that such continuing education must satisfy; amending s. 455.2124, F.S.; requiring the board, or the department when there is no board, to exempt certain individuals from completing their continuing education requirements; providing applicability; requiring the department and each affected board to adopt rules; authorizing the department to adopt emergency rules; providing requirements and an expiration date for the emergency rules; providing for the expiration of such rulemaking authority; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 757 Defamation, False Light, and Unauthorized Publication of Name or Likenesses
SPONSOR(S): Civil Justice Subcommittee, Andrade
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 4 N, As CS	Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
3) Judiciary Committee			

SUMMARY ANALYSIS

The First Amendment to the United States Constitution provides that "Congress shall make no law … abridging the freedom of speech, or of the press...." Courts apply the First Amendment to the states through the Fourteenth Amendment, thus prohibiting the states from enacting laws which abridge the freedom of speech or of the press. Courts also apply the First Amendment to civil lawsuits between private parties where the courts must, in deciding the claims, apply a state rule of law touching on the freedoms guaranteed by the First Amendment, including claims for:

- Defamation, which is a tort arising out of a statement that injures a third party's reputation.
- Invasion of privacy, which is a tort that generally falls into one the following three categories:
  - Unauthorized publication of another's name or likeness;
  - Unreasonable public disclosure of a private fact; or
  - Publicity that unreasonably places another in a false light before the public.

In these instances, the courts recognize that the First Amendment guarantees are not absolute. Instead, the courts must balance the rights of the defendant to speak or otherwise publicize information with the rights of the plaintiff to protect his or her reputation or privacy. This is especially important where the plaintiff is a public figure; in such instance, a court, recognizing the necessity of the free flow of information of public importance, generally requires a public figure suing for defamation to prove actual malice on the part of the defendant before he or she can prevail, instead of mere negligence, as is the usual standard. Further, Florida law establishes an evidentiary journalist's privilege, which privilege prevents a journalist from being compelled to testify about or provide information obtained while gathering news in most situations, including the identity of any sources.

CS/HB 757:

- Defines "defamation or privacy tort" and modifies the venue requirements for a defamation or privacy tort action.
- Extends the liability shield under the fair reporting privilege to newspaper entities.
- Limits a media entity's liability shield under the fair reporting privilege and ability to avoid punitive damages where a defamatory statement is not removed from the Internet as required by the bill.
- Creates a rebuttable presumption that a publisher published a statement about a public figure with actual malice where the public figure proves the statement is false and the publisher relied on an anonymous source for the statement.
- Authorizes a "veracity hearing" in a defamation or privacy tort action in specified circumstances.
- Resuscitates the tort of false light in the limited context of the use of artificial intelligence to create or edit any form of media.

The bill does not appear to have a fiscal impact on state or local governments. The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

First Amendment Guarantees: Freedom of Speech and of the Press

The First Amendment to the United States Constitution provides that "Congress shall make no law … abridging the freedom of speech, or of the press..."[1] In 1940, the United States Supreme Court held that the Fourteenth Amendment's concept of liberty embraced the liberties guaranteed by the First Amendment, which provides, in pertinent part, that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities or 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 equal protection of the laws."[2]

Thus, courts apply the First Amendment to the states through the Fourteenth Amendment, therefore prohibiting the states from enacting laws which abridge the freedom of speech or of the press. Courts also apply the First Amendment to civil lawsuits between private parties where the courts must, in deciding the claims, apply a state rule of law, whether statutory or common law,[3] touching on the freedoms guaranteed by the First Amendment.[4] In applying the First Amendment to such lawsuits, the United States Supreme Court recognizes that the constitutional protections for the freedom of speech and of the press were guaranteed to the people to assure the free exchange of ideas for the bringing about of political and social changes desired by the people.[5] The Court has also acknowledged that maintaining the opportunity for free political discussion so that governments may be responsive to the will of the people and changes may be obtained by lawful means is a fundamental principle of the constitutional system; indeed, noted the Court, the freedom of speech and of the press "is the indispensable condition of nearly every other form of freedom."[6]

General Tort Law

The main purpose of Florida's civil justice system is to properly and fairly redress the civil wrongs committed throughout the state. A functioning civil justice system, when it operates justly:

- Provides a fair and equitable forum to resolve disputes;
- Discourages persons from resorting to self-help methods to redress wrongs;
- Appropriately compensates legitimately harmed persons;
- Shifts losses to responsible parties;
- Provides incentives to prevent future harm; and
- Deters undesirable behavior.[7]

A goal of the civil justice system is to redress tortious conduct, or "torts" – that is, wrongs for which the law provides a remedy. Torts are generally divided into three categories, as follows:

- An intentional tort, examples of which include assault, battery, or false imprisonment.[8]

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[1] The First Amendment was ratified on December 15, 1791, as part of the Bill of Rights; that is, the first ten Amendments to the United States Constitution. Library of Congress, *The Bill of Rights*, https://www.loc.gov/item/today-in-history/december-15/#:~:text=On%20December%2015%2C%201791%2C%20the,of%20peaceful%20assembly%20and%20petition (last visited Jan. 18, 2024).
[2] *Cantwell v. Connecticut*, 310 U.S. 296 (1940).
[3] Common law is law arising from judicial decisions. Legal Information Institute, *Common Law*, https://www.law.cornell.edu/wex/common_law (last visited Jan. 18, 2024).
[4] *See, e.g.*, *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *see also, e.g.*, *American Fed'n of Labor v. Swing*, 312 U.S. 321 (1941).
[5] *See, e.g., Sullivan*, 376 U.S. at 269.
[6] *Curtis Pub. Co. v. Butts*, 388 U.S. 130 (1967)
[7] *Cf.* Am. Jur. 2d Torts s. 2.
[8] Legal Information Institute, *Intentional Tort*, https://www.law.cornell.edu/wex/intentional_tort (last visited Jan. 18, 2024).

- Recklessness, which is behavior so careless that it is considered an extreme departure from the care a reasonable person would exercise in similar circumstances.[9]
- Negligence, which is the failure to behave with the level of care that an ordinary prudent person would have exercised under the same circumstances.[10] To prevail in a negligence lawsuit, the plaintiff must show that the:
    - Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
    - Defendant breached his or her duty of care by failing to conform to the required standard;
    - Defendant's breach caused the plaintiff to suffer an injury; and
    - Plaintiff suffered actual damage or loss resulting from such injury.[11]

Some torts, such as defamation and invasion of privacy, touch on conduct which amounts to speech, or which is carried out by the press; in these instances, the courts recognize that the First Amendment guarantees are not absolute.[12] Instead, the courts must balance the rights of the defendant to speak or otherwise publicize information with the rights of the plaintiff to protect his or her reputation or privacy.

Defamation

Defamation is a tort arising out of a statement that injures a third party's reputation – in other words, it is a statement that tends to harm the reputation of another by lowering him or her in the community's estimation.[13] More broadly stated, it is a statement that exposes another to hatred, ridicule, or contempt or injures another's business, reputation, or occupation.[14] Such statements fall into one of two categories:

- Libel, which is a defamatory statement expressed in print, writing, pictures, signs, effigies, or any communication embodied in physical form.[15]
- Slander, which is a defamatory statement made orally.[16]

To prove defamation, a plaintiff generally must show:

- A false statement purporting to be fact;
- Publication or communication of that statement to a third person;
- Fault amounting to at least negligence; and
- Damages – that is, some harm caused to the plaintiff's reputation.

Florida law also recognizes defamation by implication.[17] Thus, a technically true statement can be defamatory where, by its context or the omission of other facts, it creates a false impression and satisfies all of the other elements of defamation.[18]

[9] Legal Information Institute, *Reckless*, https://www.law.cornell.edu/wex/reckless (last visited Jan. 18, 2024).
[10] Legal Information Institute, *Negligence*, https://www.law.cornell.edu/wex/negligence (last visited Jan. 18, 2024).
[11] 6 *Florida Practice Series* s. 1.1; *see Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).
[12] *See, e.g.*, *Herbert v. Lando*, 441 U.S. 153 (1979) ("Given the required proof, damages liability for defamation abridges neither freedom of speech nor freedom of the press"); *see also Butts*, 388 U.S. at 146 (society has "a pervasive and strong interest in preventing and redressing attacks upon reputation").
[13] Fla. S. Ct., *Standard Jury Instructions – Civil Cases (No. 00-1)*, 795 So. 2d 51 (2001).
[14] *Id.*
[15] Legal Information Institute, *Libel*, https://www.law.cornell.edu/wex/libel (last visited Jan. 18, 2024).
[16] Legal Information Institute, *Slander*, https://www.law.cornell.edu/wex/slander (Jan. 18, 2024).
[17] *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008).
[18] *Id.* at 1108.

Venue for Defamation Action

For civil lawsuits not relating to real property, including defamation claims, Florida law provides two locations where venue is proper (that is, where the lawsuit may be filed); specifically, such lawsuits may be filed in the county where the defendant resides or the county in which the cause of action accrued.[19] Florida law also prohibits a person from having more than one choice of venue for damages for defamation founded upon any single publication, exhibition, or utterance, such as one:

- Newspaper edition;
- Book;
- Magazine;
- Presentation to an audience;
- Broadcast over radio or television; or
- Motion picture exhibition.[20]

Recovery in such an action must include all damages for the alleged tort suffered by the plaintiff in all jurisdictions.[21]

Cause of Action for Defamation

A person who believes he or she is a defamation victim has two years to file a lawsuit raising the defamation allegation, with the time in which to bring a lawsuit for damages founded upon a single publication, exhibition, or utterance running from the time of the first publication, exhibition, or utterance at issue in Florida.[22] Further, a judgment in any jurisdiction for or against the plaintiff on the substantive merits of an action for damages founded on a single publication, exhibition, or utterance bars any other action for damages by the same plaintiff against the same defendant founded on the same publication, exhibition, or utterance.[23]

Defenses to Defamation

Truth is an absolute defense to most defamation allegations, except for allegations of defamation by implication; however, in such cases, truth is still available as a defense to a defendant who can prove that the implication created by the allegedly defamatory statement is true.[24] Defamation law also shields publishers from liability for minor factual inaccuracies; thus, a statement is considered substantially true where its "substance or gist conveys essentially the same meaning that the truth would have conveyed."[25]

Certain privileges may also provide a defense to defamation, although the degree of the defense provided depends on whether the privilege is absolute or qualified.[26] An absolute privilege provides complete immunity to defamation liability; in such instances, the statement's falsity and the speaker's intent are irrelevant.[27] However, a qualified privilege only provides immunity from defamation liability where the defendant did not act with actual malice.[28]

Damages

[19] S. 47.011, F.S.
[20] S. 770.05, F.S.
[21] *Id.*
[22] Ss. 95.11(4)(h), F.S. and 770.07, F.S.
[23] S. 770.06, F.S.
[24] *Butts*, 388 U.S. at 151.
[25] Fla. S. Ct., *Standard Jury Instructions*, *supra* note 13.
[26] Legal Information Institute, *Defamation*, https://www.law.cornell.edu/wex/defamation (last visited Jan. 18, 2024).
[27] For example, an absolute privilege extends to statements made by judges, attorneys, witnesses and jurors in a judicial proceeding where the statements are relevant to the issue before the court. *Myers v. Hodges*, 44 So. 357 (1907).
[28] For example, a qualified privilege extends to statements made by judges, attorneys, witnesses, and jurors in a judicial proceeding where the statements are irrelevant to the issue before the court. *Id.* at 362.

A prevailing plaintiff in a defamation action may recover his or her actual damages where the award is supported by competent evidence.[29] Such damages may be economic damages (that is, monetary losses) or noneconomic damages (such as damages for pain and suffering or humiliation).[30] Moreover, nominal damages[31] may be awarded to vindicate a plaintiff where defamation is found but no actual damages are proved, and punitive damages[32] may be awarded where the plaintiff proves the defendant acted willfully, wantonly, or maliciously.[33]

Defamation Per Se

"Defamation *per se*" is a statement that is so egregious that the law presumes that it was defamatory.[34] In determining whether a statement is defamation *per se*, the fact-finder must look only to the language of the statement itself without relying on implications.[35] Courts have found that certain statements are defamation *per se*, including a false statement:

- That a person committed a crime of moral turpitude;[36]
- Charging a person with having a sexually-transmitted or other communicable disease;
- Tending to subject a person to hatred, distrust, ridicule, contempt, or disgrace, such as by imputing that a woman is unchaste; or
- Tending to impute to another conduct, characteristics, or a condition incompatible with the proper exercise of his or her lawful business, trade, profession, or office.[37]

When a defamation claim involves defamation *per se*, malice and damages are generally presumed as a matter of law and thus do not need to be proved; these presumptions may justify a punitive damages[38] award even where the jury does not find that the plaintiff suffered actual damages.[39] However, the Florida Supreme Court has found that the malice and damages presumption does not apply against defendants who are members of the media; thus, even where defamation *per se* is alleged against such a defendant, malice and damages must still be proved.[40]

Discrimination Allegations

Courts typically hold that an allegation that a person is racist, sexist, homophobic, transphobic or otherwise holds feelings of dislike or hatred toward a particular class of persons is an "opinion" not amounting to defamation, since the truth of the opinion cannot be proved or disproved.[41] However, courts typically hold that a false allegation that a person discriminated against a person or group of people on the basis of race, sex, sexual orientation, gender identity, or membership in another class amounts to defamation, as it is more of a factual assertion, the truth of which can be proven or disproved.[42] At least one court has found that an allegation that a business discriminated against would-be patrons on the basis of their race was defamation *per se*.[43]

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[29] *Army Aviation Heritage Found. And Museum, Inc. v. Buis*, 504 F. Supp. 2d 1254 (N.D. Fla. 2007); Legal Information Institute, *Actual Damages*, https://www.law.cornell.edu/wex/actual_damages (last visited Jan. 18, 2024).
[30] *Id.*
[31] "Nominal damages" is a trivial sum of money awarded to a plaintiff whose legal right was technically violated but who has not established that he or she is entitled to an actual damages award because there was no accompanying loss proved. Legal Information Institute, *Nominal Damages*, https://www.law.cornell.edu/wex/nominal_damages (last visited Jan. 18, 2024)
[32] "Punitive damages" are damages awarded to punish the defendant and deter the future bad behavior of others. Legal Information Institute, *Punitive Damages*, https://www.law.cornell.edu/wex/punitive_damages (last visited Jan. 18, 2024).
[33] *Buis,* 504 F. Supp. 2d at 1262.
[34] *Layne v. Tribune Co.*, 146 So. 234 (Fla. 1933).
[35] *Id.* at 237.
[36] A "crime of moral turpitude" is a crime involving wicked or deviant behavior constituting an immoral, unethical, or unjust departure from ordinary social standards such that it would shock a community. Legal Information Institute, *Moral Turpitude*, https://www.law.cornell.edu/wex/moral_turpitude (last visited Jan. 18, 2024).
[37] *Blake v. Giustibelli*, 182 So. 3d 881 (Fla. 4th DCA 2016) (citing *Richard v. Gray*, 62 So. 2d 597, 598 (Fla. 1953)).
[38] "Punitive damages" are damages awarded to punish the defendant and deter the future bad behavior of others. Such damages are usually only available where a plaintiff proves the defendant acted willfully, wantonly, or maliciously. Legal Information Institute, *Punitive Damages*, https://www.law.cornell.edu/wex/punitive_damages (last visited Jan. 18, 2024).
[39] *Layne*, 146 So. at 236; *Lawnwood Medical Center, Inc. v. Sadow*, 43 So. 3d 710 (Fla. 4th DCA 2010).
[40] *Mid-Florida Television Corp. v. Boyles*, 467 So. 2d 282 (Fla. 1985).
[41] *See, e.g.*, *Williams v. Lazer*, 495 P.3d 93 (Nev. 2021); *Garrard v. Charleston Cnty. Sch. Dist.*, 838 S.E. 2d 698 (S.C. Ct. App. 2019).
[42] *See, e.g.*, *Gibson Brothers, Inc. v. Oberlin College*, 187 N.E. 3d 629 (Ohio Ct. App. 2022).
[43] Id. at 653.

Pre-Suit Notice for Media Entities

Before a defamation lawsuit may be filed in Florida against a newspaper, periodical, or other medium for publishing or broadcasting a defamatory statement, the plaintiff must, at least five days before filing suit, serve notice in writing on the defendant, which notice specifies the article or broadcast and the statements therein which the plaintiff alleges are defamatory.[44] Further, the plaintiff in such a suit is limited to recovering his or her actual damages if it appears from the evidence presented at trial that:

- An article or broadcast was published in good faith;
- Its falsity was due to an honest mistake of facts;
- There were reasonable grounds for believing the statement at issue was true; and
- Within a specified time period, a full and fair correction, apology, or retraction was, in the case of a:
    - Newspaper or periodical, published in the same editions or corresponding issues of the newspaper or periodical in which the defamatory article appeared, and in as conspicuous a place and type as said article; or
    - Broadcast, the correction, apology, or retraction was broadcast at a comparable time.[45]

However, "full and fair correction" must be made, in the case of a:

- Broadcast or a daily or weekly newspaper or periodical, within 10 days after service of notice;
- Newspaper or periodical published semi-monthly, within 20 days after service of notice;
- Newspaper or periodical published monthly, within 45 days of the notice; and
- Newspaper or periodical published less frequently than monthly, in the next issue, if notice is served no later than 45 days before such publication.[46]

In other words, the plaintiff may not recover punitive damages where the defendant newspaper or broadcast station published or broadcast the defamatory statement in good faith and issued a timely and appropriate correction, apology, or retraction.

Civil Liability of Certain Media Outlets

Florida law provides a fair reporting privilege, which privilege shields from civil liability a radio or television broadcasting station owner, licensee, or operator, and the agents and employees thereof, for any defamatory statement published or uttered in or as part of a radio or television broadcast by one other than such owner, licensee, or operator, or an agent or employee thereof, unless the plaintiff alleges and proves that such owner, licensee, or operator, or an agent or employee thereof, failed to exercise due care to prevent the publication or utterance of such statement in such broadcasts.[47] In this context, the exercise of due care is construed to include the bona fide compliance with any federal law or the regulation of any federal regulatory agency.[48]

Public Figures

Courts classify persons who have achieved a certain measure of notoriety, whether by achievement or celebrity, or who hold public office, as "public figures" for the purpose of defamation law.[49] A person may achieve such pervasive fame or notoriety that he or she becomes a public figure for all purposes and in all contexts of his or her life.[50] More commonly, however, a person voluntarily injects himself or is drawn into a particular controversy and thereby becomes a public figure for a limited range of issues.[51]

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[44] S. 770.01, F.S.
[45] S. 770.02(1), F.S.
[46] S. 770.02(2), F.S.
[47] S. 770.04, F.S.
[48] *Id.*
[49] *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).
[50] *Id.* at 351.
[51] *Id.*

Recognizing the unique role public figures play in society, the United States Supreme Court has held that the negligence standard applicable in a defamation claim involving a private citizen is the inappropriate standard in a defamation claim brought by a public figure; instead, a public figure must prove the statement at issue was made with "actual malice" – that is, with knowledge that it was false or with reckless disregard as to whether it was false or not.[52] Mere proof of failure to investigate, without more, does not establish the reckless disregard for the truth which would constitute "actual malice."[53]

In justifying the actual malice standard, the U.S. Supreme Court has noted that criticism of official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes a public figure's official reputation.[54] Further, the Court has noted that authoritative interpretations of the First Amendment's constitutional guarantees do not turn upon "the truth, popularity, or social utility of the ideas and beliefs which are offered."[55] Erroneous statements, according to the Court, are inevitable in free debate and must be protected if the freedoms of expression are to survive; "cases which impose liability for erroneous reports of the political conduct of officials reflect the obsolete doctrine that the governed must not criticize their governors."[56]

Invasion of Privacy

Florida law recognizes a right to privacy – that is, the right to be let alone and live in a community without being held up to the public gaze against one's will.[57] An invasion of privacy claim is a tort ("privacy tort") that generally falls into one of the following three categories:[58]

- Unauthorized publication of another's name or likeness;
- Unreasonable public disclosure of a private fact; or
- Publicity that unreasonably places another in a false light before the public.[59]

A person who believes he or she has been the victim of a privacy tort generally has four years to bring a lawsuit raising the invasion of privacy allegations; however, an unauthorized publication cause of action may not be brought if the name or likeness used belongs to a decedent and the use on which the action is based occurred more than 40 years after the decedent's death.[60]

Further, as with defamation:

- The cause of action for damages founded upon a single publication, exhibition, or utterance is deemed to have accrued at the time of the first publication, exhibition, or utterance thereof in Florida.[61]
- No person may have more than one choice of venue for damages for a privacy tort founded upon any single publication, exhibition, or utterance and recovery in such an action must include all damages for any such tort suffered by the plaintiff in all jurisdictions.[62]
- A public figure has a lower expectation of privacy that a non-public figure.[63]

However, unlike in defamation claims, mere spoken words do not give rise to a privacy tort; the conduct at issue must be published or broadcast in some fashion.[64] Further, neither the truth of the published matter nor the absence of malice or wrongful motive on the part of the writer or publisher constitute a defense to a privacy tort.[65]

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[52] *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).
[53] *Gertz*, 418 U.S. at 330.
[54] *Sullivan*, 376 U.S. at 271-272 (citing *N.A.A.C.P. v. Button*, 371 U.S. 415, 433 (1963) and quoting *Sweeney v. Patterson*, 128 F. 2d 457 (D.C. Cir. 1942)).
[55] *Sullivan*, 376 U.S. at 271.
[56] *Id.*
[57] *Cason v. Baskin*, 20 So. 2d 243 (Fla. 1944). This is not to be confused with the right to privacy guaranteed in article I, section 23 of the Florida Constitution, which generally guarantees Floridians a right to be free from government intrusion into their private lives.
[58] A fourth category, unreasonable intrusion into another's seclusion, is not discussed here, as it does not require publication.
[59] Restatement (Second) of Torts s. 652A.
[60] Ss. 95.11(3)(o) and 540.08(4), F.S.; *Epic Metals Corp. v. Condec, Inc.*, 867 F. Supp. 1009 (M.D. Fla. 1994).
[61] S. 770.07, F.S.
[62] S. 770.05, F.S.
[63] *Cason*, 20 So. 2d at 251.
[64] *Id.* at 251-252; *In re Carter*, 411 B.R. 730 (U.S. Bankr. Ct., M.D. Fla. 2009).
[65] *Cason,* 20 So. 2d at 252.

Damages available to a prevailing plaintiff in a privacy tort include actual damages and punitive damages where the defendant's conduct was willful, wanton, or malicious.[66] However, the plaintiff need not prove actual damages to prevail in a privacy tort claim and may recover nominal damages if actual damages are not proved.[67]

Unauthorized Publication

Florida courts recognize the common law tort of unauthorized publication of another's name or likeness (sometimes referred to as "appropriation").[68] Florida law also codifies this tort in s. 540.08, F.S., providing generally the same elements as the common law tort.[69] Specifically, s. 540.08, F.S., prohibits a person from publishing, printing, displaying, or otherwise publicly using for purposes of trade or for any commercial or advertising purpose[70] the name, photograph, or other likeness of any natural person without the express written or oral consent to such use given by:

- The natural person whose name or likeness is to be used;[71]
- Any other person authorized in writing by such person to license the commercial use of his or her name or likeness; or
- If such person is deceased:
    - Any person authorized in writing to license the commercial use of the decedent's name or likeness; or
    - If no person is so authorized, then by the decedent's surviving spouse or any one of his or her surviving children.[72]

If proper consent is not obtained, the person whose name or likeness was appropriated, or any person authorized to consent to the commercial use of the name or likeness, may sue under the statutory cause of action to enjoin the unauthorized use and recover damages, including an amount that would have been a reasonable royalty.[73] The court may also impose a civil penalty of up to $1,000 per violation if the person whose name or likeness was appropriated is a member of the armed forces.[74] However, only the individual whose privacy was invaded may sue for unauthorized publication at common law.[75]

Further, the statutory cause of action does not apply to, and Florida courts generally recognize common law exceptions for:

- The publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such name or likeness is not used for advertising purposes;
- The use of a name or likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other merchandise or property where the person has

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[66] *James v. Intelligent Software Solutions*, 2017 WL 5634293 (11th Cir. 2017).
[67] *Facchina v. Mut. Benefits Corp.*, 735 So. 2d 499 (Fla. 4th DCA 1999).
[68] *Coton v. Televised Visual X-Ography, Inc.*, 740 F. Supp.2d 1299 (M.D. Fla. 2010).
[69] A plaintiff may plead an unauthorized publication cause of action under both the statutory and common law remedies. A cause of action may exist under the common law tort regardless of whether the unauthorized publication was for trade, commercial, or advertising purposes as required by statute. *Lane v. MRA Holdings, LLC*, 242 F. Supp. 2d 1205 (M.D. Fla. 2002).
[70] A "commercial or advertising purpose" does not include publications which do not directly promote a product or service. It is not enough that a publication is offered for sale; rather, the liability inquiry turns on whether the plaintiff's name or likeness is associated with something else within the publication. *Tyne v. Time Warner Entertainment Co.*, L.P., 901 So. 2d 802 (Fla. 2005); *Loft v. Fuller*, 408 So. 2d 619 (Fla. 4th DCA 1981); *Valentine v. CBS, Inc.*, 698 F. 2d 430 (11th Cir. 1983).
[71] Consent may only be given on behalf of a minor by the guardian of his or her person or by either parent. S. 540.08(6), F.S.
[72] A person's "surviving spouse" is the person's surviving spouse under the law of his or her domicile at the time of his or her death, whether or not the spouse has later remarried, and a person's "surviving children" are his or her immediate offspring and any children legally adopted by the person. S. 540.08(1) and (6), F.S.
[73] S. 540.08(2), F.S.; *Coton*, 740 F. Supp. 2d at 1312.
[74] "Member of the armed forces" means an officer or enlisted member of the Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard of the United States, the Florida National Guard, or the United States Reserve Forces, and includes any officer or enlisted member who died due to injuries sustained in the line of duty. S. 540.08(2) and (3), F.S.; *Coton*, 740 F. Supp. 2d at 1312.
[75] *Loft*, 408 So. at 623-625.

consented to the use of his or her name or likeness on or in connection with the initial sale or distribution of the items; or
- Any photograph of a person solely as a member of the public, where such person is not named or otherwise identified in or in connection with the use of such photograph.[76]

Public Disclosure of Private Facts

Florida courts recognize the common law tort of unreasonable public disclosure of private facts, which cause of action may only be brought by the person whose privacy was so invaded.[77] To prevail in a public disclosure claim, the plaintiff must prove that the:
- Defendant publicized a truthful but private[78] fact concerning the plaintiff; and
- Matter publicized is of a kind that:
  - Publication would be highly offensive to a reasonable person; and
  - Is not of legitimate pubic concern – that is, the matter is not newsworthy.[79]

Generally, the disclosure must also have been made to the public at large or to so many persons that the matter is substantially certain to become public knowledge.[80] There is no precise number of persons to whom disclosure must be made to satisfy this requirement; instead the court must consider the facts of each case in determining whether the publication was sufficiently "public."[81] Further, the plaintiff's consent to the publication is an absolute defense, which consent may be express or implied.[82]

False Light

False light is a common law tort that Florida courts no longer recognize, although other jurisdictions do continue to recognize it. Traditionally, this tort arose out of a statement that would be highly offensive to a reasonable person; unlike defamation, which affords a remedy for damages to a person's reputation, false light affords a remedy for emotional harm.[83] Thus, to prevail in a false light claim, a plaintiff traditionally had to prove that the:
- Publication places the plaintiff in a false light that would be highly offensive to a reasonable person; and
- Defendant acted knowingly or in reckless disregard as to the false light in which the plaintiff would be placed.[84]

As with defamation by implication, truth was not an absolute defense to a false light claim, as such a claim could exist where the facts alleged are true but the implication or innuendo created by the juxtaposition or omission of the facts is false.[85] However, truth was available to a defendant in a false light claim as a defense where the defendant could show that the implication or innuendo created was true.[86]

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[76] S. 540.08(4), F.S.; *see, e.g.*, *Jacova v. S. Radio & Television Co.*, 83 So. 2d 34 (Fla. 1955); *Zim v. W. Publ'g Co.*, 573 F. 2d 1318 (5th Cir. 1978).
[77] *Cape Publications, Inc. v. Hitchner*, 549 So. 2d 1374 (Fla. 1989); *Tyne*, 204 F. Supp. 2d at 1344.
[78] To be considered "private," a fact cannot already have been "in the public eye"; that is, the facts cannot already have been publicized by another source or through the plaintiff's failure to conceal them. *Heath v. Playboy Enter. Inc.*, 732 F. Supp. 1145 (S.D. Fla. 1990); *Doe v. Univision Television Group, Inc.*, 717 So. 2d 63 (Fla. 3d DCA 1998).
[79] There is no set standard for what is considered "newsworthy." Instead, the courts look to the specific facts of each case to determine the newsworthiness of the private information publicized. *Hitchner,* 549 So. 2d at 1377; Restatement (Second) of Torts § 652D.
[80] *Guarino v. Mandel*, 327 So. 3d 853 (Fla. 4th DCA 2021).
[81] *Leach v. District Bd. of Trustees of Palm Beach*, 244 F. Supp. 3d 1334 (S.D. Fla. 2017).
[82] *Heath*, 732 F. Supp. At 1150.
[83] *Rapp*, 997 So. 2d at 1108; Restatement (Second) of Torts § 652E; *Gannet Co., Inc. v. Anderson*, 947 So. 2d 1 (Fla. 1st DCA 2006); Robert, Rafii, *Defamation vs. False Light: What Is the Difference?*, https://www.findlaw.com/injury/torts-and-personal-injuries/defamation-vs--false-light--what-is-the-difference-.html (last visited Jan. 18, 2024) (noting that "[d]efamation is meant to protect reputation. A non-offensive statement about a person can harm…reputation. As such, defamation does not require that the statement is offensive or embarrassing. False light demands that the implication is offensive or embarrassing to a reasonable person").
[84] Restatement (Second) of Torts § 652E.
[85] *Lane*, 242 F. Supp. 2d at 1221.
[86] *Id.* at 1222.

Florida courts recognized the common law tort of false light until 2008,[87] when the Florida Supreme Court held that it would no longer recognize false light because it overlapped so substantially with defamation.[88]

Journalist's Privilege

A legal privilege generally operates to keep communications or other information private to promote open communication and information-sharing in situations where such communication and information-sharing should be encouraged; such privileges can be affirmatively raised in legal proceedings to shield protected communications and information, but can also generally be waived by the person for whose benefit the privilege exists.[89]

One such privilege is the journalist's privilege, which, generally speaking, affords journalists the right not to disclose the identity of witnesses and other materials in court. Although it is journalists who invoke the journalist's privilege, the theory behind the privilege is to shield informants who have information of value to the public, to encourage the free flow of such information.[90]

Forty-nine states (including Florida) and the District of Columbia currently recognize a journalist's privilege either in statute or under the common law; some states make the privilege absolute, while others make the privilege qualified, and the laws vary as to who may claim the privilege and to what information it applies.[91] The United States Supreme Court has also recognized a journalist's limited First Amendment right to keep confidential the names of his or her sources and unpublished information provided by such sources; most federal courts also recognize such a privilege, but the scope of the privilege varies.[92]

Journalist's Privilege in Florida

Florida law affords a professional journalist[93] a qualified privilege not to be a witness concerning, and not to disclose the information, including the identity of any source, that the professional journalist has obtained while actively gathering news.[94] This privilege applies only to information or eyewitness observations obtained within the professional journalist's normal scope of employment, and a journalist does not waive the privilege simply by publishing or broadcasting information.[95] However, the privilege does not apply to physical evidence, eyewitness observations, or visual or audio recording of crimes; thus, a professional journalist may be compelled to testify before a grand jury or in other criminal proceedings regarding criminal activity which he or she witnessed and to turn over any physical evidence or recordings of the crime he or she may have obtained.[96]

Further, because the journalist's privilege is qualified, it may be overcome by a party who makes a clear and specific showing that:

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[87] *See, e.g.*, *Gannet*, 947 So. 2d at 11.; *see also Heekin v. CBS Broadcasting, Inc.*, 789 So. 2d 355 (Fla. 2d DCA 2001).
[88] *Rapp*, 997 So. 2d at 1113-1114.
[89] Legal Information Institute, *Privilege*, https://www.law.cornell.edu/wex/privilege (last visited Jan. 18, 2024).
[90] Geoffrey R. Stone, *Why We Need A Federal Reporter's Privilege*, 34 Hofstra L. Rev. 39 (2005), https://law.hofstra.edu/pdf/academics/journals/lawreview/lrv_issues_v34n01_bb4_ideas-essays_stone_final.pdf (last visited Jan. 18, 2024).
[91] Wyoming does not currently recognize a journalist's privilege. Student Press Law Center, *State-by-State Guide to the Reporter's Privilege for Student Media*, https://splc.org/2019/08/state-by-state-guide-to-the-reporters-privilege-for-student-media/ (last visited Jan. 18, 2024); Justia, *Reporter Shield Laws* https://www.justia.com/communications-internet/reporter-shield-laws/ (last visited Jan. 18, 2024).
[92] *Branzburg v. Hayes*, 408 U.S. 665 (1972).
[93] A "professional journalist" is a person regularly engaged in collecting, photographing, recording, writing, editing, reporting, or publishing news, for gain or livelihood, who obtained the information sought while working as a salaried employee of, or an independent contractor for a newspaper; news journal; news agency; press association; wire service; radio or television station; network; or news magazine. S. 90.5015(1), F.S.
[94] "News" means information of public concern relating to local, statewide, national, or worldwide issues or events. S. 90.5015(2), F.S.
[95] S. 90.5015(2) and (4), F.S.; *State v. Davis*, 720 So. 2d 220 (Fla. 1998).
[96] S. 90.5015(2), F.S.; *Miami Herald Publishing Co. v. Morejon*, 561 So. 2d 577(Fla. 1990) ("There is no privilege, qualified, limited, or otherwise, which protects journalists from testifying as to their eyewitness observations of a relevant event in a subsequent court proceeding.")

- The information is relevant and material to unresolved issues that have been raised in the proceeding for which the information is sought;
- The information cannot be obtained from alternative sources; and
- A compelling interest exists for the required information disclosure.[97]

The court, in turn, must order disclosure only of that portion of the information for which such a showing was made and support such order with clear and specific findings made after a hearing.[98]

Effect of Proposed Changes

Defamation or Privacy Tort Defined

CS/HB 757 amends s. 770.05, F.S., to define the term "defamation or privacy tort," as used in chapter 770, F.S., to mean libel, slander, invasion of privacy, or any other tort founded upon a single publication, exhibition, or utterance, including any one:

- Newspaper edition.
- Book.
- Magazine.
- Presentation to an audience.
- Radio or television broadcast.
- Motion picture exhibition.
- Internet publication, exhibition, or utterance.

This definition under the bill does not change any of the elements of defamation or a privacy tort, and does not make something defamation or a privacy tort that is not already such under current law.

Pre-Suit Notice for Media Entities

The bill amends s. 770.02, F.S., to provide that, if a newspaper or broadcast station published the article or broadcast identified in the plaintiff's pre-suit notice on the Internet, such article or broadcast must be permanently removed from the Internet within 10 days after service of such notice in order to limit the plaintiff's recovery to actual damages. In other words, even where a newspaper or broadcast station has properly issued a correction, apology, or retraction as contemplated by this section, where the newspaper or broadcast station does not also timely and permanently remove the article or broadcast from the Internet, punitive damages may still be assessed. This accounts for the reality that, in the digital age, the printing or broadcasting of a correction, apology, or retraction alone may be insufficient to remedy the harm caused by a defamatory statement's publication or broadcast, as the statement may continue to exist on the Internet and indefinitely perpetuate the plaintiff's harm.

Civil Liability of Certain Media Outlets

The bill amends s. 770.04, F.S., to add a newspaper owner, licensee, or operator, and the agents or employees thereof, to the list of persons affiliated with media outlets who are shielded from liability in specified circumstances by the reporting privilege provided in this section. Specifically, the bill provides that a newspaper owner, licensee, or operator, and the agents and employees thereof, are not liable for any defamatory statement published or uttered in a newspaper article by one other than such owner, licensee, or operator, or an agent or employee thereof, unless the plaintiff alleges and proves that such owner, licensee, or operator, or an agent or employee thereof, failed to exercise due care to prevent the publication or utterance of such statement in such newspaper article.

However, the bill also amends s. 770.04, F.S., to provide that, when an owner, licensee, or operator of shielded media entity publishes a defamatory statement on the Internet with no knowledge of the statement's falsity and thereafter receives notice that such statement has been found in a judicial proceeding to be false, or receives notice of facts that would cause a reasonable person to conclude that such statement was false, and fails to take reasonable steps to permanently remove the statement

[97] S. 90.5015(2), F.S.
[98] S. 90.5015(3), F.S.

and any related report from the Internet, the continued appearance of such statement or report on the Internet after receipt of the notice is a new publication for purposes of the statute of limitations, and the owner, licensee, or operator would not be entitled to a fair reporting privilege for such new publication. In other words, even where the media entity's owner, licensee, or operator exercised due care as to the original publication of the statement in a radio or television broadcast or a newspaper article, where such statement is also published on the Internet and the owner, licensee, or operator fails to take reasonable steps to remove it therefrom, the owner, licensee, or operator loses the benefit of the fair reporting privilege and the liability shield it provided as to the Internet publication. This accounts for the reality that, in the digital age, the continued publication of a defamatory statement on the Internet, even where such statement was originally published without the knowledge that it was false, could indefinitely perpetuate the harm caused by the statement, and reflects the policy that persons who knowingly choose to perpetuate that harm should not be shielded from civil liability.

Venue for a Defamation or Privacy Tort

The bill amends s. 770.05, F.S., to expand the venue options available to a person suing for a defamation or privacy tort. Specifically, the bill provides that, when the damages for a defamation or privacy tort are based on material published through the:

- Radio or television, venue is proper in any county where the material was accessed.
- Internet, venue is proper in any county in the state.

These changes update venue laws as they pertain to defamation or privacy tort actions, reflecting the wide reach of the internet and certain broadcasts through which defamatory statements and private information are easily spread.

Veracity Hearings in Defamation of Privacy Tort Actions

The bill creates s. 770.107, F.S., to authorize a "veracity hearing" in defamation or privacy tort actions. Specifically, the bill requires a court, upon motion by any party to a defamation or privacy tort action, to conduct an evidentiary hearing to determine two issues, which issues may be dispositive, as follows:

- Whether a statement is a state of fact or opinion.
- The veracity of any statement of fact that constitutes the basis for the cause of action.

Under the bill, the court must hear such motion within 60 days of service thereof, and the court's review is limited solely to determining the nature of the statement and its veracity. The bill also prohibits a court, in ruling upon such a motion, from issuing findings about:

- Whether the statement of fact is defamation per se, defamation per quod, or a privacy tort;
- Whether the plaintiff qualifies as a public figure or limited public figure; or
- Whether the defendant acted negligently, recklessly, intentionally, or with actual malice.

Anonymous Sources

The bill creates s. 770.11, F.S., to provide that there is a rebuttable presumption that a publisher acted with actual malice in publishing a statement if a public figure plaintiff can prove that the published statement is false and the publisher relied on an anonymous source for the statement. Practically speaking, a journalist who relies on information supplied by an anonymous source in making a statement, which statement turns out to be false, and who chooses to exercise the journalist's privilege by maintaining the confidentiality of a source's identity, would have to overcome the presumption of actual malice to avoid civil liability.

False Light through Artificial Intelligence

The bill creates s. 770.15, F.S., to resuscitate the tort of false light in the limited context of the use of artificial intelligence. Specifically, the bill provides that a person who uses artificial intelligence to create or edit any form of media so that it attributes something false to or leads a reasonable viewer to believe something false about another is subject to liability if all of the following apply:

- The media is published, distributed, or otherwise placed before the public;

- The false light in which the other person was placed would be highly offensive to a reasonable person; and
- The person had knowledge of or acted in reckless disregard as to the media's false implications.

The bill defines "artificial intelligence" for the purposes of this section as the theory and development of computer systems that are designed to simulate human intelligence through machine learning and perform tasks that would normally require human involvement, such as visual perception, speech recognition, decision-making, and translation between languages. The bill also expands the original tort of false light by specifying that this section incorporates the standards set forth under Ch. 770, F.S., for defamation causes of action "to the extent necessary."

Practically speaking, where artificial intelligence is used to create or edit any form of media, a person represented therein could likely bring a defamation claim under current law where the media so created or edited is used in a way that defames the person. However, such a person, when attempting to prove damages, would generally have to show that his or her reputation had suffered. By generally resuscitating the tort of false light in this limited context, the bill requires a plaintiff attempting to prove damages to show only that he or she suffered emotional harm; this is likely an easier standard for a plaintiff to meet.

Severability

The bill provides for severability. Specifically, the bill provides that, if a court holds any provision of the bill or its application to any person or circumstances invalid, the invalidity does not affect the bill's other provisions or applications which can be given effect without the invalid provision or application.

Effective Date

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 770.02, F.S., relating to correction, apology, or retraction by newspaper or broadcast station.
Section 2: Amends s. 770.04, F.S., relating to civil liability of radio or television broadcasting stations; care to prevent publication or utterance required.
Section 3: Amends s. 770.05, F.S., relating to limitation of choice of venue.
Section 4: Creates s. 770.107, F.S., relating to veracity hearings in defamation or privacy tort actions.
Section 5: Creates s. 770.11, F.S., relating to presumption regarding anonymous sources when the statement made about a public figure is false.
Section 6: Creates s. 770.15, F.S., relating to using artificial intelligence to place person in false light.
Section 7: Reenacts s. 770.06, F.S., relating to adverse judgment in any jurisdiction a bar to additional action.
Section 8: Reenacts s. 770.07, F.S., relating to cause of action, time of accrual.
Section 9: Reenacts s. 770.08, F.S., relating to limitation on recovery of damages.
Section 10: Provides for severability.
Section 11: Provides an effective date of July 1, 2024.

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 fiscal impact on a public figure plaintiff who obtains the benefit of an actual malice presumption which a publisher is unable to overcome. Likewise, the bill may have a negative fiscal impact on a publisher who relies on an anonymous source for a statement about a public figure, which statement turns out to be false, and who is unable to overcome the presumption that the statement was published with actual malice.

The bill may also have a positive fiscal impact on a plaintiff who prevails on a false light claim as resuscitated by the bill, which requires only a showing of emotional harm when attempting to prove damages, where such plaintiff would not have prevailed had he or she raised a defamation claim, which requires a showing of reputational harm when attempting to prove damages. Likewise, the bill may have a negative fiscal impact on a defendant who is found liable for a false light claim as resuscitated by the bill where such defendant would not have been found liable had the plaintiff raised a defamation claim instead.

Further, the bill may have a positive fiscal impact on a plaintiff who prevails in a lawsuit against a media entity involving publication of a statement on the Internet where the media entity would have previously been shielded from civil liability, or where the plaintiff is able to obtain punitive damages against a media entity even after the entity issues a correction, apology, or retraction. Likewise, the bill may have a negative fiscal impact on a media entity who does not take required steps to remove a publication from the Internet and therefore loses its liability shield or is assessed punitive damages.

Finally, the bill may have a positive economic impact on the private sector, to the extent that a “veracity hearing” leads to the earlier resolution of a defamation or privacy tort action and thereby reduces litigation costs for the parties to such action.

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 or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill resuscitates the tort of false light in the context of the use of artificial intelligence, limits a media entity’s civil liability shield and ability to avoid punitive damages in specified circumstances, and creates a rebuttable presumption that a publisher acted with actual malice in publishing a statement where a public figure plaintiff proves such statement is false and where the publisher chose to exercise the journalist’s privilege by maintaining the confidentiality of a source’s identity.

The First Amendment to the United States Constitution provides that "Congress shall make no law … abridging the freedom of speech, or of the press..." Courts apply the First Amendment to the states through the Fourteenth Amendment, thus restricting the states in enacting laws which abridge the freedom of speech or of the press.

In claims for defamation and invasion of privacy, the courts recognize that the First Amendment guarantees are not absolute. Instead, the courts must balance the rights of the defendant to speak or otherwise publicize information with the rights of the plaintiff to protect his or her reputation or privacy.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 18, 2024, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Extended the liability shield under the fair reporting privilege to newspaper entities.
- Limited a media entity's liability shield under the fair reporting privilege and ability to avoid punitive damages where a defamatory statement is not removed from the Internet as required by the bill.
- Authorized a "veracity hearing" in specified circumstances.

This analysis is drafted to the Committee Substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to defamation, false light, and unauthorized publication of name or likenesses; amending s. 770.02, F.S.; requiring that certain articles or broadcasts be removed from the Internet within a specified period to limit damages for defamation; amending s. 770.04, F.S.; providing persons in certain positions relating to newspapers with immunity for defamation if such persons exercise due care to prevent utterance of such a statement; requiring removal of defamatory statements from the Internet in certain circumstances; amending s. 770.05, F.S.; providing a definition; providing venue for damages for a defamation or privacy tort based on material broadcast over radio or television; providing venue for damages for a defamation or privacy tort based on material published, exhibited, or uttered on the Internet; creating s. 770.107, F.S.; providing for a motion for a veracity hearing in a defamation or privacy tort action; specifying determinations to be made on such a motion; providing a timeframe for a hearing; limiting the court's review of such a motion; specifying that a certain finding may not be made in ruling on such a motion; creating s. 770.11, F.S.; providing a rebuttable presumption that a publisher of

a false statement acted with actual malice in certain circumstances; creating s. 770.15, F.S.; providing a definition; providing that a person who uses artificial intelligence to create or edit any form of media in a certain manner is subject to liability in certain circumstances; incorporating certain standards; reenacting ss. 770.06, 770.07, and 770.08, F.S., relating to adverse judgment in any jurisdiction as a bar to additional action, cause of action and time of accrual, and limitation on recovery of damages, respectively, to incorporate the amendment made to s. 770.05, F.S., in references thereto; providing severability; providing an effective date.

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

Section 1. Section 770.02, Florida Statutes, is amended to read:

770.02 Correction, apology, or retraction by newspaper or broadcast station.—

(1) If it appears upon the trial that said article or broadcast was published in good faith; that its falsity was due to an honest mistake of the facts; that there were reasonable grounds for believing that the statements in said article or broadcast were true; and that, within the period of time

specified in subsection (2), a full and fair correction, apology, or retraction was, in the case of a newspaper or periodical, published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared and in as conspicuous place and type as said original article or, in the case of a broadcast, the correction, apology, or retraction was broadcast at a comparable time, then the plaintiff in such case shall recover only actual damages. For purposes of this section, if such an article or a broadcast has been published on the Internet, the article or broadcast must be permanently removed from the Internet within the time period provided in paragraph (2)(a) in order to limit recovery to actual damages as provided in this section.

(2) Full and fair correction, apology, or retraction shall be made:

(a) In the case of a broadcast or a daily or weekly newspaper or periodical, within 10 days after service of notice.~~;~~

(b) In the case of a newspaper or periodical published semimonthly, within 20 days after service of notice.~~;~~

(c) In the case of a newspaper or periodical published monthly, within 45 days after service of notice.~~; and~~

(d) In the case of a newspaper or periodical published less frequently than monthly, in the next issue, provided notice is served no later than 45 days prior to such publication.

Section 2. Section 770.04, Florida Statutes, is amended to read:

770.04 Civil liability of certain media outlets ~~radio or television broadcasting stations~~; care to prevent publication or utterance required.—

(1) The owner, licensee, or operator of a radio or television broadcasting station or a newspaper, and the agents or employees of any such owner, licensee, or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a radio or television broadcast or newspaper article, by one other than such owner, licensee, or operator, or general agent or employees thereof, unless it is ~~shall be~~ alleged and proved by the complaining party~~,~~ that such owner, licensee, operator, general agent, or employee~~,~~ has failed to exercise due care to prevent the publication or utterance of such statement in such broadcasts or newspaper articles, provided, however, the exercise of due care shall be construed to include the bona fide compliance with any federal law or the regulation of any federal regulatory agency.

(2) When an owner, a licensee, or an operator described in subsection (1) publishes a defamatory statement on the Internet with no knowledge of falsity of the statement and thereafter receives notice that such statement has been found in a judicial proceeding to be false, or receives notice of facts that would cause a reasonable person to conclude that such statement was

false, and the owner, licensee, or operator fails to take reasonable steps to permanently remove the statement and any related report from the Internet, the continued appearance of such statement or report on the Internet after the notice shall be a new publication for purpose of the statute of limitations, and the owner, licensee, or operator shall not be entitled to a fair reporting privilege for such new publication.

Section 3. Section 770.05, Florida Statutes, is amended to read:

770.05 Limitation of choice of venue.—

(1) As used in this chapter, the term "defamation or privacy tort" means libel, slander, invasion of privacy, or any other tort founded upon any single publication, exhibition, or utterance, such as any one edition of a newspaper, book, or magazine, any one presentation to an audience, any one broadcast over radio or television, any one exhibition of a motion picture, or any one publication, exhibition, or utterance on the Internet.

(2) A ~~No~~ person may not ~~shall~~ have more than one choice of venue for damages for a defamation or privacy tort ~~libel or slander, invasion of privacy, or any other tort founded upon any single publication, exhibition, or utterance, such as any one edition of a newspaper, book, or magazine, any one presentation to an audience, any one broadcast over radio or television, or any one exhibition of a motion picture~~. Recovery in any action

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

shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.

(3) Notwithstanding any other provision of this chapter, or any other statute providing for venue, when:

(a) Damages for a defamation or privacy tort are based on material broadcast over radio or television, venue is proper in any county in which the material was accessed.

(b) Damages for a defamation or privacy tort are based on material published, exhibited, or uttered on the Internet, venue is proper in any county in the state.

Section 4. Section 770.107, Florida Statutes, is created to read:

770.107 Veracity hearings in defamation or privacy tort actions.—

(1) Upon motion by any party to a cause of action brought under this chapter, the court shall conduct an evidentiary hearing to determine:

(a) Whether a statement is a statement of fact or an opinion.

(b) The veracity of any statement of fact that constitutes the basis for the cause of action.

(2) Unless otherwise agreed to by the parties, the court shall hear the motion within 60 days after service of the motion.

(3) The court's review of the motion shall be limited

solely to determining whether a statement is a statement of fact or an opinion and the veracity of the statement of fact at issue in the underlying cause of action.

(4) In ruling upon a motion for determination of veracity, the court shall issue no findings regarding the following matters at issue in the underlying cause of action:

(a) Whether the statement of fact constitutes defamation per se, defamation per quod, or a privacy tort;

(b) Whether the plaintiff in the cause of action qualifies as a public figure or limited public figure; or

(c) Whether the defendant in the cause of action acted negligently, recklessly, intentionally, or with actual malice.

Section 5. Section 770.11, Florida Statutes, is created to read:

770.11 Presumption regarding anonymous sources when the statement made about a public figure is false.—If a public figure plaintiff can establish that a published statement is false and that the publisher relied on an anonymous source for the statement, there is a rebuttable presumption that the publisher acted with actual malice in publishing the statement.

Section 6. Section 770.15, Florida Statutes, is created to read:

770.15 Using artificial intelligence to place person in false light.—

(1) As used in this section, the term "artificial

intelligence" means the theory and development of computer systems that are designed to simulate human intelligence through machine learning and perform tasks that would normally require human involvement, such as visual perception, speech recognition, decisionmaking, and translation between languages.

(2) A person who uses artificial intelligence to create or edit any form of media so that it attributes something false to or leads a reasonable viewer to believe something false about another person is subject to liability if all of the following apply:

(a) The media is published, distributed, or otherwise placed before the public.

(b) The false light in which the other person was placed would be highly offensive to a reasonable person.

(c) The person had knowledge of or acted in reckless disregard as to the false implications of the media.

(3) This section incorporates the standards set forth under chapter 770 for defamation causes of action to the extent necessary.

Section 7. For the purpose of incorporating the amendment made by this act to section 770.05, Florida Statutes, in a reference thereto, section 770.06, Florida Statutes, is reenacted to read:

770.06 Adverse judgment in any jurisdiction a bar to additional action.—A judgment in any jurisdiction for or against

the plaintiff upon the substantive merits of any action for damages founded upon a single publication or exhibition or utterance as described in s. 770.05 shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance.

Section 8. For the purpose of incorporating the amendment made by this act to section 770.05, Florida Statutes, in a reference thereto, section 770.07, Florida Statutes, is reenacted to read:

770.07 Cause of action, time of accrual.—The cause of action for damages founded upon a single publication or exhibition or utterance, as described in s. 770.05, shall be deemed to have accrued at the time of the first publication or exhibition or utterance thereof in this state.

Section 9. For the purpose of incorporating the amendment made by this act to section 770.05, Florida Statutes, in a reference thereto, section 770.08, Florida Statutes, is reenacted to read:

770.08 Limitation on recovery of damages.—No person shall have more than one choice of venue for damages for libel founded upon a single publication or exhibition or utterance, as described in s. 770.05, and upon his or her election in any one of his or her choices of venue, then the person shall be bound to recover there all damages allowed him or her.

Section 10. If any provision of this act or its

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

Section 11. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 785 Limited Barbering
SPONSOR(S): Valdés
TIED BILLS: **IDEN./SIM. BILLS:** SB 704

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

SUMMARY ANALYSIS

Barbers and barbershops are regulated by ch. 476, F.S., and licensed by the Barbers' Board under the Department of Business and Professional Regulation (DBPR). A barber's license is required to perform barbering services.

The bill allows a person without a license to practice barbering to perform services designated by the board as limited barbering, if the person:

- Performs limited barbering under the supervision of a licensed barber in a licensed barbershop,
- Has not been disciplined relating to the practice of barbering in the previous 3 years, and
- Has successfully completed any education course requirements the board requires on sanitation safety, including education on HIV and AIDS.

The bill allows a registered person to perform limited barbering in a licensed barbershop.

The bill requires each barbershop to display, in a conspicuous place, each individual's proof of limited barbering registration.

The bill allows the board to revoke or suspend any registration to practice limited barbering, and requires the board to keep record of any disciplinary proceedings against persons registered to practice limited barbering.

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, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Barbering

Barbers and barbershops are regulated by Ch. 476, F.S., and licensed by the Barbers' Board (board) under the Department of Business and Professional Regulation (DBPR).

'Barbering' means any of the following practices when done for remuneration and for the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances."[1]

A barber's license is required to perform barbering services.[2] To be eligible for licensure, barbers must:[3]

- be at least 16 years old,
- complete the required training,
- pass the written examination, and
- pay a $205.50 application fee,[4] plus a $5 unlicensed activity fee.[5]

Generally, barbers must complete 900 hours of education in the profession; however, barber applicants are eligible to take the examination after 600 hours of education. If the examination is not successful, the full 900 hours must be completed.[6] There is also an option to be a barber with a restricted license, which is 600 hours training in total and restricts such barbers from applying chemical solutions or preparations to hair.[7] A restricted barber may perform the following services:[8]

- Hair cutting and styling, including the application of hair tonics and hair spray, but not including the application of any other chemical preparations or solutions to the hair,
- Full facial shaves,
- Mustache and beard trimming, and
- Shampooing hair, including the application of shampoos and hair conditioners and blow drying the hair.

As of July, 1, 2022, there were 14,147 barbers and 7,231 restricted barbers. In Fiscal Year 21-22, for barbers, DBPR received 140 complaints against barbers, and took 15 disciplinary actions. For restricted barbers, DBPR received 79 complaints against barbers, and took 9 disciplinary actions.[9]

Barbershops

In Florida, barbershops must be registered.[10] Barbershops are inspected periodically by DBPR, in accordance with sanitary standards set forth by the board.[11]

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[1] S. 476.034(2), F.S.
[2] S. 476.144(1), F.S.
[3] S. 476.114, F.S.
[4] R. 61-35.006, F.A.C..
[5] S. 455.2281, F.S.
[6] S. 476.114(2)(c), F.S.
[7] S. 476.144(6), F.S.; R. 61G3-16.006, F.A.C.
[8] R. 61G3-16.006(4), F.A.C.
[9] Email from Jonas Marquez, Legislative Affairs Director, Florida Department of Business and Professional Regulation, RE: Question (Mar. 14, 2023).
[10] S. 476.184(1), F.S.
[11] S. 476.184(2), F.S.

Generally, all barbering services must performed in registered barbershops by licensed barbers, except services provided:[12]

- in a location other than a registered barbershop, including, but not limited to, a nursing home, hospital, or residence, for a client of ill health who is unable to go to a registered barbershop;
    - arrangements for the performance of such barber services must be made through a registered barbershop.
- in connection with the motion picture, fashion photography, theatrical, or television industry; or
- for a manufacturer trade show demonstration or educational seminar.

However, barbers may shampoo, cut, or arrange hair **outside of a registered barbershop** at any time, and allows barbers to do so without making arrangements or appointments through a registered barbershop.

On July 1, 2022, there were 5,791 licensed barbershops. In Fiscal Year 21-22, DBPR received 438 complaints against barbershops, and took 113 disciplinary actions[13]

Unlicensed Practice

Chapter 476, F.S., provides actions that are prohibited under the practice act, which includes holding himself or herself out as a barber unless duly licensed.[14] If a person violates this provision, he or she is subject to one or more of the following penalties:[15]

- Revocation or suspension of any license or registration issued pursuant to this chapter.
- Issuance of a reprimand or censure.
- Imposition of an administrative fine not to exceed $500 for each count or separate offense.
- Placement on probation for a period of time and subject to such reasonable conditions as the board may specify.
- Refusal to certify to the department an applicant for licensure.

Also, certain prohibited actions under are also criminal violations, including:[16]

- Engaging in the practice of barbering without an active license as a barber.
- Hiring or employing any person to engage in the practice of barbering unless such person holds a valid license as a barber.
- Owning, operating, maintaining, opening, establishing, conducting, or having charge of, either alone or with another person or persons, a barbershop:
    - Which is not licensed; or
    - In which a person not licensed as a barber is permitted to perform services.
- Using or attempting to use a license to practice barbering when the license is suspended or revoked.

Any person who violates any such provision is guilty of a misdemeanor of the second degree.[17]

Instruction on HIV and AIDS

Barber applicants and licensees are required to complete a 2-hour board-approved continuing educational course on human immunodeficiency virus and acquired immune deficiency syndrome (HIV and AIDS) as part of initial licensure and license renewal. The course must consist of education on modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome.[18]

[12] S. 476.188, F.S.
[13] DBPR, *supra* note 9.
[14] S. 476.204(1), F.S.
[15] S. 476.204(2), F.S.
[16] S. 476.194(1), F.S.
[17] S. 476.194(2), F.S.
[18] S. 455.2228, F.S.

The board has authority to adopt rules to enforce this requirement.

Effect of the Bill

The bill defines "limited barbering" as the following practices when done for remuneration for the public, but not when done for the treatment of disease or physical or mental ailments:

- Hair cutting and styling, including the application of hair tonics and hair spray, but not including the application of any other chemical preparations or solutions to the hair,
- Mustache and beard trimming, and
- Shampooing hair, including the application of shampoos and hair conditioners and blow drying the hair.

The scope of a limited barber will be the same as a restricted barber, except a restricted barber may perform full facial shaves.

The bill allows a person without a license to practice barbering to perform limited barbering, if:

- The person registers his or her name with the board.
- The person performs limited barbering in a licensed barbershop with a licensed barber present.
- The person has completed a continuing educational course approved by the board on human immunodeficiency virus and acquired immune deficiency syndrome, as required by s. 455.2228.
- The person complies with all safety and sanitation requirements for barbershop personnel while practicing limited barbering at a barbershop.

When the board receives a registration request, the board:

- May not charge a fee for such registration.
- May deny such registration if the person has been disciplined relating to the practice of barbering in the previous 3 years in any jurisdiction or as provided under s. 455.213(3).
- Must list the person on department's website as a limited barber if he or she is granted a registration.

The bill provides that an unlicensed person registered to perform "limited barbering" is not committing unlicensed barbering when providing services.

The bill requires each barbershop to display, in a conspicuous place, each individual's proof of limited barbering registration.

The bill allows the board to revoke or suspend any registration to practice limited barbering, and requires the board to keep record of any disciplinary proceedings against persons registered to practice limited barbering.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 476.144, F.S.; relating to authorized unlicensed limited barbering.
Section 2: Amends s. 476.188, F.S.; relating to services performed in a barbershop.
Section 3: Amends s. 476.194, F.S.; relating to prohibited acts.
Section 4: Amends s. 476.204, F.S.; relating to administrative penalties.
Section 5: Amends s. 476.214, F.S.; relating to grounds for disciplining a license.
Section 6: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will likely reduce revenues to DBPR from licensing fees from people registered to practice limited barbering who would have otherwise obtained a license.[19]

2. Expenditures:

The bill may increase expenditures of DBPR for inspections to ensure compliance with the new limited barber requirements.[20] DBPR has stated that, "The department and board may experience an increase in applications and complaints, but the fiscal impact is indeterminate."[21]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow more people to practice certain barbering services without maintaining a full license or paying for barber education. The bill will likely result in a reduction of fees payable to barber schools.

The bill may decrease attendance and enrollment at barber schools.

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 board will need to promulgate rules related to requirements of the new practice of limited barbering. The board has sufficient authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[19] DBPR, *supra* note 8.
[20] *Id*.
[21] DBPR, Agency Analysis of 2024 Senate Bill 704, p.5 (Dec. 18, 2023).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to limited barbering; amending s. 476.144, F.S.; defining the term "limited barbering"; authorizing persons without a license to practice barbering to perform limited barbering in licensed barbershops if certain requirements are met; amending ss. 476.184, 476.188, 476.194, and 476.204, F.S.; conforming provisions to changes made by the act; amending s. 476.214, F.S.; authorizing the Barbers' Board to discipline persons authorized to perform limited barbering; providing an effective date.

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

Section 1. Subsection (8) is added to section 476.144, Florida Statutes, to read:

476.144 Licensure.—

(8)(a) As used in this chapter, the term "limited barbering" means the following practices when done for remuneration for the public, but not when done for the treatment of disease or physical or mental ailments:

1. Hair cutting and styling, including the application of hair tonics and hair spray, but not including the application of any other chemical preparations or solutions to the hair.

2. Mustache and beard trimming.

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

3. Shampooing hair, including the application of hair shampoos and hair conditioners, and blow drying hair.

(b) Notwithstanding any other provision of this chapter or board rule, a person without a license to practice barbering who has not completed the examination or training required under s. 476.114 may perform limited barbering if the person:

1. Registers his or her name with the board.

2. Performs limited barbering in a licensed barbershop with a licensed barber present.

3. Has completed the continuing educational course approved by the board on human immunodeficiency virus and acquired immune deficiency syndrome required under s. 455.2228.

4. Complies with all safety and sanitation requirements for barbershop personnel while performing limited barbering in a licensed barbershop.

(c) Upon receipt of the registration request, the board:

1. May not charge a fee for such registration.

2. May deny such registration if the person has been disciplined relating to the practice of barbering in the previous 3 years in any jurisdiction or as provided under s. 455.213(3).

3. Must list the person on the department's website as a limited barber upon granting a registration.

Section 2. Subsection (10) of section 476.184, Florida Statutes, is amended to read:

476.184 Barbershop licensure; requirements; fee; inspection; license display.—

(10) Each barbershop shall display, in a conspicuous place, the barbershop license and each individual licensee's certificate or each individual's proof of limited barbering registration.

Section 3. Subsection (1) of section 476.188, Florida Statutes, is amended to read:

476.188 Barber services to be performed in registered barbershop; exception.—

(1) Barber services shall be performed only by licensed barbers in registered barbershops, except as otherwise provided in this section. However, a person registered to perform limited barbering under s. 476.144(8) may perform limited barbering in a licensed barbershop.

Section 4. Paragraphs (a), (b), and (d) of subsection (1) of section 476.194, Florida Statutes, are amended to read:

476.194 Prohibited acts.—

(1) It is unlawful for any person to:

(a) Engage in the practice of barbering without an active license as a barber issued pursuant to ~~the provisions of~~ this act by the department, unless the person is registered to perform limited barbering under s. 476.144(8).

(b) Hire or employ any person to engage in the practice of barbering unless such person holds a valid license as a barber

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

or is registered to perform limited barbering under s. 476.144(8).

(d) Own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a barbershop:

1. Which is not licensed under ~~the provisions of~~ this chapter; or

2. In which a person not licensed as a barber is permitted to perform services, unless the person is registered to perform limited barbering under s. 476.144(8).

Section 5. Paragraph (a) of subsection (1) of section 476.204, Florida Statutes, is amended to read:

476.204 Penalties.—

(1) It is unlawful for any person to:

(a) Hold himself or herself out as a barber unless duly licensed as provided in this chapter or registered to perform limited barbering under s. 476.144(8).

Section 6. Subsections (1) and (2) of section 476.214, Florida Statutes, are amended to read:

476.214 Grounds for suspending, revoking, or refusing to grant license or certificate.—

(1) The board shall have the power to revoke or suspend any license, registration card, or certificate of registration, including a registration to perform limited barbering, issued pursuant to this act, or to reprimand, censure, deny subsequent

licensure of, or otherwise discipline any holder of a license, registration card, or certificate of registration, including a registration to perform limited barbering, issued pursuant to this act, for any of the following causes:

(a) Gross malpractice or gross incompetency in the practice of barbering;

(b) Practice by a person knowingly having an infectious or contagious disease; or

(c) Commission of any of the offenses described in s. 476.194.

(2) The board shall keep a record of its disciplinary proceedings against holders of licenses or certificates of registration, including a registration to perform limited barbering, issued pursuant to this act.

Section 7. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1049 Flood Disclosure in the Sale of Real Property
SPONSOR(S): Hunschofsky and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 484

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

SUMMARY ANALYSIS

Property owners in Florida must disclose significant or material known defects or problems with real property to prospective buyers. In addition, s.161.57, F.S., requires sellers to disclose the potential for coastal erosion for properties located seaward of the costal construction control line under certain conditions. However, current Florida law does not require disclosure related to prior flooding of property. This may leave buyers who are not familiar with the area at a significant disadvantage. Given its history of extreme weather, several areas of Florida could be at risk for flooding, which is typically not covered by homeowner's insurance or hurricane insurance.

Thirty-two states have flood disclosure laws, while eighteen states, including Florida, do not require a seller to disclose a property's prior flood history to a prospective buyer.

The bill creates a flood disclosure requirement for every residential real property transaction.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Disclosure of Known Defects

As to sales of real property, Florida historically followed the legal theory of *caveat emptor* ("let the buyer beware"). Under this theory, the seller had no duty to disclose defects in the property and the buyer accepted the property "as-is."[1]

The law changed in 1985 when the Florida Supreme Court ruled that "where the seller of a home knows of facts materially affecting the value of the property which are **not readily observable** and are not known to the buyer, the seller is under a duty to disclose them to the buyer."[2] This duty applies even where the buyer has agreed to purchase residential property "as-is."[3]

In the context of flood disclosures, the appellate courts are split as to whether a tendency to flood is readily observable. For example, in one case, the buyers of a home in the East Everglades area of Miami-Dade County[4] bought the home during the dry season and the sellers did not disclose that the land on which the home sat flooded annually in the rainy season. The flooding, according to the court, was so severe that "snakes and even alligators (two at least), have gathered at the property to escape the waters."[5] The court found that seasonal flooding of the neighborhood was common knowledge and information that was readily available to the buyers had they exercised "diligent attention."[6] The lawsuit against the seller was dismissed.

In another case, the buyers sued the seller who failed to disclose that the property was in the Coastal Barrier Resource Area (CBRA), and thus was ineligible for flood insurance. The trial court found the information regarding the CBRA was publicly available, and dismissed the case. However, the appellate court reversed and ruled for the buyers.[7]

The duty to disclose latent defects will generally not apply to an "as-is" contract for non-residential property. Florida courts will continue to apply the doctrine of caveat emptor to an "as-is" contract for non-residential property unless one of the following exceptions apply:

- Where some artifice or trick has been employed to prevent the purchaser from making independent inquiry;
- Where the purchaser does not have equal opportunity to become apprised of the fact; and
- Where a party undertakes to disclose facts and fails to disclose the whole truth.[8]

Numerous laws have created specific legal disclosure requirements for a seller that are in addition to the disclosure required by case law, including:

- Associations -- A seller of property in a condominium, cooperative, or homeowners association must make extensive specific disclosures of information related to the association.[9]
- Coastal -- A sale of a property located partially or totally seaward of the coastal construction control line requires a written disclosure statement at time of contract. Also, the seller must

[1] *Banks v. Salina*, 413 So. 2d 851, 852 (Fla. 4th DCA 1982).
[2] *Johnson v. Davis*, 480 So. 2d 625, 629 (Fla. 1985).
[3] *Rayner v. Wise Realty Co. of Tallahassee*, 504 So. 2d 1361 (Fla. 1st DCA 1987).
[4] *Nelson v. Wiggs*, 699 So. 2d 258 (Fla. 3rd DCA 1997).
[5] *Id.* at 259.
[6] *Id.* at 260.
[7] *Newbern v. Mansbach*, 777 So.2d 1044 (Fla. 1st DCA 2001).
[8] *Florida Holding 4800, LLC v. Lauderhill Mall Investment, LLC,* 317 So.3d 121, 124 (Fla. 4th DCA 2021).
[9] See, ss. 718.503 (condominiums), 719.503 (cooperatives), and 720.401 (homeowners association), F.S.

furnish the buyer with a survey or affidavit showing the line, although the buyer may waive this requirement.[10]

- Code enforcement -- If a code enforcement proceeding is pending at the time of sale, the seller must disclose it to the buyer.[11]
- Lead paint -- Federal law requires all sellers or landlords of residential real property built before 1978 to give the buyer or tenant a federally produced form disclosure. The contract or lease must allow for a 10-day inspection period.[12]
- Property tax -- The seller must disclose that a transfer of ownership may lead to an increased property tax assessment related to the Save Our Homes Amendment.[13]
- Radon gas -- A specific disclosure relating to the risks of radon gas must be made in writing in connection with the sale of any building.[14]
- Sewer lines -- The seller must disclose known defects in the property's sanitary sewer lateral line.[15]
- Sinkhole damage -- The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must disclose to the buyer of such property, before the closing, that a claim has been paid and whether or not the full amount of the proceeds was used to repair the sinkhole damage.[16]
- Subsurface rights -- The seller must provide a prospective purchaser of residential property with a disclosure summary if the seller or an affiliated or related entity has previously severed or retained or will sever or retain any of the subsurface rights or right of entry.[17]

Correspondingly, statutes provide that certain disclosures are not required, including:

- That an occupant is or has been infected with HIV or AIDS.[18]
- That the property was or may have been the site of a homicide, suicide, or other death.[19]

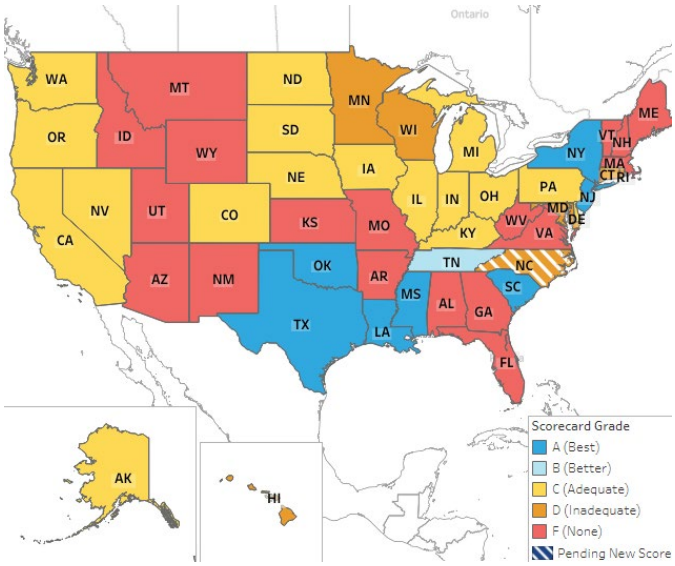
States that Require Flood Disclosure

Thirty-two states have flood disclosure laws.[20] However, eighteen states do not require a seller to disclose a property's prior flood history to a prospective buyer, including Florida.[21] According to the Natural Resources Defense Council, homeowners who unknowingly purchase a home with undisclosed flood damage were subsequently inundated with bills up to tens of thousands of dollars to repair such damage.[22]

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[10] S. 161.57, F.S. The written disclosure states the following: "The property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shoreline of the property being purchased."
[11] S. 162.06(5), F.S.
[12] 24 CFR Part 35 and 40 CFR Part 745. See also United States Environmental Protection Agency, Lead-Based Paint Disclosure Rule (updated Aug. 7, 2023),https://www.epa.gov/lead/lead-based-paint-disclosure-rule-section-1018-title-x.
[13] S. 689.261, F.S. The written disclosure states that: "BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION."
[14] S. 404.056(5), F.S.
[15] S. 689.301, F.S.
[16] S. 627.7073(2)(c), F.S.
[17] S. 689.29, F.S.
[18] S. 689.25(1)(a), F.S.
[19] S. 689.25(1)(b), F.S.
[20] *How States Stack up on Flood Disclosure*, Natural Resources Defense Council (Aug. 31, 2023), www.nrdc.org/resources/how-states-stack-flood-disclosure (last visited Feb. 2, 2024).
[21] Thomas Frank, *More States Are Requiring Flood Risk Disclosures. Florida Is Conspicuously Not among Them.* Scientific American, (Oct. 5, 2023), www.scientificamerican.com/article/more-states-are-requiring-flood-risk-disclosures-florida-is-conspicuously-not-among-them/ (last visited Feb. 2, 2024).
[22] *Supra* note at 20.

In an effort to let homeowners know which states have flood disclosure laws, the Natural Resources Defense Council graded the states from A (as the best) to F (having no flood disclosure laws):[23]



Floods

Usually, homeowner's insurance[24] and hurricane insurance does not cover flood related damage.[25] Nonetheless, thirty-six percent of homeowners believe that homeowner's insurance covers flood-related damage.[26] Florida has an average of 59.21 inches of rain each year.[27] Florida's flat terrain makes it more susceptible to flooding.[28] In the next 30 years, one-third of properties in Florida are at risk of flooding.[29]

Inability of Buyers to Access Federal Data on Flood-Prone Homes

The Federal Emergency Management Agency (FEMA) responds to emergencies caused by natural disasters including flooding. Like all federal agencies, they keep records related to their regulatory function. One form of data held by FEMA is properties categorized as a "severe repetitive loss property." That designation covers homes that have flooded twice, with damage totaling the value of the property, or flooded four times with at least $5,000 of damage each time. There are about 45,000 of these properties in the United States, as of the end of 2022, with about 3,100 in Florida alone, according to FEMA data. Florida added about 120 of those homes from 2021 to 2022. FEMA's policy is to share past flood history only with a property owner that holds an active flood insurance policy on a property, so prospective buyers may know the details of their property's flood history only after they have closed the deal.[30]

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[23] *Id*.
[24] Jason Metz, *Does Homeowners Insurance Cover Water Damage from Rain or a Leak?* Forbes (Oct. 27, 2023), www.forbes.com/advisor/homeowners-insurance/water-damage/ (last visited Feb. 2, 2024).
[25] *Hurricane Insurance*. Federal Emergency Management Agency, https://community.fema.gov/PreparednessCommunity/s/ContactUs?language=en_US (last visited Feb. 3, 2024).
[26] Jason Metz, *72% of Homeowners Don't Understand Essential Home Insurance* Coverage. Forbes (May 26, 2023), www.forbes.com/advisor/homeowners-insurance/survey-homeowners-insurance-knowlege/#:~:text=36%25%20of%20homeowners%20think%20that,damage%2C%20but%20it%20does%20not (last visited Feb. 2, 2024).
[27] *Flood History*. Florida Flood Insurance (June 1, 2022), www.floridafloodinsurance.org/flood-history/ (last visited Feb. 3, 2024).
[28] *Id*.
[29] Manuel Bojorquez, *More than One-Third of Florida Properties Face Looming Flood Risk, but Some Residents Are Unaware*. CBS News (June 1, 2023), www.cbsnews.com/news/florida-insurance-flooding-properties/ (last visited Feb. 3, 2024).
[30] Alex Harris, *Thousands of Florida homes flood repeatedly. You're not allowed to know which ones.* Miami Herald (Jan. 14, 2024), https://www.wusf.org/politics-issues/2024-01-14/thousands-of-florida-homes-flood-repeatedly-youre-not-allowed-to-know-which-ones (last visited Feb. 2, 2024).

Effect of the Bill

The bill creates a requirement for certain flood-related disclosures in every residential real estate transaction.

The bill provides that a seller must provide a purchaser of a residential real property with a flood disclosure summary at the time or before the sales contract is executed. The bill requires such flood disclosure summary form to contain, or have something substantially similar to the following:

- A statement in conspicuous type that says, "Flood Insurance: Homeowner's insurance policies do not include coverage for damage resulting from floods. Please discuss the need to purchase separate flood insurance coverage with your insurance agent."
- Section completed by the seller with the following questions for which the only allowable responses are "Yes" or "No":
  - Are you aware of damage caused by flooding during your ownership of the property?
  - Have you ever filed a claim for flood damage to an insurance provider or accepted federal assistance for flood damage?
  - Do you maintain flood insurance on the property?

The bill provides if the seller says “yes” on the section of the form which asks if the seller has ever filed a claim for flood damage with an insurance provider or accepted federal assistance for flood damage, the seller must:

- Identify each insurance provider with whom they filed a claim for such flooding.
- Explain the nature of all federal assistance they were provided for such flooding or both.

The bill defines flooding as a general or temporary condition of partial or complete inundation of the property caused by any of the following:

- The overflow of inland or tidal waters.
- The unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch.
- Excessive rainfall.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 689.302, F.S., relating to disclosure of flood risks to prospective purchaser.
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:

Home buyers may avoid flood-related costs. While, property owners who are trying to sell their house may have a decrease in the market value of their property because of the required flood disclosure.

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 flood disclosure in the sale of real property; creating s. 689.302, F.S.; requiring a seller of residential real property to provide specified information to a prospective purchaser at or before the sales contract is executed; specifying how such information must be disclosed; defining the term "flooding"; providing an effective date.

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

Section 1. Section 689.302, Florida Statutes, is created to read:

689.302 Disclosure of flood risks to prospective purchaser.—

(1) A seller must provide a purchaser of residential real property with a flood disclosure summary at the time or before the sales contract is executed. The flood disclosure summary must be a form that contains, or is substantially similar to, the following:

(a) A statement in conspicuous type that says, "Flood Insurance: Homeowner's insurance policies do not include coverage for damage resulting from floods. Please discuss the need to purchase separate flood insurance coverage with your insurance agent."

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

(b) A section completed by the seller with the following questions for which the only allowable responses are "Yes" or "No":

1. Are you aware of damage caused by flooding during your ownership of the property?

2. Have you ever filed a claim for flood damage to an insurance provider or accepted federal assistance for flood damage?

3. Do you maintain flood insurance on the property?

(c) If the seller answers "yes" to subparagraph (b)2., the seller must:

1. Identify each insurance provider with whom they filed a claim for such flooding.

2. Explain the nature of all federal assistance they were provided for such flooding or both.

(2) For the purposes of this subsection, the term "flooding" means a general or temporary condition of partial or complete inundation of the property caused by any of the following:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch.

(c) Excessive rainfall.

Section 2. This act shall take effect July 1, 2024.

REGULATORY REFORM & ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1049 by Rep. Hunschofsky
Flood Disclosure in the Sale of Real Property

AMENDMENT SUMMARY
February 6, 2023

Amendment 1 by Rep. Hunschofsky (line 14-50):

- Revises the flood disclosure form to remove:
  - The requirement for the seller to identify an insurance provider in the event of a prior claim.
  - The requirement for the seller to provide details related to all federal assistance received related to flooding.
- Revises and clarifies the definition of “flooding” to include “sustained periods of standing water resulting from rainfall”, rather than “excessive rainfall.”
- 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: Regulatory Reform & Economic Development Subcommittee
Representative Hunschofsky offered the following:

Amendment (with title amendment)

Remove lines 14-50

689.302 Disclosure of flood risks to prospective purchaser.—A seller must complete and provide a flood disclosure to a purchaser of residential real property at or before the time the sales contract is executed. The flood disclosure must be made in the following form:

FLOOD DISCLOSURE

Flood Insurance: Homeowners' insurance policies do not include coverage for damage resulting from floods. Buyer is encouraged to discuss the need to purchase separate flood insurance coverage with Buyer's insurance agent.

(1) Seller is .... is not .... aware of damage to the property caused by flooding during Seller's ownership of the property.

(2) Seller has .... has not .... filed a claim with an insurance provider relating to flood damage on the property, including, but not limited to, a claim with the National Flood Insurance Program.

(3) Seller has .... has not .... received federal assistance for flood damage to the property, including, but not limited to, assistance from the Federal Emergency Management Agency.

(4) Seller does .... does not .... maintain flood insurance on the property.

(5) For the purposes of this disclosure, the term "flooding" means a general or temporary condition of partial or complete inundation of the property caused by any of the following:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch.

(c) Sustained periods of standing water resulting from rainfall.

Section 2. This act shall take effect October 1, 2024.

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

Remove lines 7-8 and insert:
such information must be disclosed; providing an
effective date.

HB 1081

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1081 Tourist Development
SPONSOR(S): Porras
TIED BILLS: **IDEN./SIM. BILLS:** SB 1072

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

SUMMARY ANALYSIS

Counties are authorized to levy five separate taxes on transient rental transactions (tourist development taxes or TDTs). These apply to hotels, motels, and holiday inns. Depending on a county's eligibility to levy such taxes, the maximum potential tax rate varies. A county, as defined by s. 125.011(1), F.S., (i.e., Miami-Dade County) is also authorized to impose a 3 percent convention development tax on the total consideration charged for transient rental transactions. Current law limits the uses of revenues received by counties from TDTs.

The bill provides an exception to the authorized uses of revenues received by counties imposing certain TDTs. Under the bill, a county as defined in s. 125.011(1), F.S. (i.e. Miami-Dade County) may use the revenues to complete existing projects, debt obligations, or contracts in existence as of July 1, 2024. Revenues may not be used to renew or to extend such projects.

For remaining revenues not needed for existing projects, contracts, or debt obligations, 50 percent of TDT revenues must be distributed proportionally to municipalities in the county for specified uses.

The county must distribute the remaining tax revenues monthly as follows:

- 20 percent for the primary bureau, department, or association responsible for organizing, funding, and promoting artist and cultural organizations;
- 30 percent for visitors bureaus and homeless shelters; and
- 50 percent for regular TDT uses.

The bill revises the purposes for which Miami-Dade County may use charter county convention development revenue, by providing that 50 percent of the revenues must be distributed proportionally to the governing boards of the municipalities within the county. Distributions may be used to:

- Acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain a convention center, an exhibition hall, a coliseum, an auditorium, a performing arts center, or a related building or parking facility for such buildings.
- Promote and advertise tourism and to fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus.

The county must use the remaining charter county convention development revenue to acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain a countywide convention and visitors bureau, a convention center, an exhibition hall, a coliseum, an auditorium, a performing arts center, or a related building or parking facility for such buildings.

The bill takes effect July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Tourist Development Taxes

Pursuant to the Local Option Tourist Development Act,[1] counties are authorized to levy five separate taxes on transient rental[2] transactions (tourist development taxes or TDTs). Depending on a county's eligibility to levy such taxes, the maximum potential tax rate varies:

- The original TDT may be levied at the rate of 1 or 2 percent.[3]
- An additional 1 percent tax may be levied by counties who have previously levied the original TDT at the 1 or 2 percent rate for at least three years.[4]
- A high tourism impact tax may be levied at an additional 1 percent.[5]
- A professional sports franchise facility tax may be levied up to an additional 1 percent.[6]
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.[7]

TDT Process

Each county that levies the original 1 or 2 percent TDT is required to have a tourist development council consisting of county residents who are appointed by the county governing board.[8] The tourist development council makes recommendations to the county governing board for the effective operation of special projects or for uses of the TDT revenue.[9]

Prior to the authorization of the original 1 or 2 percent TDT, the levy must be approved by a countywide referendum held at a general election,[10] and additional TDT levies must be authorized by a vote of the county's governing board or by voter approval in a countywide referendum.[11] Each county proposing to levy the original 1 or 2 percent tax must then adopt an ordinance for the levy and imposition of the tax,[12] which must include a plan for tourist development prepared by the tourist development council.[13]

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[1] S. 125.0104, F.S.
[2] S. 125.0104(3)(a)1., F.S., considers "transient rental" to be the rental or lease of any accommodation for a term of six months or less.
[3] S. 125.0104(3)(c), F.S. All 67 of Florida's counties are eligible to levy this tax, but only 62 counties have done so, all at a rate of 2 percent. Office of Economic and Demographic Research (EDR), *2024 Local Option Tourist Tax Rates,* http://edr.state.fl.us/Content/local-government/data/county-municipal/2024LOTTrates.pdf (last visited Feb. 2, 2024). These counties are estimated to realize $583 million in revenue from these taxes in the 2023-2024 fiscal year. EDR *2023 Florida Tax Handbook,* p. 289, http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2023.pdf (last visited Feb. 2, 2024).
[4] S. 125.0104(3)(d), F.S. Fifty-six of the eligible 59 counties levy this tax, with an estimated 2023-2024 state fiscal year collection of $254 million in revenue. EDR *2023 Florida Tax Handbook*, *supra* note 3 at.293.
[5] S. 125.0104(3)(m), F.S. Ten of the 14 eligible counties levy this tax with an estimated 2023-2024 state fiscal collection of $161 million in revenue. EDR *2023 Florida Tax Handbook*, *supra* note 3 at 300.
[6] S. 125.0104(3)(l), F.S. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and convention centers and to promote and advertise tourism. Forty-six of the 67 counties levy this additional tax, with an estimated 2023-2024 state fiscal year collection of $259 million in revenue. EDR *2023 Florida Tax Handbook*, *supra* note 3 at 297.
[7] S. 125.0104(3)(n), F.S. Thirty-six of the eligible 65 counties levy the additional professional sports franchise facility tax, with an estimated 2023-2024 state fiscal year collection of $226 million in revenue. EDR *2023 Florida Tax Handbook*, *supra* note 3 at 303.
[8] S. 125.0104(4)(e), F.S.
[9] *Id.*
[10] S. 125.0104(6), F.S.
[11] S. 125.0104(3)(d), F.S.
[12] S. 125.0104(4)(a), F.S.
[13] S. 125.0104(4), F.S.

The plan for tourist development must include the anticipated net tax revenue to be derived by the county for the two years following the tax levy, as well as a list of the proposed uses of the tax and the approximate cost for each project or use.[14] The plan for tourist development may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.[15]

TDT Uses

The revenues derived from TDTs may be used for:[16]

- The acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, or promotion of a zoo.
- Promoting and advertising tourism in the state.
- Funding of convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies, or by contract with chambers of commerce or similar associations in the county.
- Financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river.[17]
- In counties with populations less than 950,000, the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are publicly owned and operated or owned and operated by a not-for-private organization and open to the public.[18]
- Securing revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum, or financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.

In addition, up to 10 percent of the tax revenue received by a county located adjacent to the Gulf of Mexico or the Atlantic Ocean may be used to reimburse for expenses incurred in providing public safety services[19] that are needed to address impacts related to increased tourism and visitors to an area. However, a county or municipality that does so may not use these funds to supplant the normal operating expenses of an emergency medical services department, a fire department, a sheriff's office, or a police department.[20] To receive reimbursement the county must:

- Generate a minimum of $10 million in annual proceeds from any tax, or any combination of taxes, authorized to be levied pursuant to this section;
- Have at least three municipalities; and
- Have an estimated population of less than 225,000.[21]

<u>Convention Development Taxes</u>

Each county, as defined by s. 125.011(1), F.S., (i.e., Miami-Dade County) is authorized to impose a 3 percent convention development tax on the total consideration charged for transient rental transactions.

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[14] *Id.*
[15] *Id.* The provisions found in s. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.
[16] S. 125.0104(5), F.S.
[17] In counties with populations less than 100,000, up to 10 percent of TDT revenues may be used for financing beach park facilities. *See* s. 125.0104(5)(a), F.S.
[18] S. 125.0104(5)(b), F.S.
[19] Public safety services include emergency medical services as defined in s. 401.107(3), F.S., and law enforcement services. S. 125.0104(5)(c), F.S.
[20] *Id*.
[21] S. 125.0104(5)(c), F.S.

The tax must be levied pursuant to an ordinance enacted by the county's governing body. [22] During fiscal year 2022-2023, Miami-Dade generated approximately $130 million in revenue.[23] Tax proceeds must be used in the following manner:[24]

- Two-thirds of the proceeds must be used to extend, enlarge, and improve the largest existing publicly owned convention center in the county.
- After completion of any project above, proceeds may be used to acquire, construct, extend, enlarge, remodel, repair, improve, plan for, operate, manage, or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums, auditoriums, or golf courses, and may be used to acquire and construct an intercity light rail transportation system.
- One-third of the proceeds must be used to construct a new multipurpose convention/coliseum/exhibition center/stadium or the maximum components thereof as funds permit in the most populous municipality in the county.
- After completion of the above projects, tax revenues and interest accrued pursuant to that authorized use may be used, as determined by the county to operate an authority created pursuant to s. 212.0305(4)(b)4., F.S., or to acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums, auditoriums, golf courses, or related buildings and parking facilities in the most populous municipality in the county.

Prior to the county enacting an ordinance imposing the levy, the county must notify the governing body of each municipality in which projects are to be developed. As a precondition to the receipt of funding, the governing bodies must designate or appoint an authority that has the power to approve the concept, location, program, and design of the facilities or improvements to be developed. The authority administers and disburses the tax proceeds and any other related source of revenue. However, the authority's annual budget is subject to approval of the municipality's governing body. [25]

The governing body of each municipality levying the tax may adopt a resolution prohibiting the imposition of the convention development tax within the municipality's jurisdiction. If a municipality adopts such a resolution, the tax is imposed by the county in all other areas of the county except such municipality. No funds collected from the convention development tax may be expended in a municipality that has adopted such a resolution. [26]

Effect of the Bill

The bill provides an exception to the authorized uses of revenues received by counties imposing a TDT for a county defined in s. 125.011(1), F.S. (i.e. Miami-Dade County). The bill specifies that revenues may be used to complete any project underway or to perform any contract in existence as of July 1, 2024, and that revenues may not be used to renew or extend the contracts or projects. Bonds or other outstanding debt as of July 1, 2024, may be refinanced; however, the duration of the debt pledging the TDT may not be extended and the outstanding principal may not be increased, except to account for the costs of issuance.

Revenues not needed for projects, debt obligations, or contracts must be distributed as follows:

- 50 percent must be distributed proportionally to the governing authorities of the municipalities within the county on a monthly basis. The receiving municipality may use the distributions to:
    - Promote and advertise tourism.
    - Fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus. Municipalities may enter into interlocal agreements for the purpose of using the revenue for these stated purposes in combination with moneys used by the county for a countywide convention and visitor bureau pursuant to current law.

[22] S. 212.0305(4)(b)1., F.S.
[23] Florida Office of Economic and Demographic Research, *2023 Florida Tax Handbook*, p. 312, http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2023.pdf (last visited Feb. 2, 2024).
[24] S. 212.0305(4)(b)2., F.S.
[25] S. 212.0305(4)(b)4., F.S.
[26] *Id.*

- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities[27] within the boundaries of the municipality, if the public facilities are needed to increase tourist-related business activities in the municipality. Tax distributions may be used for any related land acquisition, land improvement, design and engineering costs, and all other professional and related costs required to bring the public facilities into service. Tax distributions may only be used if:
  - At least 2/3 of the governing authority of the municipality approves the use;
  - No more than 70 percent of the cost will be paid for using TDT revenues;
  - No more than 40 percent of all TDT revenues distributed to the municipality are spent to promote and advertise tourism.
- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote parks or trails that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public.
- Reimburse expenses incurred in providing public safety services including emergency medical services and law enforcement needed to address impacts related to increased tourism and visitors to a municipality.
- Finance water quality improvement projects including, but not limited to, flood mitigation; algae control, cleanup, or prevention measures; and Biscayne Bay and waterway network restoration activities.
- Provide for septic-to-sewer conversion projects.

The county must distribute the remaining tax revenues monthly as follows:

- 20 percent for the primary bureau, department, or association responsible for organizing, funding, and promoting artist and cultural organizations;
- 30 percent for visitors bureaus and homeless shelters; and
- 50 percent for regular TDT uses.

The bill revises the purposes for which a county may use charter county convention development moneys. The bill provides that 50 percent of charter county convention development money must be distributed proportionally to the governing boards of the municipalities within the county on a monthly basis. Moneys collected in unincorporated areas of the county are not included in the distribution. The distributions may be used for the following purposes:

- To acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain a convention center, an exhibition hall, a coliseum, an auditorium, a performing arts center, or a related building or parking facility to such buildings.
- To promote and advertise tourism and to fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus. Municipalities may enter into interlocal agreements to use the revenue in combination with moneys used by the county for a countywide convention and visitor's bureau.

The county must use the remaining charter county convention development money only for the following purposes:

- To acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain a convention center, an exhibition hall, a coliseum, an auditorium, a performing arts center, or a related building or parking facility for such buildings.
- To acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain a countywide convention and visitors bureau which, by interlocal agreement and contract with the municipalities within the county, has the primary responsibility for promoting the county and its municipalities as a destination site for conventions, trade shows, and pleasure travel, or to be used for regular TDT uses. If the county is not or is no longer a party to an interlocal agreement, the county must distribute the revenue for regular TDT uses.

[27] The bill defines the term "public facilities" as major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation; sanitary sewer, including solid waste, drainage, and potable water; and pedestrian facilities.

The bill removes the requirement that the county notify the governing board of each municipality before enacting an ordinance imposing the levy, as well as the designation or appointment of an authority and the powers granted to the authority.

Lastly, the bill directs the Division of Law Revision to replace the phrase “the effective date of this act” wherever it occurs in this act with the date the act becomes law.

The bill takes effect July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.0104, F.S., relating to tourist development tax; procedure for levying; authorized uses; referendum; enforcement.

Section 2: Amends s. 212.0305, F.S., relating to convention development taxes; intent; administration; authorization; use of proceeds.

Section 3: Directs the Division of Law Revision to make conforming changes.

Section 4: 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:

   By reallocating TDT funds, the bill may have an indeterminate impact on county and municipal government revenues.

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:

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to tourist development; amending s. 125.0104, F.S.; providing an exception to the authorized uses of revenues received by counties imposing the tourist development tax; specifying uses of tax revenues received by certain counties imposing the tourist development tax; defining the term "public facilities"; amending s. 212.0305, F.S.; requiring that charter county convention development moneys be distributed to the governing boards of municipalities for specified purposes; revising the purposes for which a county may use charter county convention development moneys; deleting the requirement that the county notify the governing board of each municipality under certain circumstances; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Paragraphs (a) and (e) of subsection (5) of section 125.0104, Florida Statutes, are amended, and paragraph (f) is added to that subsection, to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(5) AUTHORIZED USES OF REVENUE.—

(a) Except for counties identified in paragraph (f), all tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:

a. Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the boundaries of the county or subcounty special taxing district in which the tax is levied;

b. Auditoriums that are publicly owned but are operated by organizations that are exempt from federal taxation pursuant to 26 U.S.C. s. 501(c)(3) and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied; or

c. Aquariums or museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied;

2. To promote zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;

3. To promote and advertise tourism in this state and nationally and internationally; however, if tax revenues are

expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists;

4. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency;

5. To finance beach park facilities, or beach, channel, estuary, or lagoon improvement, maintenance, renourishment, restoration, and erosion control, including construction of beach groins and shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, channel, estuary, lagoon, or inland lake or river. However, any funds identified by a county as the local matching source for beach renourishment, restoration, or erosion control projects included in the long-range budget plan of the state's Beach Management Plan, pursuant to s. 161.091, or funds contractually obligated by a county in the financial plan for a federally authorized shore protection project may not be used or loaned for any other purpose. In counties of fewer than 100,000 population, up to 10 percent of the revenues from the tourist

development tax may be used for beach park facilities; or

6. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county or subcounty special taxing district in which the tax is levied, if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council created pursuant to paragraph (4)(e). Tax revenues may be used for any related land acquisition, land improvement, design and engineering costs, and all other professional and related costs required to bring the public facilities into service. As used in this subparagraph, the term "public facilities" means major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities. Tax revenues may be used for these purposes only if the following conditions are satisfied:

a. In the county fiscal year immediately preceding the fiscal year in which the tax revenues were initially used for such purposes, at least $10 million in tourist development tax revenue was received;

b. The county governing board approves the use for the proposed public facilities by a vote of at least two-thirds of its membership;

c. No more than 70 percent of the cost of the proposed public facilities will be paid for with tourist development tax revenues, and sources of funding for the remaining cost are identified and confirmed by the county governing board;

d. At least 40 percent of all tourist development tax revenues collected in the county are spent to promote and advertise tourism as provided by this subsection; and

e. An independent professional analysis, performed at the expense of the county tourist development council, demonstrates the positive impact of the infrastructure project on tourist-related businesses in the county.

Subparagraphs 1. and 2. may be implemented through service contracts and leases with lessees that have sufficient expertise or financial capability to operate such facilities.

(e) Any use of the local option tourist development tax revenues collected pursuant to this section for a purpose not expressly authorized by paragraph (3)(l) or paragraph (3)(n) or paragraphs (a)-(d) and (f) of this subsection is expressly prohibited.

(f) All tax revenues received pursuant to this section by a county, as defined in s. 125.011(1), imposing the tourist development tax may only be used by the county as specified in this paragraph.

1. Revenues may be used to complete any project underway

as of the effective date of this act or to perform any contract in existence on the effective date of this act, pursuant to this section as this section existed before the effective date of this act. Revenues may not be used to renew or extend such contracts or projects. Bonds or other debt outstanding as of the effective date of this act may be refinanced, but the duration of such debt pledging the tourist development tax may not be extended and the outstanding principal may not be increased, except to account for the costs of issuance.

2. Revenues not needed for projects, contracts, or debt obligations pursuant to subparagraph 1. must be distributed and used as follows:

a. Fifty percent must be distributed monthly by the county to the governing authorities of the municipalities within the county. Distributions to each municipality must be in proportion to the amount collected in the prior month within the municipality as a share of the total amount collected from all municipalities in the county. These distributions may be used by the receiving municipality to:

(I) Promote and advertise tourism.

(II) Fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus. Municipalities may enter into interlocal agreements for the purpose of using the revenue received for the purpose stated in this sub-sub-subparagraph in combination with moneys used by the county for a countywide

convention and visitors bureau under s. 212.0305(4)(b)2.b.(II).

(III) Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the municipality, if the public facilities are needed to increase tourist-related business activities in the municipality.

(A) As used in this sub-sub-subparagraph, the term "public facilities" means major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation; sanitary sewer, including solid waste, drainage, and potable water; and pedestrian facilities.

(B) Tax distributions may be used for any related land acquisition, land improvement, design and engineering costs, and all other professional and related costs required to bring the public facilities into service.

(C) Tax distributions may be used for the purposes stated in sub-sub-sub-subparagraph (B) only if the following conditions are satisfied:

i. The governing authority of the municipality approves the use for each proposed public facility by a vote of at least two-thirds of its membership.

ii. No more than 70 percent of the cost of a proposed public facility will be paid for using tourist development tax revenues, and sources of funding for the remaining costs are identified and confirmed by the governing authority of the

municipality.

iii. No more than 40 percent of all tourist development tax revenues distributed to the municipality are spent to promote and advertise tourism as provided in this paragraph.

(IV) Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote parks or trails that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the municipality.

(V) Reimburse expenses incurred in providing public safety services, including, but not limited to, emergency medical services as defined in s. 401.107(3), and law enforcement services, needed to address impacts related to increased tourism and visitors to a municipality.

(VI) Finance water quality improvement projects, including, but not limited to, all of the following:

(A) Flood mitigation.

(B) Algae control, cleanup, or prevention measures.

(C) Biscayne Bay and waterway network restoration initiatives.

(VII) Provide for septic-to-sewer conversion projects important to the local tourism industry which are primarily undertaken to reduce or prevent the discharge of untreated or partially treated wastewater into surface waters.

b. A county shall use the remaining tax revenues received

pursuant to this section as provided in this sub-subparagraph. Twenty percent must be distributed monthly to the governing board of the county to fund the primary bureau, department, or association responsible for organizing, funding, and promoting opportunities for artists and cultural organizations within the county. Thirty percent must be distributed monthly to the governing board of the county and used for one or more of the purposes set forth in s. 212.0306(3). Fifty percent must be distributed monthly to the governing board of the county and used for the purposes set forth in paragraph (5)(a) or sub-sub-subparagraphs 2.a.(IV)-(VII).

Section 2. Paragraph (b) of subsection (4) of section 212.0305, Florida Statutes, is amended to read:

212.0305 Convention development taxes; intent; administration; authorization; use of proceeds.—

(4) AUTHORIZATION TO LEVY; USE OF PROCEEDS; OTHER REQUIREMENTS.—

(b) *Charter county levy for convention development.*—

1. Each county, as defined in s. 125.011(1), may impose, under an ordinance enacted by the governing body of the county, a levy on the exercise within its boundaries of the taxable privilege of leasing or letting transient rental accommodations described in subsection (3) at the rate of 3 percent of the total consideration charged therefor. The proceeds of this levy shall be known as the charter county convention development tax.

2.a. Fifty percent of all charter county convention development moneys, including any interest accrued thereon, received by a county imposing the levy shall be distributed monthly to the governing boards of the municipalities within the county in proportion to the amount collected in the prior month within each municipality compared with the total collected from all municipalities in the county. Moneys collected within the unincorporated area of the county are not included in the distribution under this subparagraph. The distributions as described in this sub-subparagraph may be used by the receiving municipality only for the following purposes ~~used as follows~~:

(I) To acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain one or more of the following:

(A) A convention center.

(B) An exhibition hall.

(C) A coliseum.

(D) An auditorium.

(E) A performing arts center.

(F) A related building or parking facility to such buildings described in sub-sub-sub-subparagraphs (A)-(E).

(II) To promote and advertise tourism and to fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus. Municipalities may enter into interlocal agreements for the purpose of using the revenue

received for the purpose stated in this sub-sub-subparagraph in combination with moneys used by the county for a countywide convention and visitor's bureau under sub-sub-subparagraph b. (II).

b. The governing body of the county shall use the remaining charter county convention development moneys only for the following purposes:

(I) To acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain one or more of the following:

(A) A convention center.

(B) An exhibition hall.

(C) A coliseum.

(D) An auditorium.

(E) A performing arts center.

(F) A related building or parking facility to such buildings described in sub-sub-sub-subparagraphs (A)-(E).

(II) To acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain a countywide convention and visitors bureau which, by interlocal agreement and contract with the municipalities within the county, has the primary responsibility for promoting the county and its municipalities as a destination site for conventions, trade shows, and pleasure travel, or to be used for purposes provided in s. 125.0104(5)(a)2.b. or c. If the county is not or is no longer a

party to such an interlocal agreement, the county must allocate the proceeds of such tax for the purposes described in s. 125.0104(5)(a)2.b. or c.

~~a. Two-thirds of the proceeds shall be used to extend, enlarge, and improve the largest existing publicly owned convention center in the county.~~

~~b. One-third of the proceeds shall be used to construct a new multipurpose convention/coliseum/exhibition center/stadium or the maximum components thereof as funds permit in the most populous municipality in the county.~~

~~c. After the completion of any project under sub-subparagraph a., the tax revenues and interest accrued under sub-subparagraph a. may be used to acquire, construct, extend, enlarge, remodel, repair, improve, plan for, operate, manage, or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums, auditoriums, or golf courses, and may be used to acquire and construct an intercity light rail transportation system as described in the Light Rail Transit System Status Report to the Legislature dated April 1988, which shall provide a means to transport persons to and from the largest existing publicly owned convention center in the county and the hotels north of the convention center and to and from the downtown area of the most populous municipality in the county as determined by the county.~~

~~d. After completion of any project under sub-subparagraph~~

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

~~b., the tax revenues and interest accrued under sub-subparagraph b. may be used, as determined by the county, to operate an authority created pursuant to subparagraph 4. or to acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums, auditoriums, golf courses, or related buildings and parking facilities in the most populous municipality in the county.~~

~~c. For the purposes of completion of any project pursuant to this paragraph, tax revenues and interest accrued may be used:~~

~~(I) As collateral, pledged, or hypothecated for projects authorized by this paragraph, including bonds issued in connection therewith; or~~

~~(II) As a pledge or capital contribution in conjunction with a partnership, joint venture, or other business arrangement between a municipality and one or more business entities for projects authorized by this paragraph.~~

3. The governing body of each municipality in which a municipal tourist tax is levied may adopt a resolution prohibiting imposition of the charter county convention development levy within such municipality. If the governing body adopts such a resolution, the convention development levy must ~~shall~~ be imposed by the county in all other areas of the county except such municipality. No funds collected pursuant to this

paragraph may be expended in a municipality which has adopted such a resolution.

~~4.a. Before the county enacts an ordinance imposing the levy, the county shall notify the governing body of each municipality in which projects are to be developed pursuant to sub-subparagraph 2.a., sub-subparagraph 2.b., sub-subparagraph 2.c., or sub-subparagraph 2.d. As a condition precedent to receiving funding, the governing bodies of such municipalities shall designate or appoint an authority that shall have the sole power to:~~

~~(I) Approve the concept, location, program, and design of the facilities or improvements to be built in accordance with this paragraph and to administer and disburse such proceeds and any other related source of revenue.~~

~~(II) Appoint and dismiss the authority's executive director, general counsel, and any other consultants retained by the authority. The governing body shall have the right to approve or disapprove the initial appointment of the authority's executive director and general counsel.~~

~~b. The members of each such authority shall serve for a term of not less than 1 year and shall be appointed by the governing body of such municipality. The annual budget of such authority shall be subject to approval of the governing body of the municipality. If the governing body does not approve the budget, the authority shall use as the authority's budget the~~

~~previous fiscal year budget.~~

~~c. The authority, by resolution to be adopted from time to time, may invest and reinvest the proceeds from the convention development tax and any other revenues generated by the authority in the same manner that the municipality in which the authority is located may invest surplus funds.~~

~~5.~~ The charter county convention development levy shall be in addition to any other levy imposed pursuant to this section.

5.~~6.~~ A certified copy of the ordinance imposing the levy shall be furnished by the county to the department within 10 days after approval of such ordinance. The effective date of imposition of the levy shall be the first day of any month at least 60 days after enactment of the ordinance.

6.~~7.~~ Revenues collected pursuant to this paragraph shall be deposited in a convention development trust fund, which shall be established by the county as a condition precedent to receipt of such funds.

Section 3. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 4. This act shall take effect July 1, 2024.

HB 1123

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1123 Unlawful Sale Of Alcoholic Beverages
SPONSOR(S): Bankson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1090

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Phelps	Hamon
2) Judiciary Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of alcoholic beverages within the state. Any person who wishes to sell alcohol must file an application with the Division, and contingent on approval, will be issued a license. It is unlawful for any person to sell alcoholic beverages without a license from the Division and to sell in a manner not permitted by her or his license. A person who violates this obligation is guilty of a misdemeanor and subject to criminal penalties.

Local governments can establish a nuisance abatement board to hear public nuisance complaints and impose administrative actions to address these public nuisances. Additionally, specified criminal activities may be declared to be a public nuisance and such nuisance may be abated by order of a nuisance abatement board.

Communities across the state deal with illicit After Hour Clubs or hookah lounges that operate without a liquor license or in violation of their license. These operations have attracted criminal activity involving dangerous drugs and violent crimes.

The bill increases the criminal penalties for the unlicensed or unlawful sale of alcoholic beverages from a misdemeanor to a felony of the third degree and a fine of not less than $5,000 and not more than $10,000. The bill creates an additional punishment for any person who commits a second or subsequent violation punishable by a felony of the second degree and must pay a fine of not less than $15,000 and not more than $20,000.

The bill provides additional grounds for local nuisance abatement boards to declare a place or premise a public nuisance by permitting a board to declare a place or premise a public nuisance if used on more than two occasions within a 6-month period as a cite of unlicensed or unlawful sale of alcohol beverages. Local boards are authorized to prohibit specified nuisances, including the ordering the closure of any place or premises that has been the site of certain specified nuisances.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Beverage Law

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of alcoholic beverages[1] within the state.[2] Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Any person who wishes to sell alcohol must first file a sworn application with the Division.[3] After the application has been filed, the application will be fully investigated.[4] Upon completion of the investigation, the Division shall approve or disapprove the application; if approved, the license shall be issued upon payment to the division of the license tax hereinafter provided.[5]

It is unlawful for any person to sell alcoholic beverages without a license from the Division and to sell in a manner not permitted by her or his license.[6] In addition, a licensee or other person who keeps or possesses alcoholic beverages not permitted to be sold by her or his license, or not permitted to be sold without a license, with intent to sell or dispose of same unlawfully, or who keeps and maintains a place where alcoholic beverages are sold unlawfully, is guilty of a misdemeanor of the second degree.[7]

It is also unlawful for any person to operate as an exporter[8] of alcoholic beverages within the state without registering as an exporter pursuant to s. 561.17, F.S.[9] A person who violates this prohibition is guilty of a misdemeanor of the second degree.[10]

Nuisance Abatement

Section 893.138, F.S., allows local governments to establish a nuisance abatement board to hear public nuisance complaints. These boards may impose administrative fines and other noncriminal penalties to abate a violence-related, drug-related, prostitution-related, or stolen property-related public nuisance and criminal gang activity, including a closure of the place or premises.[11]

If a board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such place or premises to adopt abatement procedures.[12] The board may also enter an order immediately prohibiting: the maintaining of the nuisance; the operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or the conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.[13]

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[1] Alcoholic beverages are distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume. S. 561.01(4)(a).
[2] S. 561.02, F.S.
[3] S. 561.17, F.S.
[4] S. 561.18, F.S.
[5] S. 561.19, F.S.
[6] S. 562.12, F.S.
[7] S. 562.12(1), F.S. A person convicted of a misdemeanor of the second degree shall not exceed $500. S. 775.083, F.S.
[8] An "exporter" is "any person that sells alcoholic beverages to persons for use outside the state and includes a ship's chandler and a duty-free shop." S, 561.01(16).
[9] S. 562.12(2), F.S.
[10] S. 561.12(2), F.S.
[11] S. 893.138(1), F.S.
[12] S. 893.138(5), F.S.
[13] S. 893.18(5)(a)-(c), F.S.

Additionally, s. 893.138(2), F.S., lists criminal activities which, if committed at any place or premises during a specified period of time, may be declared to be a public nuisance, and such nuisance abated by order of a nuisance abatement board. Those properties subject to nuisance abatement by the board include any place or premises that has been used:[14]

- On more than two occasions within a 6-month period, as the site of a violation of s. 796.07;
- On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- By a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03;
- On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property;
- On two or more occasions within a 6-month period, as the site of a violation of chapter 499; or
- On more than two occasions within a 6-month period, as the site of a violation of any combination of murder and other specified aggravated batteries.

These provisions may be supplemented by a county or municipal ordinance to:[15]

- Impose additional penalties for public nuisances, including fines not to exceed $250 per day;
- Require the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances;
- Provide continuing jurisdiction for a period of one year over any place or premises that has been or is declared to be a public nuisance;
- Impose penalties, including fines not to exceed $500 per day for recurring public nuisances;
- Require the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order;
- Provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and
- Provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. However a lien may not be created to foreclose on real property which is a homestead under s. 4, Art. X of the State Constitution.

A nuisance abatement board may also bring a complaint under s. 60.05, F.S. to seek temporary and permanent injunctive relief against any nuisance described in s. 893.138(2), F.S.[16]

Section 60.05, F.S., also provides a process for an Attorney General, state attorney, city attorney, county attorney, sheriff, or any citizen of the county to sue in the name of the state on his or her relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists.[17]

Dangers of Illicit After Hour Clubs and Hookah Lounges

Communities across the state deal with illicit After Hour Clubs or hookah lounges that operate without a liquor license or in violation of their license.[18] These operations have attracted criminal activity involving dangerous drugs and violent crimes.[19]

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[14] S. 893.138(2), F.S.
[15] S. 893.138(11), F.S.
[16] S. 893.138(8), F.S.
[17] S. 60.05(1), F.S.
[18] Cristobal Reyes, *Orange sheriff announces proposed 'legislative changes' after 2 arrested in hookah lounge shooting*, Orlando Sentinel (Oct. 30, 2023), https://www.orlandosentinel.com/2023/10/30/orange-sheriff-announces-proposed-legislative-changes-after-2-arrested-in-hookah-lounge-shooting/ (last visited Feb. 1, 2024).

Effect of Bill

The bill increases the criminal penalties for persons selling alcoholic beverages without a license or not in compliance with s. 561.12(1), F.S., from a misdemeanor to a third-degree felony.[20] And must pay a fine of not less than $5,000 and not more than $10,000.

A person who commits a second or subsequent violation of s. 561.12(1), F.S., commits a felony of the second degree[21] and must pay a fine of not less than $15,000 and not more than $20,000.

The bill amends s. 893.138(2), F.S., to provide that a place or premises may be declared a public nuisance, if used on more than two occasions within a 6-month period, as the site of a violation of s. 562.12, F.S., relating to the unlicensed or unlawful sale of alcoholic beverages.

B. SECTION DIRECTORY:

Section 1: Amends s. 562.12, F.S., relating to beverages sold with improper license, or without license or registration, or held with intent to sell prohibited.

Section 2: Amends s. 893.138, F.S., relating to local administrative action to abate certain activities declared public nuisances.

Section 3: Provides an effective date of July 1, 2024.

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.

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[19] *Id*. (shooting occurred at a west Orlando hookah lounge that left three injuried); *see also* C.T. Bowen, *Hillsborough County bans late-night hookah lounges*, Tampa Bay Times (Aug. 18, 2021), https://www.tampabay.com/news/hillsborough/2021/08/18/hillsborough-county-bans-late-night-hookah-lounges/ (last visited Feb. 1, 2024) (Hillsborough County commissioners unanimously approved an ordinance requiring lounges to close at 3 a.m. after a string of violent incidents at or near hookah lounges).

[20] A person convicted of a third-degree felony is punishable by a term of imprisonment not to exceed five years. S. 775.082, F.S. It is also punishable by a fine not to exceed $5,000.

[21] A person convicted of a second-degree felony is punishable by a term of imprisonment not to exceed fifteen years. S. 775.082, F.S. It is also punishable by a fine not to exceed $10,000.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to unlawful sale of alcoholic beverages; amending s. 562.12, F.S.; revising upward the penalties associated with selling alcoholic beverages without a license; providing for additional criminal penalties for subsequent violations; amending s. 893.138, F.S.; specifying conditions under which sites that have violated the prohibition on the unlawful sale of alcoholic beverages may be declared a public nuisance; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 562.12, Florida Statutes, are renumbered as subsections (3) and (4), respectively, subsection (1) is amended, and a new subsection (2) is added to that section, to read:

562.12 Beverages sold with improper license, or without license or registration, or held with intent to sell prohibited.—

(1) It is unlawful for any person to sell alcoholic beverages without a license, and it is unlawful for any licensee to sell alcoholic beverages except as permitted by her or his license, or to sell such beverages in any manner except that permitted by her or his license; and any licensee or other

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

person who keeps or possesses alcoholic beverages not permitted to be sold by her or his license, or not permitted to be sold without a license, with intent to sell or dispose of same unlawfully, or who keeps and maintains a place where alcoholic beverages are sold unlawfully, is guilty of a felony ~~misdemeanor~~ of the third ~~second~~ degree, punishable as provided in s. 775.082 or s. 775.083 and shall pay a fine of not less than $5,000 and not more than $10,000.

(2) A person who commits a second or subsequent violation of subsection (1) commits a felony of the second degree punishable as provided in s. 775.082 or s. 775.083 and shall pay a fine of not less than $15,000 and not more than $20,000.

Section 2. Paragraphs (f) and (g) of subsection (2) of section 893.138, Florida Statutes are amended, and paragraph (h) of subsection (2) is added to that section, to read:

893.138 Local administrative action to abate certain activities declared public nuisances.—

(2) Any place or premises that has been used:

(f) On two or more occasions within a 6-month period, as the site of a violation of chapter 499; ~~or~~

(g) On more than two occasions within a 6-month period, as the site of a violation of any combination of the following:

1. Section 782.04, relating to murder;

2. Section 782.051, relating to attempted felony murder;

3. Section 784.045(1)(a) 2., relating to aggravated battery

with a deadly weapon; ~~or~~

4. Section 784.021(1)(a), relating to aggravated assault with a deadly weapon without intent to kill; or~~,~~

(h) On more than two occasions within a 6-month period as the site where a violation related to the unlawful sale of alcoholic beverages under s. 562.12 occurred,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

Section 3. This act shall take effect July 1, 2024.

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

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1123 by Rep. Bankson
Unlawful Sale Of Alcoholic Beverages

AMENDMENT SUMMARY
February 6, 2024

Amendment 1 by Rep. Bankson (line 54):

- Changes the time period when there may be increased penalties for a subsequent offense, to 2 times in a 12-month period, from two times in a 6-month period.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform & Economic Development Subcommittee

Representative Bankson offered the following:

Amendment

Remove line 54 and insert:

(h) On more than two occasions within a 12-month period as

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1185 Thermal Efficiency Standards for Unvented Attic and Unvented Enclosed Rafter Assemblies
SPONSOR(S): Griffitts
TIED BILLS: **IDEN./SIM. BILLS:** SB 1130

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

SUMMARY ANALYSIS

The Florida Building Code (Building Code), Energy Conservation (EC Code), regulates the design and construction of buildings for the effective use and conservation of energy over the useful life of each building. The EC Code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective.

The Building Code and EC code requires that unvented attics and unvented enclosed roof framing assemblies in residential homes must meet the following requirements:

- The unvented attic space is completely within the building thermal envelope.
- Where only air-impermeable insulation is provided, the insulation must be applied in direct contact with the underside of the structural roof sheathing.
- The attic is built using **R-30 insulation** in Climate Zone 1, and **R-38 insulation** in Climate Zone 2.
- The home is verified as having an air leakage rate not exceeding seven air changes per hour (**7 ACH50**) in Climate Zones 1 and 2.
- If the home has an air leakage rate less than three air changes per hour (**3 ACH50**), the home must have whole-house mechanical ventilation.

The bill provides that unvented attic and unvented enclosed rafter assemblies that are insulated and air sealed with a minimum of **R-20 air-impermeable insulation** meet the requirements of the EC Code, if all of the following apply:

- The building has a blower door test result of less than **3 ACH50**.
- The building has a positive input ventilation system or a balanced or hybrid **whole-house mechanical ventilation system**.
- If the insulation is installed below the roof deck and the exposed portion of roof rafters is not already covered by the R-20 air-impermeable insulation, the exposed portion of the roof rafters is insulated by a minimum of **R-3 air-impermeable insulation** unless directly covered by a finished ceiling. Roof rafters are not required to be covered by a minimum of R-3 air-impermeable insulation if continuous insulation is installed above the roof deck.
- All indoor heating, cooling, and ventilation equipment and ductwork is inside the building thermal envelope.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum building standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[1]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[2] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[3]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[4]

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,[5] the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[6] The current edition of the Building Code is the eighth edition, which is referred to as the 2023 Florida Building Code.[7]

Building Thermal Envelope

The Florida Building Code, Energy Conservation (EC Code), regulates the design and construction of buildings for the effective use and conservation of energy over the useful life of each building. The EC Code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective.[8]

The EC Code defines:[9]

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[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 2, 2024).
[2] *Id.*
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb. 2, 2024).
[4] *See* s. 553.72(1), F.S.
[5] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Feb. 2, 2024).
[6] S. 553.73(7)(a), F.S.
[7] Florida Building Commission, Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb. 2, 2024).
[8] S. R101.1-101.3. FBC, Energy Conservation (8th Ed. 2023).
[9] S. R202, FBC, Energy Conservation (8th Ed. 2023).

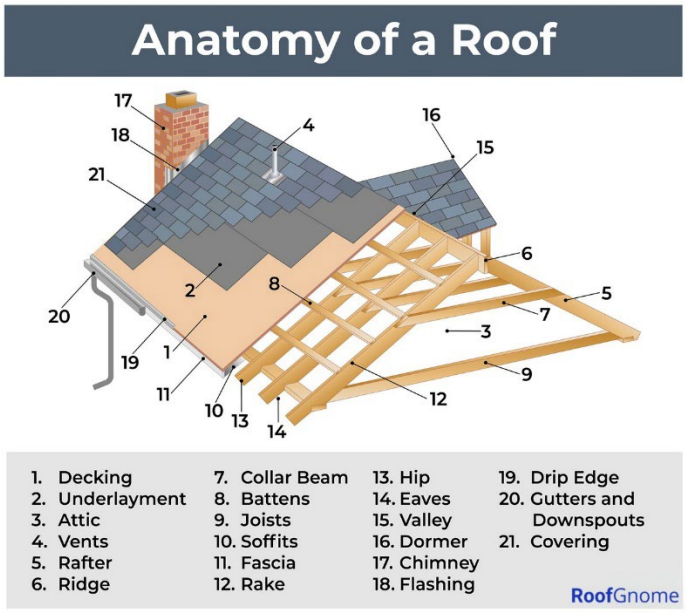
- "Building thermal envelope" as the basement walls, exterior walls, floors, ceilings, roofs and any other building element assemblies that enclose conditioned space or provide a boundary between conditioned space and exempt or unconditioned space.
- "Conditioned space" as an area, room or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned spaces; where they are separated from conditioned spaces by uninsulated walls, floors or ceilings; or where they contain uninsulated ducts, piping or other sources of heating or cooling.

The building thermal envelope for residential buildings must meet the requirements of ss. R402.1.1 through R402.1.5 of the EC Code, except the following low-energy buildings, or portions thereof, separated from the remainder of the building by EC Code-compliant building thermal envelope assemblies:[10]

- Those with a peak design rate of energy usage less than 3.4 Btu/h · ft2 (10.7 W/m2) or 1.0 watt/ft2 of floor area for space-conditioning purposes.
- Those that do not contain conditioned space.
- Log homes designed in accordance with ICC-400.

Parts of a Roof

In general, a roof is composed of the following structures:[11]



Roof sheathing, also called roof decking, are the wooden boards that make up the framing of a roof system. These boards are what shingles and other roofing components are installed directly on.[12]

Roof rafters are structural components of a roof on a building. Traditional rafters frame out the roof and connect to the exterior walls, and land on a ridge board, which runs across the length of the building. The result is a vaulted ceiling that can be filled with insulation and drywall to finish the space or be left as open space in an attic.[13]

Unvented Attics

[10] S. R402.1, FBC, Energy Conservation (8th Ed. 2023).
[11] Kimberly Magerl, *21 Different Parts of a Roof,* Roof Gnome, Oct. 9, 2023, https://roofgnome.com/blog/roofing/different-parts-of-a-roof/ (last visited Feb. 4, 2024).
[12] Bill Ragan, What is Roof Sheathing? (What You Need to Know About It), Bill Ragan Roofing Company, Aug. 31, 2022, https://www.billraganroofing.com/blog/what-roof-sheathing (last visited Feb. 4, 2024).
[13] MT Copeland, *What Are Rafters?*, Dec. 22, 2021, https://mtcopeland.com/blog/what-are-rafters/ (last visited Feb. 4, 2024).

Residences may be constructed with either a:[14]

- Vented attic: With openings for outside air to ventilate the space underneath the roof with insulation above the ceiling finish.
- Unvented attic: Without any opening underneath the roof–creating an unvented attic space with insulation at the roof deck. The unvented attic is completely within the building thermal envelope.

Unvented roof assemblies, such as conditioned attics and unvented cathedral ceilings, are created by eliminating ventilation openings and moving the thermal (or insulation), moisture, and air control boundaries to the plane of the roof deck.[15] Unvented attics are also typically built with the HVAC system completely within the building thermal envelope. Insulation is usually a spray foam product that also provides air sealing to create a semi-conditioned space.[16]

Although the rationale for attic ventilation is for moisture control, this was historically based on needs in cold climates and to prevent ice dams. However, vented attics can introduce additional moisture loads into Florida homes by allowing moisture laden air in the attic that may come indoors. Unvented attics can help to reduce moisture condensation on attic mounted ducts and air handlers by reducing the moisture level of the air around the ducts and on the back side of ceiling drywall when low thermostat set points are used.

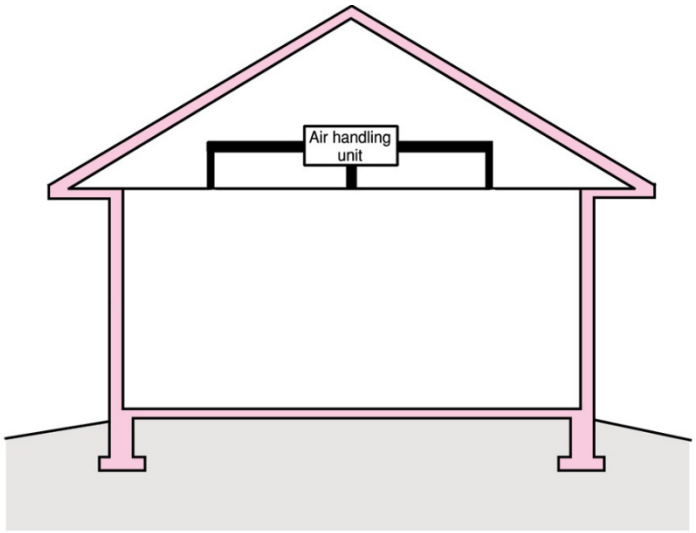
Unvented attics offer the following potential advantages over vented attics:[17]

- Energy Savings - An unvented attic is warmer in winter and cooler in summer, reducing the HVAC load. The equipment will be more durable and more efficient, especially if ductwork is in the attic.
- Moisture Resistance - The attic will stay dry, avoiding problems with mold and wood rot, and thus can serve as living or storage space.
- Disaster Resistance - Roofs over unvented attics are less likely to be blown off in high winds because the wind cannot readily enter the attic. In addition, a house in wildfire zones is less likely to catch fire from floating embers since there are no soffit vents for the embers to enter. In coastal areas, an unvented roof keeps out wind-driven rain and better protects metal connectors in the roof assembly against salt spray and corrosion.

However, an unvented attic system can be more expensive than a vented attic, as it requires more spray foam insulation, which means more cost.[18]

An example of an unvented attic is pictured below:[19]

[14] University of Central Florida, Florida Solar Energy Center, *Attic Insulation and Ventilation*, https://energyresearch.ucf.edu/research/buildings-research/roof-assembly/attic-insulation-ventilation/ (last visited Feb. 4, 2024).
[15] U.S. Department of Energy, *Unvented, Conditioned Attics*, https://www.energy.gov/eere/buildings/articles/unvented-conditioned-attics-building-america-top-innovation#:~:text=Insulating%20and%20air%20sealing%20along,insulating%20along%20the%20ceiling%20deck%3A&text=Energy%20Savings%20%2D%20An%20unvented%20attic,the%20attic%20(Rudd%202005). (last visited Feb. 4, 2024
[16] UCF, *supra* note 14.
[17] US Dept. of Energy, *supra* note 15.
[18] Amanda Ringler, *Vented vs. Unvented Attic: Which is Better?*, RetroFoam of Michigan Inc., July 13, 2020, https://www.retrofoamofmichigan.com/blog/vented-vs-unvented-attic-which-is-better (last visited Feb. 4, 2024).
[19] U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, *Unvented Attic Insulation*, https://basc.pnnl.gov/resource-guides/unvented-attic-insulation#edit-group-description (last visited Feb. 4, 2024).



Note: Colored shading depicts the building's thermal barrier and pressure boundary. The thermal barrier and pressure boundary enclose the conditioned space.

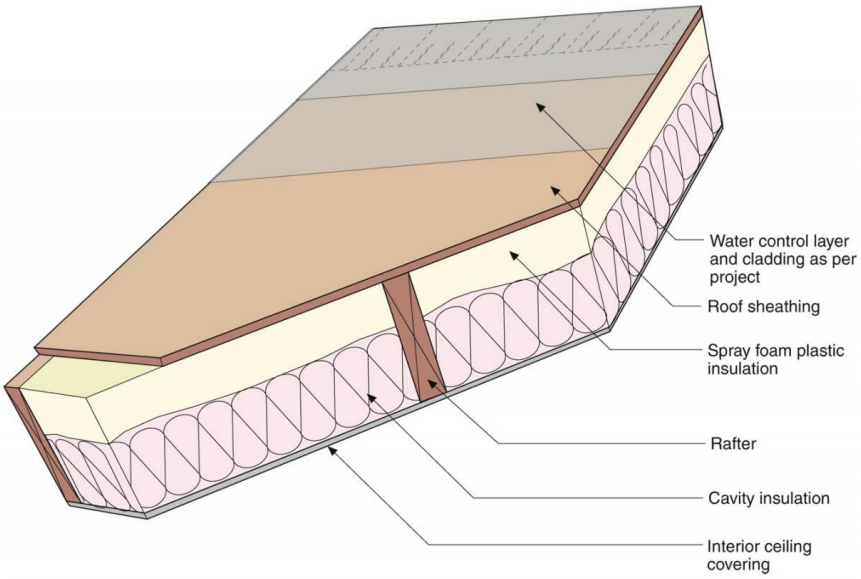
Air-impermeable Insulation

Permeable and impermeable air barrier membranes differ in their ability to block moisture:[20]

- Impermeable air barriers block water vapor and air.
- Permeable air barriers block air but allow water vapor to move through the membrane, promoting diffusion out of the wall system. Permeable air barriers offer varying permeability rates and come as either sheet or fluid-applied membranes.

Air-impermeable insulation that is installed to the underside of the roof sheathing of an unvented roof is typically spray foam.

Insulation for unvented attics applied under the sheathing is typically installed as follows:[21]



R-Value

[20] Cory Bendokas, *Impermeable vs. Permeable Air Barriers: Main Differences*, Build Meets World by Tremco CPG Inc., https://blog.buildmeetsworld.com/impermeable-vs-permeable-air-barriers (last visited Feb. 4, 2024).
[21] *Id.*

R-value is a measure of how much resistance insulation has to heat flow. The higher the R-value, the more the resistance and the better the material is at insulating a home. Generally, insulation materials with higher R-values cost more when compared to those with lower R-values.[22]

Blower Door Tests

Blower door tests determine to what degree a home is airtight. A temporary "blower door" equipped with a powerful fan is fitted into the frame of an existing front or back door, and when the fan is turned on, it sucks the air out of the house and blows it outside. Digital gauges compare the difference in air pressure between the inside air and the outside air to determine how much air is leaking into the house.[23]

The standard way to determine air tightness of a building is to measure air leakage at 50 Pascals (ACH50) to the conditioned volume of the building. Air Change per Hour at 50 Pa (ACH50) is calculated by dividing air flow per hour by the volume of the building. ACH50 tells us how many times per hour the entire volume of air in the building is replaced when the building envelope is subjected to a 50 Pascal pressure. The airtightness of existing homes can vary dramatically based on the construction style, age and region.[24]

Proper, tight air sealing of unvented attics is important for proper function.[25] Whole-house mechanical ventilation is required for homes with a high air-tightness.[26]

The chart below shows the relative tightness of homes based on the ACH50:[27]

0 - 1.5 ACH	Very tight
1.5 - 3 ACH	Tight
3 - 5 ACH	Moderately tight
5 - 7 ACH	Loose
7 - 10 ACH	Very loose
10 + ACH	Extremely loose

Unvented Attics and Unvented Enclosed Roof Framing Assemblies

Section 806.5, Florida Building Code, Residential, for residential buildings, requires that unvented attics and unvented enclosed roof framing assemblies created by ceilings that are applied directly to the underside of the roof framing members and structural roof sheathing applied directly to the top of the roof framing members or rafters, must be allowed if certain conditions are met, including:[28]

- The unvented attic space is completely within the building thermal envelope.
- No interior Class I vapor retarders are installed on the ceiling side (attic floor) of the unvented attic assembly or on the ceiling side of the unvented enclosed roof framing assembly.
- Insulation must comply with Item 5.1 and Item 5.3. As an alternative, where air-permeable insulation is located on top of the attic floor or on top of the attic ceiling, insulation must comply with Item 5.3 and Item 5.2.

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[22] Emily Glover and Samantha Allen, *What Is Insulation R Value? Everything You Need To Know*, Forbes, Jan, 20, 2022, https://www.forbes.com/home-improvement/home/what-is-insulation-r-value/ (last visited Feb. 4, 2024).
[23] Glenda Taylor and Bob Vila, *All You Need to Know About Blower Door Tests*, BobVila.com, Oct. 23, 2020, https://www.bobvila.com/articles/blower-door-tests/ (last visited Feb. 4, 2024); Tyler Vanzo, *Air Changes Per Hour (ACH): What is it & How to Calculate it*, SmartAir, Jan. 16, 2024, https://smartairfilters.com/en/blog/what-is-air-changes-per-hour-ach-how-to-calculate/ (last visited Feb. 4, 2024).
[24] The Energy Conservatory, TEST RESULTS AND SAMPLE TEST FORMS, https://energyconservatory.com/wp-content/uploads/2017/08/Test-Results-and-Sample-Test-Forms-Guide-.pdf (last visited Feb. 4, 2024).
[25] UCF, *supra* note 14.
[26] Eric Martin and Charles Withers, Jr., *Survey of Unvented Attics in Climate Zone 2A*, University of Central Florida, Florida Solar Energy Center, Mar. 17, 2021, https://publications.energyresearch.ucf.edu/wp-content/uploads/2021/02/FSEC-CR-2106-21.pdf (last visited Feb. 4, 2024).
[27] UCF, *supra* note 14.
[28] S. R806.5, FBC, Residential (8th Ed. 2023).

Item 5.1. provides requirements insulation depending on the air permeability of the insulation directly under the structural roof sheathing. The following requirements are applicable to air-impermeable insulation:

- Where only **air-impermeable insulation** is provided, it must be applied in direct contact with the **underside** of the structural roof sheathing.
- Alternatively, sufficient rigid board or sheet insulation must be installed directly above the structural roof sheathing to maintain the monthly average temperature of the underside of the structural roof sheathing above 45°F (7°C). For calculation purposes, an interior air temperature of 68°F (20°C) is assumed and the exterior air temperature is assumed to be the monthly average outside air temperature of the three coldest months.

Item 5.2. provides requirements for air-permeable insulation, and Item 5.3.requires, where preformed insulation board is used as the air-impermeable insulation layer, it must be sealed at the perimeter of each individual sheet interior surface to form a continuous layer.

Section R402 of the EC Code

Insulation Requirements

In general, the EC Code requires residential ceilings, including ceilings with attics, to be built using **R-30 insulation** in Climate Zone 1, and **R-38 insulation** in Climate Zone 2.[29]

However, s. R402.1.2 of the EC Code, where R-38 insulation is required in the ceiling or attic, allows installing R-30 over 100 percent of the ceiling or attic area requiring insulation to satisfy the requirement for R-38 insulation wherever the full height of uncompressed R-30 insulation extends over the wall top plate at the eaves.

Mechanical Requirements

Section R402 requires that a mechanical system of a residential building or dwelling unit must be blower door tested in accordance with ANSI/RESNET/ICC 380, reported at a pressure of 50 pascals, and verified as having an air leakage rate not exceeding seven air changes per hour (**7 ACH50**) in Climate Zones 1 and 2.

Homes with an air leakage rate less than three air changes per hour (**3 ACH50**) must be provided with **whole-house mechanical ventilation**.[30] All counties In Florida are either Climate Zone 1 or 2.[31]

Types of Whole-house Ventilation Systems

Whole-house mechanical ventilation is the intentional exchange of indoor air with fresh outdoor air at a controlled rate using fans. The purpose of whole-house mechanical ventilation is to improve indoor air quality. Historically, mechanical ventilation was limited to local-exhaust (kitchen and bath exhaust fans) for spot control of moisture and odors. Houses commonly had enough natural ventilation, through leaky building enclosures, that whole-house mechanical ventilation was not necessary. Houses have become significantly tighter during the past 15-20 years as a result of changing codes, energy efficiency programs, and an overall desire to reduce energy use. Above-code programs and more recently the building codes have generally made controlled whole-house mechanical ventilation a requirement.[32]

Balanced

[29] Table R402.1.2, FBC, Energy Conservation (8th Ed. 2023).
[30] S. R402.4.1.2, FBC, Energy Conservation (8th Ed. 2023).
[31] Table R301.1, FBC, Energy Conservation (8th Ed. 2023).
[32] Home Innovation Research Labs, *Whole-House Mechanical Ventilation Code: Safety and Performance Considerations*, International Code Council and National Association of Home Builders, October 2013, https://www.iccsafe.org/wp-content/uploads/proclamations/TN01-Whole-House-Ventilation_pdf.pdf (last visited Feb. 3, 2024).

The exhaust-only ventilation method is when a fan, commonly an efficient bath fan, exhausts indoor air, and outdoor makeup air is drawn into the house through leaks in the building enclosure. The supply-only ventilation method is when a fan draws outdoor air into the house, and indoor air escapes through the building enclosure and exhaust fan ducts.[33]

A balanced whole-house mechanical ventilation system is a combination of exhaust and supply methods providing approximately equal indoor exhaust and outdoor supply air flows, e.g., an exhaust fan combined with a supply fan or passive inlet vents. A balanced system may include a heat recovery ventilator (HRV) or an energy recovery ventilator (ERV).[34]

Hybrid

A hybrid ventilation whole-house mechanical ventilation system is a recent concept that consists in using the components and sizing of natural ventilation ducts coupled with non-constant low-pressure mechanical assistance. Mechanical assistance is only used to supplement natural forces when necessary. Natural forces means three different kinds of natural phenomena that cause air to move:[35]

- Wind that can penetrate the dwelling through entrances and exists.
- Thermal draught where the airflow is produced by the density difference between the hot air and the cold air, where the less dense hot air tends to rise and the denser cold air tends to go down.
- Aeraulic draught caused by the pressure difference linked to height, where the lower upright pression creates a depression that enables the air to circulate in the dwelling.

The hybrid ventilation start is automatic; it can be activated by a temperature sensor, a wind vane or a pressure switch. Fresh air is admitted through the humidity-controlled air inlets located in the dry rooms (e.g., bedrooms and living room), and stale air is evacuated through the wet rooms (e.g., bathrooms and kitchen) by humidity-controlled extraction grilles linked to the ventilation duct connected to the fan.[36]

Positive Input

A positive input ventilation system generally addresses ventilation issues in existing properties, such as condensation, damp and mold. Positive input ventilation pumps and circulates fresh filtered air into a house, forcing stale air out of the gaps and cracks in the fabric of the building. The unit is installed in the loft area, and a distribution diffuser is mounted in the ceiling in the room below. The continual supply and slight positive pressure result in the air in the property being continually diluted, displaced and replaced to create a healthier indoor air quality.[37]

Effect of the Bill

The bill provides thermal efficiency standards for unvented attic and unvented enclosed rafter assemblies.

The bill provides that unvented attic and unvented enclosed rafter assemblies that are insulated and air sealed with a minimum of **R-20 air-impermeable insulation**[38] meet the requirements of sections R402 of the Florida Building Code, 8th Edition (2023), Energy Conservation, if all of the following apply:

- The building has a blower door test result of less than **3 ACH50**.
- The building has a positive input ventilation system or a balanced or hybrid **whole-house mechanical ventilation system**.

[33] *Id*.
[34] *Id*.
[35] Aereco, *How does hybrid ventilation work?*, https://www.aereco.com/ventilation/ventilation-systems/hybrid-ventilation/ (last visited Feb. 3, 2024).
[36] *Id*.
[37] Hugh Metcalf, *Positive Input Ventilation Explained: Pros, Cons, Costs and More*, Homebuilding & Renovating, Sep. 9, 2021, https://www.homebuilding.co.uk/advice/positive-input-ventilation (last visited Feb. 3, 2024).
[38] Current law requires R-30 or R-38, depending on Climate Zone.

- If the insulation is installed below the roof deck and the exposed portion of roof rafters is not already covered by the **R-20 air-impermeable insulation**, the exposed portion of the roof rafters is insulated by a minimum of **R-3 air-impermeable insulation** unless directly covered by a finished ceiling. Roof rafters are not required to be covered by a minimum of **R-3 air-impermeable insulation** if continuous insulation is installed above the roof deck.
- All indoor heating, cooling, and ventilation equipment and ductwork is inside the building thermal envelope.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 553.9065, F.S.; related to certain thermal efficiency standards.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow unvented attics and unvented enclosed rafter assemblies to be constructed cheaper by reducing insulation requirements.

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 requires updates to the Florida Building Code.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to thermal efficiency standards for unvented attic and unvented enclosed rafter assemblies; creating s. 553.9065, F.S.; providing that certain unvented attic and unvented enclosed rafter assemblies meet the requirements of the Florida Building Code, Energy Conservation; providing an effective date.

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

Section 1. Section 553.9065, Florida Statutes, is created to read:

553.9065 Thermal efficiency standards for unvented attic and unvented enclosed rafter assemblies.—Unvented attic and unvented enclosed rafter assemblies that are insulated and air sealed with a minimum of R-20 air-impermeable insulation meet the requirements of sections R402 of the Florida Building Code, 8th Edition (2023), Energy Conservation, if all of the following apply:

(1) The building has a blower door test result of less than 3 ACH50.

(2) The building has a positive input ventilation system or a balanced or hybrid whole-house mechanical ventilation system.

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

(3) If the insulation is installed below the roof deck and the exposed portion of roof rafters is not already covered by the R-20 air-impermeable insulation, the exposed portion of the roof rafters is insulated by a minimum of R-3 air-impermeable insulation unless directly covered by a finished ceiling. Roof rafters are not required to be covered by a minimum of R-3 air-impermeable insulation if continuous insulation is installed above the roof deck.

(4) All indoor heating, cooling, and ventilation equipment and ductwork is inside the building thermal envelope.

Section 2. This act shall take effect July 1, 2024.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1189 Corporate Actions
SPONSOR(S): Abbott
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Corporations that do business within Florida are governed by the requirements in the Florida Business Corporation Act, a law that is modeled after the Model Business Corporation Act promulgated by the American Bar Association in 1950.

The Department of State is the state's central location responsible for receiving and maintaining a number of corporate records. Florida law requires certain documents to be filed with the Division of Corporations (division) of the DOS in order for a business to be organized as a corporation, partnership, limited liability company (LLC), or other business/commercial entity.

The bill provides a statutory ratification procedure for corporate actions that may not have been properly authorized and for shares that may have been improperly issued. These improperly authorized corporate actions, that would otherwise be proper, are called defective corporate actions.

The bill provides a statutory ratification process that is intended to supplement common law ratification. Subsequent ratified defective corporate actions, under these proposed provisions, would remain subject to equitable review. The ratification procedure is intended to be available only where there is objective evidence that a corporate action was defectively implemented. The bill gives specified affected parties the ability to file motions in the circuit court of the applicable county.

The bill also provides a statutory method, though filing a single composite statement, for a registered agent to resign from more than one corporate entity at a time, if the specified entity has been inactive for 10 years or longer. The bill applies to the following business entity types:

- LLCs and foreign LLCs;
- Corporations and foreign corporations;
- Nonprofit corporations; and
- Limited partnerships and foreign limited partnerships.

The bill keeps the fee to file the registered agent resignation the same for the above listed business entity types, even if filing to resign from more than one entity at a time.

The bill has no impact on local government expenses and revenues. It has an indeterminable negative impact on state government revenues and an indeterminate positive impact on the private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Corporations that do business within Florida are governed by the requirements in the Florida Business Corporation Act, a law that is modeled after the Model Business Corporation Act (MBCA) promulgated by the American Bar Association (ABA) in 1950.[1]

Limited Liability Companies (Chapter 605)

A Limited Liability Company (LLC) is a type of business entity recognized by and regulated under chapter 605, F.S., the Florida Revised Limited Liability Company Act. Benefits to forming a business as an LLC include a flexible tax structure and a vertical liability shield, which limits the personal liability of the LLC's members and managers for company obligations. Currently, LLCs are the most popular business entity in Florida, with over 2 million active LLCs as of 2023.[2]

Corporations for Profit (Chapter 607)

A for profit corporation is a type of business entity recognized and regulated under chapter 607, F.S. In order for a corporation to organize, the entity must file articles of incorporation, including specifics such as a corporate name, address, number of shares, and the designation of a registered office and agent.[3]

Corporations Not for Profit (Chapter 617)

A corporation not for profit is a type of business entity recognized and regulated under chapter 617, F.S. The structure of corporations not for profit are similar to for profit corporations, needing the filing of articles of incorporation.

The Department of State

The Department of State (DOS) is the state's central location responsible for receiving and maintaining a number of corporate records. Florida law requires certain documents to be filed with the Division of Corporations (division) of the DOS in order for a business to be organized as a corporation, partnership, LLC, or other business/commercial entity. Business entities can file these documents and check their status through an internet portal that is maintained by the division.

Fees

In order to help maintain these records, the DOS is statutorily allowed to collect fees. Florida's fee requirements for business entities are some of the most competitive in the United States; where a corporation in Delaware (the state with the most incorporations, because of their notoriously pro-business laws) will pay no less than $175 and no more than $200,000 in annual fees, Florida only requires an aggregate of $150 in fees per year.[4]

In 2013, the Legislature passed a law to make fees more uniform across the various business law chapters. However, each specific type of business entity should be aware of the various fees associated with their respective business organization chapter.

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[1] *See generally* Chapter 607, F.S.
[2] Florida Department of State, Division of Corporations Yearly Statistics, *available at* https://dos.fl.gov/sunbiz/about-us/yearly-statistics/ (last visited January 2024).
[3] Section 607.0202, F.S.
[4] U.S. Securities and Exchange Commission, Schedule 14-A, Saga Communications, Inc. Proxy Statement (Apr. 16, 2020), *available at* https://www.sec.gov/Archives/edgar/data/0000886136/000110465921050534/tm2111304-1_def14a.htm, (last visited January 22, 2024).

The relevant fees for the bill are as follows:[5]

Corporation Fees	
New Florida/Foreign Corporation	
Filing Fees	$35.00
Registered Agent Designation	$35.00
Annual Reports	
Annual Report of a For Profit Corporation	$150.00
Annual Report of Not For Profit Corporation	$61.25
Resignation of Agent	
Resignation of Registered Agent of an Active Corporation	$87.50
Resignation of Registered Agent of an Administratively Dissolved/Voluntarily Dissolved/Withdrawn Corporation/Inactive Corporation	$35.00

Limited Liability Company Fees	
New Florida/Foreign LLC	
Filing Fee	$100.00
Registered Agent Designation Fee	$25.00
Annual Reports	
Annual Report	$138.75
Resignation of Agent	
Resignation of Registered Agent for an active LLC	$85.00
Resignation of Registered Agent for a dissolved/inactive LLC	$25.00

Defective Corporate Actions

Under the Florida Business Corporation Act, there are certain requirements that a corporation must establish in order to be considered a valid corporation and properly authorized. For instance, a corporation must file its articles of incorporation with the DOS to transact business in the state. If a corporation does not file those articles of incorporation or does not include the requirements of the articles of incorporation, they are not entitled to filing by the department and may be considered an invalid corporation.[6]

Additionally, a corporation could have filed all documents correctly, but made an error in the appointment of their board of directors. Subsequent actions by the corporation, after that incorrect appointment of the board of directors, may be considered invalid. Another potential scenario of a defective corporate action may arise when a corporation issues shares but did not adhere to the correct share issuing guidelines. Any subsequent action, after that incorrect share issuance, may be considered invalid.

Being an invalid corporation can also be referred to as being a defective corporation or an unauthorized corporation. However, because of their nature, corporations, whether it be the incorporator, the board of directors, an officer or agent of the corporation, or the shareholders, can take actions even though the corporation is technically defective, unauthorized, or invalid.

When an unauthorized or defective corporation takes an action, such as improperly issuing shares, a legal situation can arise. For example, a corporation that is trying to make a business deal with another entity or raise capital usually has to reveal certain corporate records for the other parties due diligence, discovering a defective corporate action can immediately halt a transaction or potential transaction. If a business deal has already been agreed upon prior to the discovering the defective corporate action, legal issues can arise.

[5] The Florida Department of State, Division of Corporations, Fees, *available at* https://dos.fl.gov/sunbiz/forms/fees/, (last visited January 22, 2024).
[6] Section 607.0120(1), F.S.

Currently, disputed acts or defective share issuances that are carried out by a defective or unauthorized corporation are governed by common law in the court system. These disputes can cost business entities time and money to resolve, in addition to the time and resources that have to be allocated by the state via the court system.

Amending Articles of Incorporation

The articles of incorporation govern a corporation. A corporation can amend or add as many articles of incorporation as necessary.[7] The amendment of an articles of incorporation must be adopted and approved. The adopting and approving can be done several ways, including, through the provided method in the articles of incorporation, either by the incorporators or board of directors, if shareholder action is not required, or by the shareholders or shareholders through voting groups.[8]

The amendment can be done in one single amendment form for a fee of $35.00.[9] This form, called the articles of amendment form, must be signed and delivered to the DOS, among other specific requirements laid out in statute.[10]

Active vs Dissolved Business Entities

The division annually assigns an accompanying status to business entities based on that business entities' filings and payment of fees. When a business entity pays their filing fees and files their initial required filings, (for an LLC it is their articles of organization, and for a corporation it is their articles of incorporation) the division will review the filings and if everything is satisfied the business entity will be assigned an "active" status.

After the initial filings to begin the business entity, a business entity is considered "active" when it has filed the annual report and paid the associated fee. Typically in the fall, the division will go through all of their filings and determine if a business entity is up to date in all of their filings and fees. If the division does not have the required information and associated fee on record they will assign the business entity an "inactive" status and the business entity will be administratively dissolved or administratively revoked.[11]

A business entity can determine their status by logging in to the online portal operated by the DOS, or they can file and pay to have the DOS send them a certificate of status, for a $5 fee for an LLC or an $8.75 fee for a corporation.[12]

A business entity may file a reinstatement application, accompanied with the associated fee, to reactivate their business status and become an "active" business entity again.

Registered Agents

Generally, one of the statutory requirements that a business entity must meet is designating a registered agent.[13] A registered agent must be an individual who resides in this state whose business address is identical to the address of the registered office.[14] The registered agent must also be available at that Florida address during normal business hours and promptly forward any significant legal or state documents to the business. Registered agents are required to serve as the contact for the

[7] Section 607.1001, F.S.
[8] Section 607.1003(1-9), F.S., provides various methods for amending the articles of incorporation.
[9] Florida Department of State, Division of Corporations, Articles of Amendment form, *available at* https://form.sunbiz.org/pdf/cr2e011.pdf, (last visited on January 22, 2024).
[10] Section 607.1006, F.S.
[11] Note that a general partnership is not required to file an annual report or pay an annual report fee.
[12] For LLCs *see* section 605.0213(12), F.S., and for Corporations *see* section 607.0122(19), F.S.
[13] S. 607.0501, F.S.
[14] *Id*.

business entity that receives service of process, legal notifications, and other official state documents for a business entity.

The DOS is required to maintain an accurate record of the registered agent and registered office for service of process, and must promptly furnish any information disclosed thereby upon request and payment of the required fee.[15] An individual within the business may serve as the entity's registered agent. Additionally, a business entity with an active Florida filling or registration may serve as a registered agent, however an entity cannot serve as its own registered agent.

Additionally, if a business entity does not appoint and maintain a registered agent, the DOS may administratively dissolve that business entity.[16]

In Florida, a registered agent is required for the following:
- Limited Liability Companies;
- Corporation/Foreign Corporation (for profit);
- Corporation/Foreign Corporation (not for profit);
- Limited Partnerships (domestic and foreign); and
- Limited Liability Partnerships (domestic and foreign).[17]

In order for a registered agent to resign as the registered agent of the business entity, the registered agent must complete a specific form, accompanied by the payment of the fee, and mail it in to the division. Currently, a registered agent must pay a separate fee to resign as a registered agent of each business entity, separately.

Effect of the Bill

Ratification of Defective Corporate Actions

The bill creates:
- Required procedures for ratifying a defective corporate action.
- Filing requirements for ratifying a defective corporate action.
- Provisions contemplating the jurisdiction and process for judicial proceedings regarding the validity of corporate actions.

Procedural Requirements

The bill creates definitions for certain terms, including:
- "Corporate action," which is defined as any action taken by or on behalf of a corporation, including any action taken by the incorporator the board of directors, a committee of the board of directors, an officer or agent of the corporation, or the shareholders;
- "Defective corporate action," which is defined as any corporate action purportedly taken which is, and at the time such corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization; or an overissue; and
- "Failure of authorization," which is defined as the failure to authorize, approve, or otherwise effect a corporate action in compliance with this chapter, the corporation's articles of incorporation or bylaws, a corporate resolution, or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such corporate action void or voidable.

[15] *Id*.
[16] For limited partnerships, s. 620.1809, F.S. governs.
[17] *Note that a general partnership is not required to have a registered agent*. Section 620.8301, F.S., states that each general partner is an agent of the partnership. (Note that a general partnership can still designate a separate registered agent, through their initial general partnership registration form, but partners of the general partnership are deemed to be agents and therefore the statutes do not require a general partnership to have a registered agent.)

Under the bill, a defective corporate action is not void or voidable if the defective corporate action was ratified (under the ratification requirements that are proposed by the bill.) The bill also emphasizes that the ratification process for a defective corporate action is not the exclusive means of ratifying or validating any defective corporate action.

Additionally, the bill provides that an overissue of shares over and above the number authorized in the corporation's articles of incorporation can be remedied by the adoption of an amendment to the articles of incorporation or other corporate action that authorizes or creates the putative shares that resulted in the overissue. This provision enables a corporation to cure an overissue occurring when shares have been duly authorized but are issued before articles of amendment are filed.

PROCEDURE FOR RATIFYING DEFECTIVE CORPORATION ACTIONS

The bill specifies steps that a corporation must take to remedy a defective corporate action. This includes stating:

- The defective corporate action to be ratified;
- The number and type of putative shares purportedly issued (if shares were issued);
- The date of the defective corporate action;
- The nature of the failure of authorization; and
- The approval of the ratification of the defective corporate action by the board of directors.

This bill provides a similar mechanism as described above for a scenario where the defective corporate action to be ratified relates to the election of the initial board of directors of the corporation. In this described scenario, the bill provides that after the board of directors takes action, it must refer the matter to shareholders for approval. The bill allows the board of directors to abandon ratification even after approval without further action.

PROCEDURE FOR ACTION ON RATIFICATION

The bill sets forth specific procedural requirements for the ratification of defective corporate actions. Specifically, the board of directors are subject to the same quorum and voting requirements for the ratification process that exist at the time such ratifying action is taken and that notice, of whether the defective corporate action is to be ratified at a meeting or by written consent, is required to be given to shareholders. The bill also provides notice requirements for whether the corporate action is to be ratified by written consent.

If the shareholders are meeting to ratify the election of a director, or if the ratification is through written consent, the bill requires that it must be approval by a majority vote. The bill clarifies that putative shares existing on the record date are only entitled to notice of matters relating to ratification and that such shares are not:

- Entitled to vote,
- Counted for quorum purposes, nor
- Counted in any written consent and that to ratify putative shares, an amendment to the articles of incorporation must be approved.

NOTICE REQUIREMENTS

The bill creates notice requirements to shareholders and holders of putative shares when shareholder action to approve the ratification of the defective corporate action is not required. The bill requires "prompt" notice to shareholders following the ratification of a corporate action by the board of directors. The bill provides for exceptions to the notice requirements, specifically, that notice is not required to be submitted to shareholders if notice is given pursuant to other applicable law, and a disclaimer that notice required by this section may be given in any manner that is authorized, and in the case of a public company, notice may be given by any means required by the United States Securities and Exchange Commission.

EFFECTS OF RATIFICATION

The bill specifies that the following provisions apply upon the validation effective time, without regard to the 120-day period during which a claim may be brought pursuant to other applicable law:

- Each defective corporate action ratified is not void or voidable as a result of the failure of authorization set forth and identified, and is deemed a valid corporate action effective as of the date of the defective corporate action.
- The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken is not void or voidable, and each such putative share is deemed to be an identical share or fraction of a valid share as of the time it was purportedly issued.
- Any corporate action taken subsequent to the defective corporate action ratified in reliance on such defective corporate action having been validly effected, and any subsequent defective corporate action resulting from such original defective corporate action, is valid as of the respective time such corporate action was taken.

This bill clarifies that any corporate action that was taken, subsequent to the defective corporate action that was ratified, in reliance on such defective corporate action and any subsequent defective corporate action resulting directly or indirectly from such original defective corporate action, is valid as of the respective time such corporate action was taken.

Filing Requirements

The bill establishes a new filing requirement (articles of validation) for defective corporate actions ratified that would have normally required a filing, regardless of whether or not the filing was properly made. The bill provides specific requirements for the content of the articles of validation, including that the articles of validation must be filed with the DOS and that the articles of validation will serve to amend or be a substitute for any other filings related to the defective corporate action.

Judicial Proceedings

The bill confers jurisdiction on the circuit court in the applicable county to hear and determine claims regarding the validity of any corporate action. The bill provides that it can be a successor thereto, a director of a corporation, or any shareholder of the corporation that can make the filing to a court to determine the validity of any corporate action and that when the filing is made, the court may make any findings or orders it deems proper under the circumstances.

Additionally, the bill clarifies that service of process for any of these such proceedings should follow the same rules as set forth in ch. 48, F.S.,[18] and that any action brought forth must be done so within 120 days after the validation effective time. The bill also sets forth a non-exclusive list of various factors that may be considered by the court and certain actions that the court may decide for determinations on the validity of the challenged corporate action.

Resignation of a Registered Agent

The bill amends the requirements relating to the resignation of registered agents for certain entities and amends the fees related to such resignations.

Inactive Entities

INACTIVE LLCS AND FOREIGN LLCS

The bill creates a mechanism for a registered agent to resign as the registered agent of more than one inactive limited liability company (LLC) or inactive foreign LLC, that has been inactive for 10 years or longer, through a single composite statement. Additionally, the bill sets forth requirements that the composite resignation statement should contain the name of each inactive or dissolved company and

[18] Chapter 48, F.S., codifies Florida's Rules of Civil Procedure relating to process and service of process.

the date of the respective companies' dissolution or inactivity. The resignation statement, or composite resignation statement, if resigning from two or more companies at a time, once filed with the DOS, must also be delivered to the company or each respective companies' current mailing address as it appears in the records of the DOS.

INACTIVE CORPORATIONS

The bill creates a mechanism for a registered agent of more than one inactive corporation that has been inactive for 10 years or longer, through a single composite statement. Additionally, the bill sets forth requirements that the composite resignation statement should contain the name of each inactive or dissolved corporation and the date of the respective corporation's dissolution or inactivity. The resignation statement, or composite resignation statement, if resigning from two or more corporations at a time, once filed with the DOS, must also be delivered to the corporation or each respective corporations' current mailing address as it appears in the records of the DOS.

INACTIVE FOREIGN CORPORATIONS

The bill creates a mechanism for a registered agent of more than one inactive foreign corporation that has been inactive for 10 years or longer, through a single composite statement. Additionally, the bill sets forth requirements that the composite resignation statement should contain the name of each inactive or dissolved foreign corporation and the date of the respective foreign corporation's dissolution or inactivity. The resignation statement, or composite resignation statement, if resigning from two or more corporations at a time, once filed with the DOS, must also be delivered to the corporation or each respective corporations' current mailing address as it appears in the records of the DOS.

INACTIVE NONPROFIT CORPORATIONS

The bill creates a mechanism for a registered agent of more than one inactive nonprofit corporation that has been inactive for 10 years or longer, through a single composite statement. Additionally, the bill sets forth requirements that the composite resignation statement should contain the name of each inactive or dissolved corporation and the date of the respective corporation's dissolution or inactivity. The resignation statement, or composite resignation statement, if resigning from two or more corporations at a time, once filed with the DOS, must also be delivered to the corporation or each respective corporations' current mailing address as it appears in the records of the DOS.

INACTIVE LPS AND FOREIGN LPS

The bill creates a mechanism for a registered agent to resign as the registered agent of more than one inactive limited partnership (LP) or inactive foreign LP, that has been inactive for 10 years or longer, through a single composite statement. Additionally, the bill sets forth requirements that the composite resignation statement should contain the name of each inactive or dissolved company and the date of the respective LPs or foreign LPs' dissolution or inactivity. The resignation statement, or composite resignation statement, if resigning from two or more partnerships at a time, once filed with the DOS, must also be delivered to the partnership or each respective partnerships' current mailing address as it appears in the records of the DOS.

Fees

Lastly, the bill provides that the fee to resign as a registered agent of:

- A dissolved or inactive LLC is the same, regardless of whether one is resigning from one entity or more than one entity.
- An inactive corporation is the same, regardless of whether one is resigning from one corporation or more than one corporation.
- An inactive corporation is the same, regardless of whether one is resigning from one corporation or more than one corporation.

B. SECTION DIRECTORY:

Section 1: Creates s. 607.0145, F.S.; relating to definitions.

Section 2: Creates s. 607.0146, F.S.; relating to defective corporate actions.
Section 3: Creates s. 607.0147, F.S.; relating to ratification of defective corporate actions.
Section 4: Creates s. 607.0148, F.S.; relating to action on ratification.
Section 5: Creates s. 607.0149, F.S.; relating to notice requirements.
Section 6: Creates s. 607.015, F.S.; relating to effects of ratification.
Section 7: Creates s. 607.0151, F.S.; relating to filings.
Section 8: Creates s. 607.0152, F.S.; relating to judicial proceedings.
Section 9: Amends s. 605.0115, F.S.; relating to resignation of LLC registered agents.
Section 10: Amends s. 607.0503, F.S.; relating to resignation of corporation registered agents.
Section 11: Amends s. 607.1509, F.S.; relating to resignation of foreign corporation registered agents.
Section 12: Amends s. 617.0502, F.S.; relating to resignation of corporation not for profit registered agents.
Section 13: Amends s. 620.1116, F.S.; relating to resignation of limited partnership registered agents.
Section 14: Amends s. 605.0213, F.S.; conforming a provision.
Section 15: Amends s. 607.0122, F.S.; conforming a provision.
Section 16: Amends s. 617.0122, F.S.; conforming a provision.
Section 17: Amends s. 605.0207, F.S.; conforming a provision.
Section 18: Amends s. 605.0113, F.S.; conforming a provision.
Section 19: Reenacts s. 658.23, F.S.
Section 20: Reenacts s. 607.0501, F.S.
Section 21: Reenacts s. 607.193, F.S.
Section 22: Reenacts s. 607.0120, F.S.
Section 23: Reenacts s. 607.1507 , F.S.
Section 24: Reenacts s. 39.8298, F.S.
Section 25: Reenacts s. 252.71, F.S.
Section 26: Reenacts s. 288.012, F.S.
Section 27: Reenacts s. 617.1807, F.S.
Section 28: Reenacts s. 617.2006, F.S.
Section 29: Reenacts s. 617.0501, F.S.
Section 30: Reenacts s. 617.0502, F.S.
Section 31: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill has an indeterminate negative impact on state government because the DOS is likely to see a reduced amount in collected fees if a registered agent is able to resign from more than one corporation at a time by only paying one fee, as opposed to current law which requires a registered agent to pay a fee to resign from each corporation separately.

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 positive impact on the private sector because registered agents will be able to resign from more than one corporation at a time by only paying one fee, as opposed to current law which requires a registered agent to pay a fee to resign from each corporation separately.

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 create rule-making authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to corporate actions; creating s. 607.0145, F.S.; defining terms; creating s. 607.0146, F.S.; providing that a defective corporate action is not void or voidable in certain circumstances; providing that ratification or validation under certain circumstances may not be deemed the exclusive means of either ratifying or validating defective corporate actions, and that the absence or failure of ratification does not affect the validity or effectiveness of certain corporate actions properly ratified; providing for the validity of putative shares in the event of an overissue; creating s. 607.0147, F.S.; requiring the board of directors to take certain action to ratify a defective corporate action; authorizing those exercising the powers of the directors to take certain action when certain defective actions are related to the ratification of the election of the initial board of directors; requiring members of the board of directors to seek approval of the shareholders under certain conditions; authorizing the board of directors to abandon ratification at any time before the validation effective time after action by the board and, if required, approval of the shareholders; creating s.

607.0148, F.S.; providing quorum and voting requirements for the ratification of certain defective corporate actions; requiring the board to send notice to all identifiable shareholders of a certain meeting date; requiring that the notice state that a purpose of the meeting is to consider ratification of a defective corporate action; requiring the board to send notice to all identifiable shareholders if the ratification of the defective corporate action is to be accomplished by consent of the shareholders; specifying the quorum and voting requirements applicable to ratification of the election of directors; prohibiting holders of putative shares from voting on ratification of any defective corporate action and providing that they may not be counted for quorum purposes or in certain written consent; requiring approval of certain amendments to the corporation's articles of incorporation under certain circumstances; creating s. 607.0149, F.S.; requiring that notice be given to shareholders of certain corporate action taken by the board of directors; providing requirements for such notice; providing requirements for such notice for corporations subject to certain federal reporting requirements; creating s. 607.015, F.S.; specifying the effects of ratification;

creating s. 607.0151, F.S.; requiring corporations to file articles of validation under certain circumstances; providing applicability; providing requirements for articles of validation; creating s. 607.0152, F.S.; authorizing certain persons and entities to file certain motions; providing for service of process; requiring that certain actions be filed within a specified timeframe; authorizing the court to consider certain factors in resolving certain issues; authorizing the courts to take certain actions in cases involving defective corporate actions; amending ss. 605.0115, 607.0503, 607.1509, 617.0502, and 620.1116, F.S.; providing that a registered agent may resign from certain limited liability companies or foreign limited liability companies, certain inactive or dissolved corporations, certain inactive or dissolved foreign corporations, certain active or inactive corporations, and certain limited partnerships or foreign limited partnerships, respectively, by delivering a specified statement of resignation to the Department of State; providing requirements for the statement; providing that a registered agent who is resigning from one or more such corporations, companies, or partnerships may elect to file a statement of resignation for each such

company, corporation, or partnership or a composite statement; providing requirements for composite statements; requiring that a copy of the each of the statements of resignation or the composite statement be mailed to the address on file with the department for the company, corporation, or partnership or companies, corporations, or partnerships, as applicable; amending ss. 605.0213, 607.0122, and 617.0122, F.S.; conforming provisions to changes made by the act; providing registered agents may pay one resignation fee regardless of whether resigning from one or multiple inactive or dissolved companies or corporations; reenacting s. 605.0207, F.S., relating to effective dates and times and to registered agents, respectively, to incorporate the amendments made to s. 605.0115, F.S., in references thereto; amending s. 605.0113, F.S.; conforming a cross-reference; reenacting s. 658.23(1), F.S., relating to submission of articles of incorporation, to incorporate the amendments made in s. 607.0122, F.S., in a reference thereto; reenacting s. 607.0501(4), F.S., relating to the registered offices and registered agents, to incorporate the change made to s. 607.0503, F.S., in a reference thereto; reenacting s. 607.193(2)(b), F.S., relating to supplemental corporate fees, to

incorporate the amendments made in ss. 605.0213 and 607.0122, F.S., in references thereto; reenacting ss. 607.0120(9) and 607.1507(4), F.S., relating to filing requirements and registered offices and agents of foreign corporations, respectively, to incorporate the amendments made to s. 607.1509, F.S., in references thereto; reenacting ss. 39.8298(1)(a), 252.71(2)(a), 288.012(6)(a), 617.1807, and 617.2006(4), F.S., relating to the Guardian Ad Litem direct-support organization, the Florida Emergency Management Assistance Foundation, State of Florida international offices, conversion to corporation not for profit, and incorporation of labor unions or bodies, respectively, to incorporate the amendment made in s. 617.0122, F.S., in references thereto; reenacting s. 617.0501(3) and 617.0503(1)(a), F.S., relating to registered agents, to incorporate the amendment made to s. 617.0502, F.S., in references thereto; providing an effective date.

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

Section 1. Section 607.0145, Florida Statutes, is created to read:

607.0145 Definitions.—As used in ss. 607.0145-607.0152,

the term:

(1) "Corporate action" means any action taken by or on behalf of a corporation, including any action taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation, or the shareholders.

(2) "Date of the defective corporate action" means the date, or, if the exact date is unknown, the approximate date, on which the defective corporate action was purported to have been taken.

(3) "Defective corporate action" means:

(a) Any corporate action purportedly taken which is, and at the time such corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization; or

(b) An overissue.

(4) "Failure of authorization" means the failure to authorize, approve, or otherwise effect a corporate action in compliance with this chapter, the corporation's articles of incorporation or bylaws, a corporate resolution, or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such corporate action void or voidable.

(5) "Overissue" means the purported issuance of:

(a) Shares of a class or series in excess of the number of

shares of the class or series the corporation has the power to issue under s. 607.0601 at the time of such issuance; or

(b) Shares of any class or series that is not then authorized for issuance by the corporation's articles of incorporation.

(6) "Putative shares" means the shares of any class or series, including shares issued upon exercise of rights, options, warrants or other securities convertible into shares of the corporation, or interests with respect to such shares, which were created or issued as a result of a defective corporate action and which:

(a) Would constitute valid shares but for any failure of authorization; or

(b) Cannot be determined by the board of directors to be valid shares.

(7) "Valid shares" means the shares of any class or series which have been duly authorized and validly issued, including as a result of ratification or validation under ss. 607.0145-607.0152.

(8) "Validation effective time," with respect to any defective corporate action ratified under ss. 607.0145-607.0152, means the later of the following:

(a) The date on which the ratification of the defective corporate action is approved by the shareholders, or if approval of shareholders is not required, the date on which the notice

required by s. 607.0149 becomes effective in accordance with s. 607.0141;

(b) If no articles of validation are required to be filed in accordance with s. 607.0151, the date on which the notice required by s. 607.0149 becomes effective in accordance with s. 607.0141; or

(c) If articles of validation are required to be filed in accordance with s. 607.0151, the date on which the articles of validation filed in accordance with s. 607.0151 become effective.

Section 2. Section 607.0146, Florida Statutes, is created to read:

607.0146 Defective corporate actions.—

(1) A defective corporate action is not void or voidable if:

(a) The defective corporate action was ratified in accordance with the requirements of s. 607.0147, including the filing, if required, of articles of validation pursuant to s. 607.0151; or

(b) The defective corporate action was validated pursuant to s. 607.0152.

(2) Ratification pursuant to s. 607.0147 or validation pursuant to s. 607.0152 may not be deemed to be the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification pursuant to ss.

607.0145-607.0152 does not, in and of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise, and it does not create a presumption that any such corporate action is or was a defective corporate action or is or was void or voidable.

(3) In the case of an overissue, putative shares are valid effective as of the date originally issued or purportedly issued upon:

(a) Adoption of an amendment to the articles of incorporation authorizing, designating, or creating such shares pursuant to ss. 607.0145-607.0152 and ss. 607.1001-607.1009; or

(b) Other corporate action taken under ss. 607.0145-607.0152 ratifying the authorization, designation, or creation of such shares.

Section 3. Section 607.0147, Florida Statutes, is created to read:

607.0147 Ratification of defective corporate actions.—

(1) To ratify a defective corporate action under this section, other than ratification of an election of the initial board of directors under subsection (2), the board of directors must ratify the action in accordance with s. 607.0148, stating all of the following:

(a) The defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly

issued.

(b) The date of the defective corporate action.

(c) The nature of the failure of authorization with respect to the defective corporate action that is the subject of the ratification.

(d) That the board of directors approves the ratification of the defective corporate action.

(2) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under s. 607.0205(1)(b), a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating all of the following:

(a) The name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation.

(b) The earlier of the dates on which either such persons first took such action or were purported to have been elected to the initial board of directors.

(c) That the ratification of the election of such person or persons to the initial board of directors is approved.

(3) If any action taken pursuant to this section, the corporation's articles of incorporation or bylaws, any corporate resolution, or any plan or agreement in effect at the time of the action to which the corporation is a party under subsection

(1) requires shareholder approval, or would have required shareholder approval, at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (1) must be submitted to the shareholders for approval in accordance with s. 607.0148.

(4) Unless otherwise provided in the action taken by the board of directors under subsection (1), after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

Section 4. Section 607.0148, Florida Statutes, is created to read:

607.0148 Action on ratification.—

(1) The quorum and voting requirements applicable to a ratifying action by the board of directors under s. 607.0147(1) are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time such ratifying action is taken.

(2)(a) If the ratification of the defective corporate action requires approval by the shareholders under s. 607.0147(3), and if the approval is to be given at a meeting, the corporation must notify each holder of valid and putative shares that, regardless of whether entitled to vote as of the

record date for notice of the meeting and as of the date of the occurrence of the defective corporate action, approval is required; however, such notice is not required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose, or one of the purposes, of the meeting is to consider ratification of a defective corporate action.

(b) If the ratification of the defective corporate action requires approval by the shareholders under s. 607.0147(3), and if the approval is to be ratified by one or more written consents of the shareholders, the corporation must notify each holder of valid and putative shares as of the record date of the action by written consent and as of the date of the occurrence of the defective corporate action, regardless of whether entitled to vote; however, notice is not required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose, or one of the purposes, of the written consent is to consider ratification of a defective corporate action.

(c) The notice must be accompanied by both of the following:

1. Either a copy of the action taken by the board of directors pursuant to s. 607.0147(1)(a), or the information

required pursuant to s. 607.0147(1)(a)-(d).

2. A statement that any claim asserting that the ratification of such defective corporate action, and any putative shares issued as a result of such defective corporate action, are not effective, or may only be effective on certain conditions, and must be brought within 120 days after the applicable validation effective time.

(3) Except as provided in subsection (4) with respect to the voting requirements to ratify the election of a director, any quorum and voting requirements applicable to the approval by the shareholders required by s. 607.0147(3) are those applicable, at the time of such shareholder approval, to the corporate action proposed to be ratified.

(4) The approval by shareholders at a meeting to ratify the election of a director requires that the votes cast by the voting group favoring such ratification exceed the votes cast by the voting group opposing such ratification at a meeting at which a quorum is present. Approval by shareholders by written consent to ratify the election of a director requires that the consents given by the voting group favoring such ratification represent a majority of the shares of the voting group.

(5) Holders of putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under s. 607.0147(3), and without giving effect to any ratification of putative shares which

becomes effective as a result of such vote, are not entitled to vote and may not be counted for quorum purposes in any vote to approve the ratification of any defective corporate action. Putative shares on the record date for the action by written consent, and without giving effect to any ratification of putative shares which becomes effective as a result of such written consent, are not entitled to be counted in any written consent to approve the ratification of any defective corporate action.

(6) If approval under this section of putative shares would result in an overissue, in addition to the approval required by s. 607.0147, approval is also required of an amendment to the corporation's articles of incorporation under ss. 607.1001-607.1009 to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there is no overissue.

Section 5. Section 607.0149, Florida Statutes, is created to read:

607.0149 Notice requirements.—

(1) Unless shareholder approval is required under s. 607.0147(3), prompt notice of an action taken by the board of directors under s. 607.0147 must be given to each holder of valid shares and each holder of putative shares, regardless of whether entitled to vote, which is a holder of valid shares or putative shares as of:

(a) The date of the action by the board of directors taken under s. 607.0147; and

(b) The date of the occurrence of the defective corporate action being ratified.

(2) Notice is not required to those holders of valid shares or those holders of putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(3) The notice must contain both of the following:

(a) Either a copy of the action taken by the board of directors pursuant to s. 607.0147(1)(a) or the information required by s. 607.0147(1)(a)-(d) or (2)(a), (b), and (c), as applicable.

(b) A statement that, in order to be considered, any claim asserting that the ratification of the defective corporate action, and any putative shares issued as a result of such defective corporate action, are not effective, or are effective only on certain conditions, and must be brought within 120 days after the applicable validation effective time.

(4) Notice is not required under this section with respect to any action required to be submitted to shareholders for approval pursuant s. 607.0147(3) if notice is given pursuant to s. 607.0148(2).

(5) Notice required by this section may be given in any manner authorized under s. 607.0141 and, for any corporation

subject to the reporting requirements of ss. 13 or 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of such notice with the United States Securities and Exchange Commission.

Section 6. Section 607.015, Florida Statutes, is created to read:

607.015 Effects of ratification.—The following provisions apply upon the validation effective time, without regard to the 120-day period during which a claim may be brought pursuant to s. 607.0152:

(1) Each defective corporate action ratified pursuant to s. 607.0147 is not void or voidable as a result of the failure of authorization set forth and identified pursuant to s. 607.0147(1) or (2) and is deemed a valid corporate action effective as of the date of the defective corporate action.

(2) The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken pursuant to s. 607.0147 is not void or voidable, and each such putative share is deemed to be an identical share or fraction of a valid share as of the time it was purportedly issued.

(3) Any corporate action taken subsequent to the defective corporate action ratified pursuant to ss. 607.0145-607.0152 in reliance on such defective corporate action having been validly effected, and any subsequent defective corporate action

resulting directly or indirectly from such original defective corporate action, is valid as of the respective time such corporate action was taken.

Section 7. Section 607.0151, Florida Statutes, is created to read:

607.0151 Filings.—

(1) If the defective corporate action ratified under ss. 607.0145-607.0152 would have required a filing under ss. 607.0145-607.0152, and either:

(a) Any previous filing requires any change to the filing to give effect to the defective corporate action in accordance with this section, including a change to the date and time of the effectiveness of such filing; or

(b) A filing was not previously filed with respect to the defective corporate action,

In lieu of a filing otherwise required under ss. 607.0145-607.0152, the corporation must file articles of validation in accordance with this section, and such articles of validation will serve to amend or be a substitute for any other filing with respect to such defective corporate action required under ss. 607.0145-607.0152.

(2) Articles of validation must specify all of the following:

(a) The defective corporate action that is the subject of

the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates upon which such putative shares were purported to have been issued.

(b) The date of the defective corporate action.

(c) The nature of the failure of authorization with respect to the defective corporate action.

(d) A statement that the defective corporate action was ratified pursuant to s. 607.0147, including the date on which the board of directors ratified such defective corporate action and, if applicable, the date on which the shareholders approved the ratification of such defective corporate action.

(e)1. If a filing was previously made with respect to the defective corporate action and such filing requires any change to give effect to the ratification of such defective corporate action pursuant to s. 607.0147:

a. The name, title, and filing date of the filing previously made and any articles of correction for that filing;

b. A statement that a filing containing all of the information required to be included under the applicable provisions of this chapter to give effect to such defective corporate action is attached as an exhibit to the articles of validation; and

c. The date and time that such filing is deemed to have

become effective.

2. If a filing was not previously made with respect to the defective corporate action and the defective corporate action ratified pursuant to s. 607.0147 would have required a filing under any other provision of this chapter:

a. A statement that a filing containing all of the information required to be included under the applicable provisions of this chapter to give effect to such defective corporate action is attached as an exhibit to the articles of validation; and

b. The date and time that such filing is deemed to have become effective.

Section 8. Section 607.0152, Florida Statutes, is created to read:

607.0152 Judicial proceedings regarding validity of corporate actions.—

(1) Subject to subsection (4), upon application by the corporation, any successor entity to the corporation; a director of the corporation; any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation, including any such shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified pursuant to s. 607.0147; or any other person claiming to be substantially and adversely affected by a ratification pursuant to s. 607.0147 may file in

the circuit court in the applicable county motions for any of the following:

(a) A determination of the validity and effectiveness of any corporate action or defective corporate action ratified pursuant to s. 607.0147.

(b) A determination of the validity and effectiveness of any ratification of any defective corporate action pursuant to s. 607.0147.

(c) A determination of the validity and effectiveness of any defective corporate action not ratified or not ratified effectively pursuant to s. 607.0147.

(d) A determination of the validity of any putative shares.

(e) A modification or waiver of any of the procedures specified in s. 607.0147 or s. 607.0148 to ratify a defective corporate action.

(2) Upon the filing of such a motion, the court may make such findings or issue such orders as it deems proper under the circumstances. Factors that the court may consider include, but are not limited to, those set forth in subsections (5) and (6).

(3) Service of process of the application under subsection (1) on the corporation may be made in any manner provided in chapter 48 for service on a corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require that

notice of the action be provided to other persons specified by the court and permit such other persons to intervene in the action.

(4) Notwithstanding any other law to the contrary, an action asserting that the ratification of a defective corporate action, and any putative shares issued as a result of such defective corporate action, is not effective, or may be given effect only upon certain conditions, and must be brought within 120 days after the validation effective time.

(5) In determining judicial proceedings under this section, the court may consider the following:

(a) Whether the defective corporate action was originally approved or effectuated with the belief that the approval or effectuation was in compliance with ss. 607.0145-607.0152, the articles of incorporation, or the bylaws of the corporation.

(b) Whether the corporation and board of directors have treated the defective corporate action as a valid act or transaction and whether any person has acted in reliance on the public record that such defective corporate action was valid.

(c) Whether any person will be or was harmed by the ratification or validation of the defective corporate action, excluding any harm that would have resulted if the defective corporate action had been valid when approved or effectuated.

(d) Whether any person will be harmed by the failure to ratify or validate the defective corporate action.

(e) Whether the defective corporate action was a conflict of interest transaction.

(f) Any other factors or considerations the court deems just and equitable.

(6) The court may do any of the following in connection with an action under this section:

(a) Declare that a ratification pursuant to s. 607.0147 is not effective or is effective only at a time or upon conditions established by the court.

(b) Validate and declare effective any defective corporate action or putative shares and impose conditions upon such validation.

(c) Require measures to remedy or avoid harm to any person substantially and adversely affected by a ratification pursuant to s. 607.0147 or by any order of the court pursuant to this section, excluding any harm that may have resulted if the defective corporate action had been valid when approved or effectuated.

(d) Order the department to accept an instrument for filing with an effective time specified by the court, which effective time may be before or after the date of such order, provided that the filing date of such instrument must be determined in accordance with s. 607.0123.

(e) Approve a stock ledger for the corporation which includes any shares ratified or validated pursuant to this

section or s. 607.0147.

(f) Declare that the putative shares are valid shares or require a corporation to issue and deliver valid shares in place of any putative shares.

(g) Order that a meeting of holders of valid shares or putative shares be held and exercise such powers as it deems appropriate with respect to such a meeting.

(h) Declare that a defective corporate action validated by the court is effective as of the date of the defective corporate action or at such other time as determined by the court.

(i) Declare that putative shares validated by the court are deemed to be identical valid shares or a fraction of valid shares as of the date originally issued or purportedly issued or at such other time as determined by the court.

(j) Require payment by the corporation of reasonable expenses, including attorney fees and costs, as determined by the court.

(k) Issue other orders as it deems necessary under the circumstances.

Section 9. Subsections (2), (3), (4), and (5) of section 605.0115, Florida Statutes, are redesignated as subsections (3), (4), (5), and (6), respectively, subsection (1) and present subsection (2) are amended, and a new subsection (2) is added to that section, to read:

605.0115 Resignation of registered agent.—

(1) A registered agent may resign as agent for an active limited liability company or a foreign limited liability company, an inactive limited liability company or an inactive foreign limited liability company, or for one or more inactive limited liability companies or inactive foreign limited liability companies that have been inactive for 10 years or longer ~~for a limited liability company or foreign limited liability company~~ by delivering for filing to the department a signed statement of resignation. The statement of resignation must contain: ~~containing the name of the limited liability company or foreign limited liability company.~~

(a) The name of the limited liability company or foreign limited liability company; and

(b) If the limited liability company or foreign limited liability company has been inactive or dissolved for 10 years or longer, the date of the inactivity or the date of the dissolution.

(2) If a registered agent is resigning from one or more limited liability companies or foreign limited liability companies that each have been inactive or dissolved for at least 10 years or longer, the registered agent may elect to file the statement of resignation separately for each inactive or dissolved limited liability company or foreign limited liability company or may elect to file a single composite statement of resignation covering two or more limited liability companies or

foreign limited liability companies. Such composite statement of resignation must set forth, for each inactive or dissolved limited liability company or foreign limited liability company covered by the statement of resignation, the name of each limited liability company or foreign limited liability company and each limited liability company's or foreign limited liability company's date of dissolution or date of inactivity.

(3)~~(2)~~ After delivering the statement of resignation to the department for filing, the registered agent must promptly mail:

(a) A copy of the statement to the limited liability company's or foreign limited liability company's current mailing address as it appears in the records of the department, if the registered agent is resigning from one limited liability or foreign limited liability company; or

(b) If the registered agent is resigning from more than one limited liability company or foreign limited liability company, a copy of either the composite statement of resignation or a separate notice of resignation for the inactive or dissolved limited liability companies or foreign limited liability companies, using the current mailing address of the respective companies as they appear in the records of the department.

Section 10. Present subsections (2) through (5) of section 607.0503, Florida Statutes, are redesignated as subsections (3)

through (6), respectively, a new subsection (2) is added to that section, and subsection (1) and present subsection (2) of that section are amended, to read:

607.0503 Resignation of registered agent.—

(1) A registered agent may resign as agent for an active ~~a~~ corporation, an inactive corporation, or for one or more inactive corporations that have been inactive for 10 years or longer by delivering to the department for filing a signed statement of resignation. The statement of resignation must contain: ~~containing~~

(a) The name of the corporation; and

(b) The date of the inactivity or the date of the dissolution, if the corporation has been inactive or dissolved for 10 years or longer.

(2) If a registered agent is resigning from one or more corporations that each have been inactive or dissolved for 10 years or longer, the registered agent may elect to file the statement of resignation separately for each inactive or dissolved corporation or may elect to file a single composite statement of resignation covering two or more corporations. Such composite statement of resignation must set forth, for each inactive or dissolved corporation covered by the statement of resignation, the name of each corporation and each corporation's date of dissolution or date of inactivity.

(3) ~~(2)~~ After delivering the statement of resignation to

the department for filing, the registered agent must promptly mail:

(a) A copy to the corporation at its current mailing address as it appears in the records of the department, if the registered agent is resigning from one corporation; or

(b) If the registered agent is resigning from more than one corporation, a copy of either the composite statement of resignation or a separate notice of resignation for the inactive or dissolved corporation to the current mailing address of the respective corporation as it appears in the records of the department.

Section 11. Present subsections (2) through (5) of section 607.1509, Florida Statutes, are redesignated as subsections (3) through (6), respectively, a new subsection (2) is added to that section, and subsection (1) and present subsection (2) of that section are amended, to read:

607.1509 Resignation of registered agent of foreign corporation.—

(1) A registered agent may resign as agent for a foreign corporation by delivering to the department for filing a signed statement of resignation for an active foreign corporation, an inactive foreign corporation, or for one or more inactive or dissolved foreign corporations that have each been inactive or dissolved for 10 years or longer. The statement of resignation must contain: ~~containing~~

(a) The name of the foreign corporation; and

(b) If the foreign corporation has been inactive or dissolved for 10 years or longer, the date that the foreign corporation became inactive or the date of dissolution.

(2) A registered agent resigning from more than one foreign corporation may elect to file the statement of resignation separately for each inactive or dissolved foreign corporation or may elect to file a single composite statement of resignation covering two or more foreign corporations. Such composite statement of resignation must set forth, for each inactive or dissolved foreign corporation covered by the statement of resignation, the name of the corporation and the date of inactivity or date of dissolution of the foreign corporation.

(3) ~~(2)~~ After delivering the statement of resignation to the department for filing, the registered agent must promptly mail:

(a) A copy to the foreign corporation at its current mailing address as it appears in the records of the department, if the registered agent is resigning from one foreign corporation; or

(b) If the registered agent is resigning from more than one foreign corporation, a copy of either the composite statement of resignation or a separate notice of resignation for the inactive or dissolved corporations to the current mailing

address as it appears in the records of the department.

Section 12. Present subsections (3), (4), and (5) of section 617.0502, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, new subsections (3), (4), and (5) are added to that section, and subsection (2) of that section is amended, to read:

617.0502 Change of registered office or registered agent; resignation of registered agent.—

(2) A ~~Any~~ registered agent may resign his or her agency appointment by signing and delivering for filing with the Department of State a statement of resignation for an active corporation or an inactive corporation, or for one or more inactive or dissolved corporations that have been inactive or dissolved for 10 years or longer. The statement of resignation must contain:

(a) The name of the corporation; and

(b) The date of the inactivity or date of the dissolution, if the corporation has been inactive or dissolved for 10 years or longer.

(3) If a registered agent is resigning from one or more corporations that have each been inactive or dissolved for 10 years or longer, the registered agent may elect to file the statement of resignation separately for each inactive or dissolved corporation or may elect to file a single composite statement of resignation covering two or more corporations. Such

composite statement of resignation must set forth, for each inactive or dissolved corporation covered by the statement of resignation, the respective name of the corporation and the date of dissolution or date of inactivity of the corporation.

(4) After delivering the statement of resignation to the department for filing, the registered agent must promptly mail:

(a) A copy to the corporation at its current mailing address as it appears in the records of the department, if the registered agent is resigning from one corporation; or

(b) A copy of either the composite statement of resignation or a separate notice of resignation for the inactive or dissolved corporation to the current mailing address of the respective corporation as it appears in the records of the department if the registered agent is resigning from more than one corporation ~~and mailing a copy of such statement to the corporation at its principal office address shown in its most recent annual report or, if none, filed in the articles of incorporation or other most recently filed document. The statement of resignation shall state that a copy of such statement has been mailed to the corporation at the address so stated~~.

(5) The agency is terminated as of the 31st day after the date on which the statement was filed and unless otherwise provided in the statement, termination of the agency acts as a termination of the registered office.

Section 13. Present subsections (2) and (3) of section 620.1116, Florida Statutes, are redesignated as subsections (3) and (4), respectively, a new subsection (2) is added to that section, and subsection (1) and present subsection (2) are amended, to read:

620.1116 Resignation of registered agent.—

(1) In order to resign as registered agent of a limited partnership or foreign limited partnership, the agent must deliver to the Department of State for filing a signed statement of resignation for an active limited partnership or foreign limited partnership, or more than one inactive or dissolved limited partnership or foreign limited partnership that have been inactive or dissolved for 10 years or longer containing the following:

(a) The name of the limited partnership or foreign limited partnership; and

(b) The date that the limited partnership or foreign limited partnership became inactive or the date of dissolution, if the limited partnership or foreign limited partnership has been inactive or dissolved for 10 years or longer.

(2) If a registered agent is resigning from more than one limited partnership or foreign limited partnership that each have been inactive or dissolved for 10 years or longer, the registered agent may elect to file the statement of resignation separately for each inactive or dissolved limited partnership or

foreign limited partnership or may elect to file a single composite statement of resignation covering two or more limited partnerships or foreign limited partnerships. Such composite statement of resignation must, for each inactive or dissolved limited partnership or foreign limited partnership, set forth the respective name of the limited partnership or foreign limited partnership and the date of dissolution or the date that the limited partnership or foreign limited partnership became inactive.

(3) ~~(2)~~ After filing the statement with the Department of State, the registered agent shall mail:

(a) A copy to the limited partnership's or foreign limited partnership's current mailing address as it appears in the records of the department, if the registered agent is resigning from one limited partnership or foreign limited partnership; or

(b) A copy of either the composite statement of resignation or a separate notice of resignation for the inactive or dissolved limited partnership or foreign limited partnership, to the current mailing address of the respective limited partnership or foreign limited partnership as it appears in the records of the department if the registered agent is resigning from more than one limited partnership or foreign limited partnership.

Section 14. Subsection (9) of section 605.0213, Florida Statutes, is amended to read:

605.0213 Fees of the department.—The fees of the department under this chapter are as follows:

(9) For filing a registered agent's statement of resignation from inactive or ~~a~~ dissolved limited liability companies ~~company~~, $25.

Section 15. Subsection (7) of section 607.0122, Florida Statutes, is amended to read:

607.0122 Fees for filing documents and issuing certificates.—The department shall collect the following fees when the documents described in this section are delivered to the department for filing:

(7) Agent's statement of resignation from inactive corporations ~~an inactive corporation~~: $35.

Section 16. Subsection (7) of section 617.0122, Florida Statutes, is amended to read:

617.0122 Fees for filing documents and issuing certificates.—The Department of State shall collect the following fees on documents delivered to the department for filing:

(7) Agent's statement of resignation from inactive corporations ~~corporation~~: $35.

Any citizen support organization that is required by rule of the Department of Environmental Protection to be formed as a nonprofit organization and is under contract with the department

is exempt from any fees required for incorporation as a nonprofit organization, and the Secretary of State may not assess any such fees if the citizen support organization is certified by the Department of Environmental Protection to the Secretary of State as being under contract with the Department of Environmental Protection.

Section 17. For the purpose of incorporating the amendments made by this act to section 605.0115, Florida Statutes, in a reference thereto, section 605.0207, Florida Statutes, is reenacted to read:

605.0207 Effective date and time.—Except as otherwise provided in s. 605.0208, and subject to s. 605.0209(3), any document delivered to the department for filing under this chapter may specify an effective time and a delayed effective date. In the case of initial articles of organization, a prior effective date may be specified in the articles of organization if such date is within 5 business days before the date of filing. Subject to ss. 605.0114, 605.0115, 605.0208, and 605.0209, a record filed by the department is effective:

(1) If the record filed does not specify an effective time and does not specify a prior or a delayed effective date, on the date and at the time the record is accepted as evidenced by the department's endorsement of the date and time on the filing.

(2) If the record filed specifies an effective time, but not a prior or delayed effective date, on the date the record is

accepted, as evidenced by the department's endorsement, and at the time specified in the filing.

(3) If the record filed specifies a delayed effective date, but not an effective time, at 12:01 a.m. on the earlier of:

(a) The specified date; or

(b) The 90th day after the record is filed.

(4) If the record filed specifies a delayed effective date and an effective time, at the specified time on or the earlier of:

(a) The specified date; or

(b) The 90th day after the record is filed.

(5) If the record filed is the initial articles of organization and specifies an effective date before the date of the filing, but no effective time, at 12:01 a.m. on the later of:

(a) The specified date; or

(b) The 5th business day before the record is filed.

(6) If the record filed is the initial articles of organization and specifies an effective time and an effective date before the date of the filing, at the specified time on the later of:

(a) The specified date; or

(b) The 5th business day before the record is filed.

(7) If the record filed does not specify the time zone or

place at which the date or time, or both, is to be determined, the date or time, or both, at which it becomes effective shall be those prevailing at the place of filing in this state.

Section 18. Paragraph (b) of subsection (3) of section 605.0113, Florida Statutes, is amended to read:

605.0113 Registered agent.—

(3) The duties of a registered agent are as follows:

(b) If the registered agent resigns, to provide the notice required under s. 605.0115(3) ~~s. 605.0115(2)~~ to the company or foreign limited liability company at the address most recently supplied to the agent by the company or foreign limited liability company.

Section 19. For the purpose of incorporating the amendment made by this act to section 607.0122, Florida Statutes, in a reference thereto, subsection (1) of section 658.23, Florida Statutes, is reenacted to read:

658.23 Submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.—

(1) Within 3 months after approval by the office and the appropriate federal regulatory agency, the applicant shall submit its duly executed articles of incorporation to the office, together with the filing fee due the Department of State under s. 607.0122.

Section 20. For the purpose of incorporating the amendment

made by this act to section 607.0503, Florida Statutes, in a reference thereto, subsection (4) of section 607.0501, Florida Statutes, is reenacted to read:

607.0501 Registered office and registered agent.—

(4) The duties of a registered agent are:

(a) To forward to the corporation at the address most recently supplied to the registered agent by the corporation, a process, notice, or demand pertaining to the corporation which is served on or received by the registered agent; and

(b) If the registered agent resigns, to provide the notice required under s. 607.0503 to the corporation at the address most recently supplied to the registered agent by the corporation.

Section 21. For the purpose of incorporating the amendments made by this act to sections 605.0213 and 607.0122, Florida Statutes, in references thereto, paragraph (b) of subsection (2) of section 607.193, Florida Statutes, is reenacted to read:

607.193 Supplemental corporate fee.—

(2)

(b) In addition to the fees levied under ss. 605.0213, 607.0122, and 620.1109 and the supplemental corporate fee, a late charge of $400 shall be imposed if the supplemental corporate fee is remitted after May 1 except in circumstances in which a business entity was administratively dissolved or its

certificate of authority was revoked due to its failure to file an annual report and the entity subsequently applied for reinstatement and paid the applicable reinstatement fee.

Section 22. For the purpose of incorporating the amendment made by this act to section 607.1509, Florida Statutes, in a reference thereto, subsection (9) of section 607.0120, Florida Statutes, is reenacted to read:

607.0120 Filing requirements.—

(9) The document must be delivered to the office of the department for filing. Delivery may be made by electronic transmission if and to the extent permitted by the department. If it is filed in typewritten or printed form and not transmitted electronically, the department may require one exact or conformed copy, to be delivered with the document, except as provided in s. 607.1509.

Section 23. For the purpose of incorporating the amendment made by this act to section 607.1509, Florida Statutes, subsection (4) of section 607.1507, Florida Statutes, is reenacted to read:

607.1507 Registered office and registered agent of foreign corporation.—

(4) The duties of a registered agent are as follows:

(a) To forward to the foreign corporation at the address most recently supplied to the registered agent by the foreign corporation, a process, notice, or demand pertaining to the

foreign corporation which is served on or received by the registered agent; and

(b) If the registered agent resigns, to provide the notice required under s. 607.1509 to the foreign corporation at the address most recently supplied to the registered agent by the foreign corporation.

Section 24. For the purpose of incorporating the amendment made by this act to section 617.0122, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 39.8298, Florida Statutes, is reenacted to read:

39.8298 Guardian Ad Litem direct-support organization.—

(1) AUTHORITY.—The Statewide Guardian Ad Litem Office created under s. 39.8296 is authorized to create a direct-support organization.

(a) The direct-support organization must be a Florida corporation not for profit, incorporated under the provisions of chapter 617. The direct-support organization shall be exempt from paying fees under s. 617.0122.

Section 25. For the purpose of incorporating the amendment made by this act to section 617.0122, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 252.71, Florida Statutes, is reenacted to read:

252.71 Florida Emergency Management Assistance Foundation.—

(2) The foundation is hereby created as a direct-support

organization of the division to provide assistance, funding, and support to the division in its disaster response, recovery, and relief efforts for natural emergencies.

(a) The foundation must be an organization that is a Florida nonprofit corporation incorporated under chapter 617, approved by the Department of State, and recognized under s. 501(c)(3) of the Internal Revenue Code. The foundation is exempt from paying fees under s. 617.0122.

Section 26. For the purpose of incorporating the amendment made by this act to section 617.0122, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 288.012, Florida Statutes, is reenacted to read:

288.012 State of Florida international offices; direct-support organization.—The Legislature finds that the expansion of international trade and tourism is vital to the overall health and growth of the economy of this state. This expansion is hampered by the lack of technical and business assistance, financial assistance, and information services for businesses in this state. The Legislature finds that these businesses could be assisted by providing these services at State of Florida international offices. The Legislature further finds that the accessibility and provision of services at these offices can be enhanced through cooperative agreements or strategic alliances between private businesses and state, local, and international governmental entities.

(6)(a) The department shall establish and contract with a direct-support organization, organized as a nonprofit under chapter 617 and recognized under s. 501(c)(3) of the Internal Revenue Code, to carry out the provisions of this section; assist with the coordination of international trade development efforts; and assist in development and planning related to foreign investment, international partnerships, and other international business and trade development. The organization is exempt from paying fees under s. 617.0122.

Section 27. For the purpose of incorporating the amendment made by this act to section 617.0122, Florida Statutes, in a reference thereto, section 617.1807, Florida Statutes, is reenacted to read:

617.1807 Conversion to corporation not for profit; authority of circuit judge.—If the circuit judge to whom the petition and proposed articles of incorporation are presented finds that the petition and proposed articles are in proper form, he or she shall approve the articles of incorporation and endorse his or her approval thereon; such approval shall provide that all of the property of the petitioning corporation shall become the property of the successor corporation not for profit, subject to all indebtedness and liabilities of the petitioning corporation. The articles of incorporation with such endorsements thereupon shall be sent to the Department of State, which shall, upon receipt thereof and upon payment of all taxes

due the state by the petitioning corporation, if any, issue a certificate showing the receipt of the articles of incorporation with the endorsement of approval thereon and of the payment of all taxes to the state. Upon payment of the filing fees specified in s. 617.0122, the Department of State shall file the articles of incorporation, and from thenceforth the petitioning corporation shall become a corporation not for profit under the name adopted in the articles of incorporation and subject to all the rights, powers, immunities, duties, and liabilities of corporations not for profit under state law, and its rights, powers, immunities, duties, and liabilities as a corporation for profit shall cease and determine.

Section 28. For the purpose of incorporating the amendment made by this act to section 617.0122, Florida Statutes, in a reference thereto, subsection (4) of section 617.2006, Florida Statutes, is reenacted to read:

617.2006 Incorporation of labor unions or bodies.—Any group or combination of groups of workers or wage earners, bearing the name labor, organized labor, federation of labor, brotherhood of labor, union labor, union labor committee, trade union, trades union, union labor council, building trades council, building trades union, allied trades union, central labor body, central labor union, federated trades council, local union, state union, national union, international union, district labor council, district labor union, American

Federation of Labor, Florida Federation of Labor, or any component parts or significant words of such terms, whether the same be used in juxtaposition or with interspace, may be incorporated under this act.

(4) Upon the filing of the articles of incorporation and the petition, and the giving of such notice, the circuit judge to whom such petition may be addressed shall, upon the date stated in such notice, take testimony and inquire into the admissions and purposes of such organization and the necessity therefor, and upon such hearing, if the circuit judge shall be satisfied that the allegations set forth in the petition and articles of incorporation have been substantiated, and shall find that such organization will not be harmful to the community in which it proposes to operate, or to the state, and that it is intended in good faith to carry out the purposes and objects set forth in the articles of incorporation, and that there is a necessity therefor, the judge shall approve the articles of incorporation and endorse his or her approval thereon. Upon the filing of the articles of incorporation with its endorsements thereupon with the Department of State and payment of the filing fees specified in s. 617.0122, the subscribers and their associates and successors shall be a corporation by the name given.

Section 29. For the purpose of incorporating the amendment made by this act to section 617.0502, Florida Statutes, in a

reference thereto, subsection (3) of section 617.0501, Florida Statutes, is reenacted to read:

617.0501 Registered office and registered agent.—

(3) A registered agent appointed pursuant to this section or a successor registered agent appointed pursuant to s. 617.0502 on whom process may be served shall each file a statement in writing with the Department of State, in such form and manner as shall be prescribed by the department, accepting the appointment as a registered agent simultaneously with his or her being designated. Such statement of acceptance shall state that the registered agent is familiar with, and accepts, the obligations of that position.

Section 30. For the purpose of incorporating the amendment made by this act to section 617.0502, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 617.0503, Florida Statutes, is reenacted to read:

617.0503 Registered agent; duties; confidentiality of investigation records.—

(1)(a) Each corporation, foreign corporation, or alien business organization that owns real property located in this state, that owns a mortgage on real property located in this state, or that transacts business in this state shall have and continuously maintain in this state a registered office and a registered agent and shall file with the Department of State notice of the registered office and registered agent as provided

in ss. 617.0501 and 617.0502. The appointment of a registered agent in compliance with s. 617.0501 or s. 617.0502 is sufficient for purposes of this section if the registered agent so appointed files, in the form and manner prescribed by the Department of State, an acceptance of the obligations provided for in this section.

Section 31. This act shall take effect July 1, 2024.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1189 by Rep. Abbott
Corporate Actions

AMENDMENT SUMMARY
February 6, 2024

Amendment 1 by Rep. Abbott (Line 159): The amendment conforms to the Senate bill, which is substantively identical to the House bill, with a few 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: Regulatory Reform & Economic Development Subcommittee
Representative Abbott offered the following:

Amendment (with title amendment)

Remove lines 159-956 and insert:

the corporation, or interests with respect to such shares, that were created or issued as a result of a defective corporate action and that:

(a) Would constitute valid shares but for any failure of authorization; or

(b) Cannot be determined by the board of directors to be valid shares.

(7) "Valid shares" means the shares of any class or series that have been duly authorized and validly issued in accordance

with this chapter, including as a result of ratification or validation under ss. 607.0145-607.0152.

(8)(a) "Validation effective time," with respect to any defective corporate action ratified under ss. 607.0145-607.0152, means the later of the following:

1. The date and time at which the ratification of the defective corporate action is approved by the shareholders, or if approval of shareholders is not required, the date and time at which the notice required by s. 607.0149 becomes effective in accordance with s. 607.0141;

2. If no articles of validation are required to be filed in accordance with s. 607.0151, the date and time at which the notice required by s. 607.0149 becomes effective in accordance with s. 607.0141; or

3. If articles of validation are required to be filed in accordance with s. 607.0151, the date and time at which the articles of validation filed in accordance with s. 607.0151 become effective.

(b) The validation effective time will not be affected by the filing or pendency of a judicial proceeding under s. 607.0152 or any other law unless otherwise ordered by the court.

Section 2. Section 607.0146, Florida Statutes, is created to read:

607.0146 Defective corporate actions.—

(1) A defective corporate action is not void or voidable if:

(a) The defective corporate action was ratified in accordance with the requirements of s. 607.0147, including the filing, if required, of articles of validation pursuant to s. 607.0151; or

(b) The defective corporate action was validated in accordance with s. 607.0152.

(2) Ratification under s. 607.0147 or validation under s. 607.0152 shall not be deemed to be the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification in accordance with ss. 607.0145-607.0152 will not, in and of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise, and it does not create a presumption that any such corporate action is or was a defective corporate action or is or was void or voidable.

(3) In the case of an overissue, putative shares will be valid shares effective as of the date originally issued or purportedly issued upon:

(a) The effectiveness under ss. 607.0145-607.0152 and ss. 607.1001-607.1009 of an amendment to the articles of incorporation authorizing, designating, or creating such shares; or

(b) The effectiveness of any other corporate action taken under ss. 607.0145-607.0152 ratifying the authorization, designation, or creation of such shares.

Section 3. Section 607.0147, Florida Statutes, is created to read:

607.0147 Ratification of defective corporate actions.—

(1) To ratify a defective corporate action under this section, other than to ratify an election of the initial board of directors under subsection (2), the board of directors must take the action in accordance with s. 607.0148, stating all of the following:

(a) The defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued.

(b) The date of the defective corporate action.

(c) The nature of the failure of authorization with respect to the defective corporate action to be ratified.

(d) That the board of directors approves the ratification of the defective corporate action.

(2) If a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under s. 607.0205(1)(b), a majority of the persons who, at the time of the ratification, are exercising the powers of directors must take an action stating all of the following:

(a) The name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation.

(b) The earlier of the date on which either such persons first took such action or were purported to have been elected to the initial board of directors.

(c) That the ratification of the election of such person or persons as the initial board of directors is approved.

(3) If any provision of this chapter, the corporation's articles of incorporation or bylaws, any corporate resolution, or any plan or agreement in effect at the time action to which the corporation is a party under subsection (1) is taken requires shareholder approval, or would have required shareholder approval, at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (1) must be submitted to the shareholders for approval in accordance with s. 607.0148.

(4) Unless otherwise provided in the action taken by the board of directors under subsection (1), after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

Section 4. Section 607.0148, Florida Statutes, is created to read:

607.0148 Action on ratification.—

(1) The quorum and voting requirements applicable to a ratifying action by the board of directors under s. 607.0147(1) are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time such ratifying action is taken.

(2)(a) If the ratification of the defective corporate action requires approval by the shareholders under s. 607.0147(3), and if the approval is to be given at a meeting, the corporation must give notice of the meeting to each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of the defective corporate action; however, such notice is not required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose, or one of the purposes, of the meeting is to consider ratification of a defective corporate action.

(b) If the ratification of the defective corporate action requires approval by the shareholders under s. 607.0147(3), and if the approval is to be ratified by one or more written consents of the shareholders, the corporation must give notice

of the action taken by such written consent to each holder of valid and putative shares as of the record date of the action by written consent and as of the date of the occurrence of the defective corporate action, regardless of whether entitled to vote; however, notice is not required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose, or one of the purposes, of the written consent was to ratify the defective corporate action.

(c) The notice must be accompanied by both of the following:

1. Either (i) a copy of the action taken by the board of directors in accordance with s. 607.0147(1), or (ii) the information required by s. 607.0147(1)(a)-(d).

2. A statement that any claim asserting that the ratification of such defective corporate action, and any putative shares issued as a result of such defective corporate action, should not be effective, or should only be effective on certain conditions, and must be brought, if at all, within 120 days after the applicable validation effective time.

(3) Except as provided in subsection (4) with respect to the voting requirements to ratify the election of a director, any quorum and voting requirements applicable to the approval by the shareholders required by s. 607.0147(3) will be the quorum

and voting requirements that are applicable, at the time of such shareholder approval, to the defective corporate action proposed to be ratified.

(4) The approval by shareholders at a meeting to ratify the election of a director requires that the votes cast within the voting group favoring such ratification exceed the votes cast within the voting group opposing such ratification of the election at a meeting at which a quorum is present. Approval by shareholders by written consent to ratify the election of a director requires that the consents given within the voting group favoring such ratification represent a majority of the shares of the voting group.

(5) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under s. 607.0147(3), and without giving effect to any ratification of putative shares that becomes effective as a result of such vote, will neither be entitled to vote nor be counted for quorum purposes in any vote to approve the ratification of any defective corporate action. Putative shares on the record date for an action by written consent, and without giving effect to any ratification of putative shares that becomes effective as a result of such written consent, will not be entitled to be counted in any written consent to approve the ratification of any defective corporate action.

(6) If approval under this section of putative shares would result in an overissue, in addition to the approval required by s. 607.0147(3), approval of an amendment to the corporation's articles of incorporation under ss. 607.1001-607.1009 to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there is no overissue will also be required.

Section 5. Section 607.0149, Florida Statutes, is created to read:

607.0149 Notice requirements.—

(1) Unless shareholder approval is required under s. 607.0147(3), prompt notice of an action taken by the board of directors under s. 607.0147 must be given to each holder of valid shares and each holder of putative shares, regardless of whether entitled to vote, that is a holder of valid shares or putative shares as of:

(a) The date of the action by the board of directors taken under s. 607.0147; and

(b) The date of the occurrence of the defective corporate action being ratified.

(2) Notice is not required to be given to those holders of valid shares or those holders of putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(3) The notice must contain both of the following:

(a) Either (i) a copy of the action taken by the board of directors pursuant to s. 607.0147(1), or (ii) the information required by s. 607.0147(1)(a)-(d) or s. 607.0147(2)(a), (b), and (c), as applicable.

(b) A statement that, in order to be considered, any claim asserting that the ratification of the defective corporate action, and any putative shares issued as a result of such defective corporate action, should not be effective, or should be effective only on certain conditions, and must be brought, if at all, within 120 days after the applicable validation effective time.

(4) Notice under this section is not required with respect to any action required to be submitted to shareholders for approval pursuant s. 607.0147(3) if notice is given in accordance with s. 607.0148(2).

(5) Notice required by this section may be given in any manner permitted under s. 607.0141 and, for any corporation subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of such notice with the United States Securities and Exchange Commission.

Section 6. Section 607.0150, Florida Statutes, is created to read:

607.0150 Effects of ratification.—The following provisions apply from and after the validation effective time, without

regard to the 120-day period during which a claim may be brought under s. 607.0152:

(1) Each defective corporate action ratified in accordance with s. 607.0147 will not be void or voidable as a result of the failure of authorization set forth and identified in the action taken under s. 607.0147(1) or (2) and will be deemed a valid corporate action effective as of the date of the defective corporate action.

(2) The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken in accordance with s. 607.0147 will not be void or voidable, and each such putative share or fraction of a putative share will be deemed to be an identical share or fraction of a valid share as of the time it was purportedly issued.

(3) Any corporate action taken subsequent to the defective corporate action ratified pursuant to ss. 607.0145-607.0152 in reliance on such defective corporate action having been validly effected, and any subsequent defective corporate action resulting directly or indirectly from such original defective corporate action, will be valid as of the respective time such corporate action was taken.

Section 7. Section 607.0151, Florida Statutes, is created to read:

607.0151 Filings.—

(1) If the defective corporate action ratified under ss. 607.0145-607.0152 would have required a filing under this chapter and either:

(a) Any previous filing requires any change to the filing to give effect to the defective corporate action in accordance with this section, including, but not limited to, a change to the date and time of the effectiveness of such filing; or

(b) A filing was not previously filed in respect of the defective corporate action,

In lieu of a filing otherwise required under this chapter, the corporation must file articles of validation in accordance with this section, and such articles of validation will serve to amend or be a substitute for any other filing with respect to such defective corporate action required by this chapter.

(2) The articles of validation must specify all of the following:

(a) The defective corporate action that is the subject of the articles of validation, including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates upon which such putative shares were purported to have been issued.

(b) The date of the defective corporate action.

(c) The nature of the failure of authorization in respect of the defective corporate action.

(d) A statement that the defective corporate action was ratified in accordance with s. 607.0147, including the date on which the board of directors ratified such defective corporate action and, if applicable, the date on which the shareholders approved the ratification of such defective corporate action.

(e)1. If a filing was previously made in respect of the defective corporate action and such filing requires any change to give effect to the ratification of such defective corporate action pursuant to s. 607.0147:

a. The name, title, and filing date of the filing previously made and any articles of correction for that filing;

b. A statement that a filing containing all of the information required to be included under the applicable provisions of this chapter to give effect to such defective corporate action is attached as an exhibit to the articles of validation; and

c. The date and time that such filing is deemed to have become effective.

2. If a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified pursuant to s. 607.0147 would have required a filing under any other provision of this chapter:

a. A statement that a filing containing all of the information required to be included under the applicable provisions of this chapter to give effect to such defective corporate action is attached as an exhibit to the articles of validation; and

b. The date and time that such filing is deemed to have become effective.

Section 8. Section 607.0152, Florida Statutes, is created to read:

607.0152 Judicial proceedings regarding validity of corporate actions.—

(1) Subject to subsection (4), upon application by the corporation, any successor entity to the corporation, a director of the corporation, any shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation, including any such shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner as of the date of the defective corporate action ratified pursuant to s. 607.0147; or any other person claiming to be substantially and adversely affected by a ratification in accordance with s. 607.0147, the circuit court in the applicable county may take any one or more of the following actions:

(a) Determine the validity and effectiveness of any corporate action or defective corporate action ratified pursuant to s. 607.0147.

(b) Determine the validity and effectiveness of any ratification of any defective corporate action pursuant to s. 607.0147.

(c) Determine the validity and effectiveness of any defective corporate action not ratified or not ratified effectively pursuant to s. 607.0147.

(d) Determine the validity of any putative shares.

(e) Modify or waive any of the procedures specified in s. 607.0147 or s. 607.0148 to ratify a defective corporate action.

(2) In connection with an action brought under this section, the court may make such findings or issue such orders and take into account any one or more factors or considerations as it deems proper under the circumstances, including, but not limited to, any one or more of the factors, considerations, findings, and orders set forth in subsections (5) and (6).

(3) Service of process of the application under subsection (1) on the corporation may be made in any manner provided in chapter 48 for service on a corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require that notice of the action be provided to other persons specified by the court and permit such other persons to intervene in the action.

(4) Notwithstanding any other law to the contrary, any action asserting that the ratification of a defective corporate

action, and any putative shares issued as a result of such defective corporate action, should not be effective, or should be effective only on certain conditions, must be brought, if at all, within 120 days after the validation effective time.

(5) In connection with the resolution of matters under subsection (2), the court may consider any of the following:

(a) Whether the defective corporate action was originally approved or effectuated with the belief that the approval or effectuation was in compliance with the provisions of this chapter, the articles of incorporation, or the bylaws of the corporation.

(b) Whether the corporation and board of directors have treated the defective corporate action as a valid act or transaction and whether any person has acted in reliance on the public record that such defective corporate action was valid.

(c) Whether any person will be or was harmed by the ratification or validation of the defective corporate action, excluding any harm that would have resulted if the defective corporate action had been valid when approved or effectuated.

(d) Whether any person will be harmed by the failure to ratify or validate the defective corporate action.

(e) Whether the defective corporate action was a conflict of interest transaction.

(f) Any other factors or considerations the court deems just and equitable.

(6) In connection with an action under this section, the court may do any one or more of the following:

(a) Declare that a ratification in accordance with and pursuant to s. 607.0147 is not effective or shall only be effective at a time or upon conditions established by the court.

(b) Validate and declare effective any defective corporate action or putative shares and impose conditions upon such validation.

(c) Require measures to remedy or avoid harm to any person substantially and adversely affected by a ratification in accordance with and pursuant to s. 607.0147 or by any order of the court pursuant to this section, excluding any harm that would have resulted if the defective corporate action had been valid when approved or effectuated.

(d) Order the department to accept an instrument for filing with an effective time specified by the court, which effective time may be before or after the date and time of such order, provided that the filing date of such instrument shall be determined in accordance with s. 607.0123.

(e) Approve a stock ledger for the corporation that includes any shares ratified or validated in accordance with this section or s. 607.0147.

(f) Declare that the putative shares are valid shares or require a corporation to issue and deliver valid shares in place of any putative shares.

(g) Order that a meeting of holders of valid shares or putative shares be held and exercise such powers as it deems appropriate with respect to such a meeting.

(h) Declare that a defective corporate action validated by the court shall be effective as of the date and time of the defective corporate action or at such other date and time as determined by the court.

(i) Declare that putative shares validated by the court shall be deemed to be identical valid shares or fractions of valid shares as of the date and time originally issued or purportedly issued or at such other date and time as determined by the court.

(j) Require payment by the corporation of reasonable expenses, including attorney fees and costs, that the court finds just and equitable under the circumstances.

(k) Issue other orders as it deems necessary and proper under the circumstances.

Section 9. Subsection (2) of section 605.0115, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

605.0115 Resignation of registered agent.—

(2) After delivering the statement of resignation to the department for filing, the registered agent must promptly mail a copy to the limited liability company's or foreign limited liability company's current mailing address; provided however,

that if a composite statement of resignation is being filed pursuant to subsection (6), the registered agent must promptly mail a copy of either the composite statement of resignation or a separate notice of resignation for each respective limited liability company, in each case using the respective mailing address of the respective limited liability company that then appears in the records of the department.

(6)(a) If a registered agent is resigning as registered agent from more than one limited liability company that each has been dissolved, either voluntarily, administratively, or by court action, for a continuous period of 10 years or longer, the registered agent may elect to file the statement of resignation separately for each such limited liability company or may elect to file a single composite statement of resignation covering two or more limited liability companies. Any such composite statement of resignation must set forth, for each such limited liability company covered by the statement of resignation, the name of the respective limited liability and the date dissolution became effective for the respective limited liability company.

(b) This subsection is applicable only to resignations from limited liability companies as defined in this chapter.

Section 10. Subsection (2) of section 607.0503, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

607.0503 Resignation of registered agent.—

(2) After delivering the statement of resignation to the department for filing, the registered agent must promptly mail a copy to the corporation at its current mailing address; provided however that if a composite statement of resignation is being filed pursuant to subsection (6), the registered agent must promptly mail a copy of either the composite statement of resignation or a separate notice of resignation for each respective corporation, in each case using the respective mailing address of the respective corporation that then appears in the records of the department.

(6)(a) If a registered agent is resigning as registered agent from more than one corporation that each has been dissolved, either voluntarily, administratively, or by court action, for a continuous period of 10 years or longer, the registered agent may elect to file the statement of resignation separately for each such corporation or may elect to file a single composite statement of resignation covering two or more corporations. Any such composite statement of resignation must set forth, for each such corporation covered by the statement of resignation, the name of the respective corporation and the date that dissolution became effective for the respective corporation.

(b) This subsection is applicable only to resignations by registered agents from domestic corporations.

Section 11. Subsection (2) of section 617.0502, Florida Statutes, is amended to read:

617.0502 Change of registered office or registered agent; resignation of registered agent.—

(2)(a) Any registered agent may resign his or her agency appointment by signing and delivering for filing with the Department of State a statement of resignation and mailing a copy of such statement to the corporation at its mailing address of the respective corporation that then appears in the records of the Department of State; provided however that if a composite statement of resignation is being filed pursuant to paragraph (b), the registered agent must promptly mail a copy of either the composite statement of resignation or a separate notice of resignation for each respective corporation, in each case using the respective mailing address of the respective corporation that then appears in the records of the Department of State ~~principal office address shown in its most recent annual report or, if none, filed in the articles of incorporation or other most recently filed document~~. The statement of resignation shall state that a copy of such statement of resignation or, if applicable, notice of resignation, has been mailed to the corporation at the address so stated. The agency is terminated as of the 31st day after the date on which the statement was filed and unless otherwise provided in the statement,

termination of the agency acts as a termination of the registered office.

(b) If a registered agent is resigning as registered agent from one or more corporations that each have been dissolved, either voluntarily, administratively, or by court action, for a continuous period of 10 years or longer, the registered agent may elect to file the statement of resignation separately for each such corporation or may elect to file a single composite statement of resignation covering two or more corporations. Any such composite statement of resignation must set forth, for each such corporation covered by the statement of resignation, the name of the respective corporation and the date that dissolution became effective for the respective corporation. This subsection is applicable only to resignations by registered agents from domestic corporations.

Section 12. Subsections (8) and (9) of section 605.0213, Florida Statutes, are amended to read:

605.0213 Fees of the department.—The fees of the department under this chapter are as follows:

(8) For filing a registered agent's statement of resignation from a ~~an active~~ limited liability company that has not been dissolved, $85.

(9) For filing a registered agent's statement of resignation from a dissolved limited liability company or a

composite statement of resignation from two or more dissolved limited liability companies pursuant to s. 605.0115(6), $25.

Section 13. Subsections (6) and (7) of section 607.0122, Florida Statutes, are amended to read:

607.0122 Fees for filing documents and issuing certificates.—The department shall collect the following fees when the documents described in this section are delivered to the department for filing:

(6) Agent's statement of resignation from a ~~active~~ corporation that has not been dissolved: $87.50.

(7) Agent's statement of resignation from a ~~an inactive~~ dissolved corporation or a composite statement of resignation from two or more dissolved corporations pursuant to s. 607.0502(6): $35.

Section 14. Subsections (6) and (7) of section 617.0122, Florida Statutes, are amended to read:

617.0122 Fees for filing documents and issuing certificates.—The Department of State shall collect the following fees on documents delivered to the department for filing:

(6) Agent's statement of resignation from a ~~active~~ corporation that has not been dissolved: $87.50.

(7) Agent's statement of resignation from a ~~inactive~~ dissolved corporation or a composite statement of resignation

from two or more dissolved corporations pursuant to s. 617.0502(2)(b): $35.

Any citizen support organization that is required by rule of the Department of Environmental Protection to be formed as a nonprofit organization and is under contract with the department is exempt from any fees required for incorporation as a nonprofit organization, and the Secretary of State may not assess any such fees if the citizen support organization is certified by the Department of Environmental Protection to the Secretary of State as being under contract with the Department of Environmental Protection.

Section 15. For the purpose of incorporating the amendments made by this act to section 605.0115, Florida Statutes, in a reference thereto, section 605.0207, Florida Statutes, is reenacted to read:

605.0207 Effective date and time.—Except as otherwise provided in s. 605.0208, and subject to s. 605.0209(3), any document delivered to the department for filing under this chapter may specify an effective time and a delayed effective date. In the case of initial articles of organization, a prior effective date may be specified in the articles of organization if such date is within 5 business days before the date of filing. Subject to ss. 605.0114, 605.0115, 605.0208, and 605.0209, a record filed by the department is effective:

(1) If the record filed does not specify an effective time and does not specify a prior or a delayed effective date, on the date and at the time the record is accepted as evidenced by the department's endorsement of the date and time on the filing.

(2) If the record filed specifies an effective time, but not a prior or delayed effective date, on the date the record is accepted, as evidenced by the department's endorsement, and at the time specified in the filing.

(3) If the record filed specifies a delayed effective date, but not an effective time, at 12:01 a.m. on the earlier of:

(a) The specified date; or

(b) The 90th day after the record is filed.

(4) If the record filed specifies a delayed effective date and an effective time, at the specified time on or the earlier of:

(a) The specified date; or

(b) The 90th day after the record is filed.

(5) If the record filed is the initial articles of organization and specifies an effective date before the date of the filing, but no effective time, at 12:01 a.m. on the later of:

(a) The specified date; or

(b) The 5th business day before the record is filed.

(6) If the record filed is the initial articles of organization and specifies an effective time and an effective date before the date of the filing, at the specified time on the later of:

(a) The specified date; or

(b) The 5th business day before the record is filed.

(7) If the record filed does not specify the time zone or place at which the date or time, or both, is to be determined, the date or time, or both, at which it becomes effective shall be those prevailing at the place of filing in this state.

Section 16. For the purpose of incorporating the amendments made by this act to section 605.0115, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 605.0113, Florida Statutes, is reenacted to read:

605.0113 Registered agent.—

(3) The duties of a registered agent are as follows:

(b) If the registered agent resigns, to provide the notice required under s. 605.0115(2) to the company or foreign limited liability company at the address most recently supplied to the agent by the company or foreign limited liability company.

Section 17. For the purpose of incorporating the amendment made by this act to section 607.0122, Florida Statutes, in a reference thereto, subsection (1) of section 658.23, Florida Statutes, is reenacted to read:

658.23 Submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.—

(1) Within 3 months after approval by the office and the appropriate federal regulatory agency, the applicant shall submit its duly executed articles of incorporation to the office, together with the filing fee due the Department of State under s. 607.0122.

Section 18. For the purpose of incorporating the amendment made by this act to section 607.0503, Florida Statutes, in a reference thereto, subsection (4) of section 607.0501, Florida Statutes, is reenacted to read:

607.0501 Registered office and registered agent.—

(4) The duties of a registered agent are:

(a) To forward to the corporation at the address most recently supplied to the registered agent by the corporation, a process, notice, or demand pertaining to the corporation which is served on or received by the registered agent; and

(b) If the registered agent resigns, to provide the notice required under s. 607.0503 to the corporation at the address most recently supplied to the registered agent by the corporation.

Section 19. For the purpose of incorporating the amendments made by this act to sections 605.0213 and 607.0122, Florida Statutes, in references thereto, paragraph (b) of

subsection (2) of section 607.193, Florida Statutes, is reenacted to read:

607.193 Supplemental corporate fee.—

(2)

(b) In addition to the fees levied under ss. 605.0213, 607.0122, and 620.1109 and the supplemental corporate fee, a late charge of $400 shall be imposed if the supplemental corporate fee is remitted after May 1 except in circumstances in which a business entity was administratively dissolved or its certificate of authority was revoked due to its failure to file an annual report and the entity subsequently applied for reinstatement and paid the applicable reinstatement fee.

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

Remove lines 9-119 and insert:

corporate actions, and that the absence or failure to ratify defective corporate actions does not affect the validity or effectiveness of certain corporate actions properly ratified; providing for a process whereby putative shares can be validated in the event of an overissue; creating s. 607.0147, F.S.; requiring the board of directors to take certain action to ratify a defective corporate action; authorizing those exercising the powers of the directors to take certain action

when certain defective actions are related to the ratification of the initial board of directors; requiring members of the board of directors to seek approval of the shareholders in connection with ratifying a defective corporate action under certain conditions; authorizing the board of directors to abandon ratification at any time before the validation effective time after action by the board and, if required, approval of the shareholders; creating s. 607.0148, F.S.; providing quorum and voting requirements for the ratification of certain defective corporate actions; requiring the board, in connection with a shareholder meeting held to ratify a defective corporate action, to send notice to all identifiable shareholders of a certain meeting date; requiring that the notice state that a purpose of the meeting is to consider ratification of a defective corporate action; requiring the notice sent to be accompanied with certain information; specifying the quorum and voting requirements applicable to ratification of the election of directors; requiring votes cast within the voting group favoring ratification of the election of a director to exceed the votes cast within the voting group opposing such ratification; prohibiting holders of putative shares from voting on ratification of any defective corporate action and providing that they may not be counted for quorum purposes or in certain written consents; requiring approval of certain amendments to the corporation's articles of incorporation under certain

circumstances; creating s. 607.0149, F.S.; requiring that notice be given to shareholders of certain corporate action taken by the board of directors; providing that notice is not required for holders of certain shares whose identities or addresses for notice cannot be determined; providing requirements for such notice; providing requirements for such notice for corporations subject to certain federal reporting requirements; creating s. 607.0150, F.S.; specifying the effects of ratification; creating s. 607.0151, F.S.; requiring corporations to file articles of validation under certain circumstances; providing applicability; providing requirements for articles of validation; creating s. 607.0152, F.S.; authorizing certain persons and entities to file certain motions; providing for service of process; requiring that certain actions be filed within a specified timeframe; authorizing the court to consider certain factors in resolving certain issues; authorizing the courts to take certain actions in cases involving defective corporate actions; amending ss. 605.0115, 607.0503, and 617.0502, F.S.; providing that a registered agent may resign from certain limited liability companies or foreign limited liability companies, certain dissolved corporations, and certain active or dissolved corporations, respectively, by delivering a specified statement of resignation to the Department of State; providing requirements for the statement; providing that a registered agent who is resigning from more than one such corporations or

limited liability companies may elect to file a statement of resignation for each such company or corporation or a composite statement; providing requirements for composite statements; requiring that a copy of each of the statements of resignation or the composite statement be mailed to the address on file with the department for the company or corporation or companies or corporations, as applicable; amending ss. 605.0213 and 607.0122, F.S.; conforming provisions to changes made by the act; providing registered agents may pay one resignation fee regardless of whether resigning from one or multiple dissolved companies or corporations; reenacting ss. 605.0207 and 605.0113(3)(b), F.S., relating to effective dates and times and to registered agents, respectively, to incorporate the amendments made to s. 605.0115, F.S., in references thereto; reenacting s. 658.23(1), F.S., relating to submission of articles of incorporation, to incorporate the amendment made to s. 607.0122, F.S., in a reference thereto; reenacting s. 607.0501(4), F.S., relating to registered offices and registered agents, to incorporate the amendment made to s. 607.0503, F.S., in a reference thereto; reenacting s. 607.193(2)(b), F.S., relating to supplemental corporate fees, to incorporate the amendments made to ss. 605.0213 and 607.0122, F.S., in references thereto; reenacting ss. 39.8298(1)(a), 252.71(2)(a), 288.012(6)(a), 617.1807, and 617.2006(4), F.S., relating to the Guardian Ad Litem direct-support organization, the Florida

Emergency Management Assistance Foundation, State of Florida international offices, conversion to corporation not for profit, and incorporation of labor unions or bodies, respectively, to incorporate the amendment made in s. 617.0122, F.S., in references thereto; reenacting s. 617.0501(3) and 617.0503(1)(a), F.S., relating to registered agents, to incorporate the amendment made to s. 617.0502, F.S., in references thereto; providing an effective date.

HB 1217

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1217 Florida Homeowners' Construction Recovery Fund
SPONSOR(S): Daniels
TIED BILLS: **IDEN./SIM. BILLS:** SB 414

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

SUMMARY ANALYSIS

The Florida Homeowners' Construction Recovery Fund (recovery fund) is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed contractors. Homeowners file claims with the Department of Business and Professional Regulation (DBPR), which assesses completeness and eligibility before presenting them to the Construction Industry Licensing Board for review (CILB).

Contractors are required to notify customers of their rights under the recovery fund, with contracts for residential property work mandated to include a written statement detailing consumer rights under the fund, except for contracts under $2,500 in labor and materials. The recovery fund provides compensation to eligible claimants, limited to the judgment, award, or $25,000, whichever is less, based on actual damages suffered and subject to maximum per-claim and lifetime aggregate limits specified for Division I and Division II contracts. Regarding fiscal appropriations and license suspension, pending claims are carried over to the next fiscal year if the annual appropriation is depleted, and excess funds are distributed according to relevant statutes. Upon disbursement from the recovery fund to settle claims, a licensee's license is automatically suspended until full repayment plus interest is made.

The bill increases maximum claim amounts and total lifetime aggregate limits for claims made against contractors from the recovery fund over the next four fiscal years, up to Fiscal Year 2027-2028. For Division I licensees, such as general contractors, building contractors, and residential contractors, the maximum per-claim amount rises incrementally from $50,000 to $250,000, with corresponding increases in lifetime aggregate limits. For Division II licensees, such as roofing contractors, plumbing contractors, and solar contractors, the maximum amount per claim is set to increase from the current $15,000. This increase will occur gradually over the next four fiscal years, starting from $25,000 for Fiscal Year 2024-2025 and reaching $65,000 for Fiscal Year 2027-2028. Additionally, the bill aims to raise the lifetime aggregate limits for each Division II licensee for contracts entered into after July 1, 2016. These aggregate limits will start at $250,000 for Fiscal Year 2024-2025 and reach $550,000 for Fiscal Year 2027-2028.

The bill may have an indeterminate fiscal impact on the private sector and state government expenditures. The bill has no fiscal impact on local governments or state revenues.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR), through 11 divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- The Division of Administration;
- The Division of Alcoholic Beverages and Tobacco;
- The Division of Certified Public Accounting;
- The Division of Drugs, Devices, and Cosmetics;
- The Division of Florida Condominiums, Timeshares, and Mobile Homes;
- The Division of Hotels and Restaurants;
- The Division of Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.[1]

Construction Contractors

Chapter 489, F.S., relates to “contracting,” with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction contractors are certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[2]

"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.[3]

“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.

“Registered contractors” are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.[4]

Florida Homeowners’ Construction Recovery Fund

[1] S. 20.165, F.S.
[2] S. 489.107, F.S.
[3] S. 489.105, F.S.
[4] S. 489.103, F.S.

The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review.[5]

Current law requires all local governments to assess and collect a 1 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to DBPR to fund the activities of the Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.[6]

Current law also requires all local governments to assess and collect a separate 1.5 percent surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local governments collect the assessment and remit the surcharge fees to DBPR, where it is divided equally to fund the activities of the Building Code Administrators and Inspectors Board (BCAIB) and the Florida Homeowners' Construction Recovery Fund.[7]

Local government are permitted to retain 10 percent of the amount of the surcharges they collect to fund participation by their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Building Code.[8]

Duty of Contractor to give Notice of Fund

A contractor must provide notice to a customer of rights under the recovery fund.[9] Any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed $2,500, and must be substantially in the form required by statute.[10]

Payment Limitations and Maximum Amounts from the Recovery Fund

Payment from the recovery fund, provides that an eligible claimant may be paid an amount equal to the judgment, award, or restitution order or $25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the claimant, and subject to the maximum per-claim amount and a total lifetime per-licensee maximum.[11]

The maximum amounts payable for recovery fund claims and the total lifetime aggregate limits are set forth in s. 489.143, F.S,[12] as follows:

- Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, recovery fund claims are limited to a $50,000 maximum payment for each Division I claim, with a total lifetime aggregate limit of $500,000 for each Division I licensee.
- Beginning January 1, 2017, for each Division II contract entered into on or after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), recovery fund claims are limited to a $15,000 maximum payment for each Division II claim, with a total lifetime aggregate limit of $150,000 for each Division II licensee.

Claims awarded to a claimant by the CILB are paid in the order that they are filed, up to the lifetime aggregate limits for each transaction and licensee, and to the limits of amounts appropriated to pay

[5] S. 489.1401(2), F.S.
[6] S. 553.721, F.S.
[7] S. 468.631, F.S.
[8] Ss. 468.631, and 553.721, F.S.
[9] S. 489.1425, F.S
[10] *Id*.
[11] S. 489.143(2), F.S.
[12] For recovery fund claims for contracts entered into before July 1, 2004, *see* s. 489.143(6), F.S.

claims against the recovery fund.[13] Payments may not exceed the total claim limits or lifetime aggregate limits.[14]

Fiscal Appropriation and License Suspension

Current law states that if the annual appropriation is depleted while claims are pending, those pending claims will be carried over to the next fiscal year.[15] Any excess funds will be disbursed according to s. 468.631, F.S., which pertains to the Building Code Administrators and Inspectors Fund.

Upon disbursement of any funds from the recovery fund to settle a claim or satisfy a judgment, award, or restitution order against a licensee, the licensee's license is automatically suspended without further administrative action.[16] This suspension takes effect on the date of payment from the recovery fund. Reinstatement of the license is contingent upon the licensee repaying the full amount received from the recovery fund, along with accrued interest.[17]

Effect of the bill

The bill increases the maximum amounts payable to claimants for claims that may be made against contractors from the recovery fund for each of the next four fiscal years (through Fiscal Year 2027-2028), and to substantially increase the total lifetime aggregate limit for claim payments made against a single contractor for those same fiscal years.

For claims against general contractors, building contractors, and residential contractors (Division I licensees), contracts entered into after July 1, 2004, the maximum per-claim amount increases from $50,000 in current law, as follows:

- $75,000 for Fiscal Year 2024-2025;
- $125,000 for Fiscal Year 2025-2026;
- $175,000 for Fiscal Year 2026-2027; and
- $250,000 for Fiscal Year 2027-2028.

Under the bill, the lifetime aggregate limits for each Division I licensee for Division I contracts entered into after July 1, 2004, are increased from $500,000 in current law, as follows:

- $700,000 for Fiscal Year 2024-2025;
- $800,000 for Fiscal Year 2025-2026;
- $900,000 for Fiscal Year 2026-2027; and
- $1,000,000 for Fiscal Year 2027-2028;

For claims against roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors (Division II licensees), contracts entered into after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), the maximum amount per claim increases from $15,000 in current law, as follows:

- $25,000 for Fiscal Year 2024-2025;
- $35,000 for Fiscal Year 2025-2026;
- $45,000 for Fiscal Year 2026-2027; and
- $65,000 for Fiscal Year 2027-2028.

[13] S. 489.143(7), F.S.
[14] *Id.*
[15] S. 489.143(8), F.S.
[16] S. 489.143(9), F.S
[17] *Id.*

Under the bill, the lifetime aggregate limits for each Division II licensee for Division II contracts entered into after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), are increased from $150,000 in current law, as follows:

- $250,000 for Fiscal Year 2024-2025;
- $350,000 for Fiscal Year 2025-2026;
- $450,000 for Fiscal Year 2026-2027; and
- $550,000 for Fiscal Year 2027-2028;

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 483.143, F.S., relating to payment from the fund.

Section 2: Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate fiscal impact on state government expenditures. As a result of increasing the aggregate cap per licensee, as well as the per-claim cap for each contract, the number of Recovery Fund claims awarded, as well as the amounts of claims awarded, will increase.[18]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate impact on the private sector. With the increase in both the aggregate cap per licensee and the per-claim cap for each contract, the likelihood of more claimants receiving compensation from the Recovery Fund, as well as the total compensation amount, is expected to rise.[19]

D. FISCAL COMMENTS:

DBPR allocates approximately $4.5 million annually to fulfill recovery fund claims. As of July 31, 2023, the Recovery Fund had a balance of $23,235,064.00. Over the fiscal years 20/21, 21/22, and 22/23, the average annual revenue injection into the Recovery Fund through surcharges amounted to $6,188,495.00. However, the average annual sum awarded in claims stood at $2,882,184. Nevertheless, between FY 20/21 and FY 22/23, the annual number of presented and awarded claims more than doubled, reaching 232 claims awarded in FY 22/23, totaling $4,449,552.00.[20]

[18] DBPR, Agency Analysis of 2024 SB 414, p. 4 (Nov. 20, 2023).
[19] Id. at 5.
[20] *Id*. at 6

The proposed elevation of claim caps within the bill could escalate expenditures, leading to a surge in the overall disbursement by the Division to approved claimants. The magnitude of this increase hinges on the frequency and cost of claims, which have exhibited a doubling trend over the last two fiscal years.[21]

These proposed claim cap adjustments could substantially inflate the annual volume of claims, potentially surpassing the annual revenues channeled into the Recovery Fund. This scenario would either deplete the fund's balance or necessitate General Revenue supplementation if revenue adjustments fail to align with the cap increments.[22]

While revenues have averaged $6,118,496 over the past three years, they have exceeded $6,500,000 for the last two years, while the cost of claims in the last fiscal year amounted to $4,462,465. Projecting the proposed increases through the 2027/28 Fiscal Year based on the Fund's starting balance of $23,235,064, the estimates are as follows[23]:

Fiscal Year	Estimated Fund Balance (July 1)	Estimated Revenues	% of Cap Increase from Prior Year for Division I	% of Cap Increase from Prior Year for Division II	Estimated Expenditures after Proposed Cap Increases	**Estimated End Fund Balance (June 30)**
23/24	$23,235,064	$6,014,764	-	-	$ 4,981,181	**$24,268,647**
24/25	$25,235,064	$6,158,696	50%	66.67%	$ 7,617,696	**$22,809,647**
25/26	$24,610,064	$6,238,878	66.67%	40%	$11,424,110	**$17,624,415**
26/27	$20,185,064	$6,339,727	40%	28.57%	$15,177,893	**$8,786,249**
27/28	$12,014,350	$6,167,422	42.86%	44.44%	$21,567,992	**($6,614,320)**

These estimates are based on anticipated increases in claims due to corresponding rises in cap amounts, suggesting a potential deficit in the fund by the 2027/28 Fiscal Year. This estimation assumes consistent revenues and claim volumes annually. However, as aggregate caps increase each year per the Bill's provisions, the Division of Professions has indicated the likelihood of cases remaining open from year to year, as they cannot be closed due to hitting an increased aggregate cap the following year.[24]

Considering these factors, claims may begin to surpass revenues by FY 24-25, eventually leading to a negative cash balance in the Construction Recovery Fund.[25]

The bill proposes annual increases in maximum claim amounts for four years, potentially incentivizing delaying claim filings to maximize potential recovery fund payments. However, claimants must adhere to the statute of limitations, which allows one year after the conclusion of any civil, criminal, or administrative action or arbitration award based on a compensable violation.[26]

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.

[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] S. 489.141(1)(f), F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DBPR recommends that the bill clearly indicate that the proposed increases apply exclusively to contracts entered into after a specific date, such as July 1, 2024, and commencing January 1, 2025. This specification would maintain consistency with past practices regarding cap adjustments. Without such specification, there's a risk of interpreting the bill as retroactively augmenting both per-claim and aggregate caps for all Division I claims arising from contracts initiated after July 1, 2004, and all Division II claims stemming from contracts entered into after July 1, 2016. This interpretation could encompass claims that have already been closed due to aggregate caps, as well as pending and settled claims. [27]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[27] DBPR, Agency Analysis of 2024 SB 414, p. 6 (Nov. 20, 2023).

A bill to be entitled

An act relating to the Florida Homeowners' Construction Recovery Fund; amending s. 489.143, F.S.; providing a scheduled increase in the maximum payment amounts that may be made from the recovery fund for Division I and Division II individual and aggregate claims; providing an effective date.

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

Section 1. Subsections (3) and (6) of section 489.143, Florida Statutes, are amended to read:

489.143 Payment from the fund.—

(3)(a) ~~Beginning January 1, 2005,~~ For each Division I contract entered into after July 1, 2004, payment from the recovery fund is subject to the following maximum payment amounts for each Division I claim:

1. For the 2024-2025 fiscal year, $75,000 ~~a $50,000 maximum payment for each Division I claim~~.

2. For the 2025-2026 fiscal year, $125,000.

3. For the 2026-2027 fiscal year, $175,000.

4. For the 2027-2028 fiscal year, $250,000.

(b) ~~Beginning January 1, 2017,~~ For each Division II contract entered into on or after July 1, 2016, payment from the recovery fund is subject to the following maximum payment

amounts for each Division II claim:

1. For the 2024-2025 fiscal year, $25,000 ~~a $15,000 maximum payment for each Division II claim~~.

2. For the 2025-2026 fiscal year, $35,000.

3. For the 2026-2027 fiscal year, $45,000.

4. For the 2027-2028 fiscal year, $65,000.

(6)(a) For contracts entered into before July 1, 2004, payments for claims against any one licensee may not exceed, in the aggregate, $100,000 annually, up to a total aggregate of $250,000. For any claim approved by the board which is in excess of the annual cap, the amount in excess of $100,000 up to the total aggregate cap of $250,000 is eligible for payment in the next and succeeding fiscal years, but only after all claims for the then-current calendar year have been paid. Payments may not exceed the aggregate annual or per claimant limits under law.

(b) ~~Beginning January 1, 2005,~~ For each Division I contract entered into after July 1, 2004, payment from the recovery fund is subject only to a total aggregate cap of the following amounts ~~$500,000~~ for each Division I licensee:

1. For the 2024-2025 fiscal year, $700,000.

2. For the 2025-2026 fiscal year, $800,000.

3. For the 2026-2027 fiscal year, $900,000.

4. For the 2027-2028 fiscal year, $1 million.

(c) ~~Beginning January 1, 2017,~~ For each Division II contract entered into on or after July 1, 2016, payment from the

recovery fund is subject only to a total aggregate cap of the following amounts ~~$150,000~~ for each Division II licensee:

1. For the 2024-2025 fiscal year, $250,000.

2. For the 2025-2026 fiscal year, $350,000.

3. For the 2026-2027 fiscal year, $450,000.

4. For the 2027-2028 fiscal year, $550,000.

Section 2. This act shall take effect July 1, 2024.

HB 1289

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1289 Verification of Reemployment Assistance Benefit Eligibility
SPONSOR(S): Abbott
TIED BILLS: **IDEN./SIM. BILLS:** SB 1260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Bauldree	Anstead
2) Infrastructure & Tourism Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Federal-State Unemployment Insurance Program is administered as a partnership between the federal government and state governments, providing unemployment benefits to eligible workers who are unemployed through no-fault of their own and who meet the requirements of state law. The Department of Commerce (department) is the current agency responsible for administering Florida's reemployment assistance program. To receive weekly benefits, a claimant must meet certain monetary and non-monetary eligibility requirements.

The bill makes a number of changes to reemployment assistance eligibility requirements. The bill changes benefit eligibility conditions as follows:

- Requires that non-Florida residents seeking reemployment assistance benefits report to workforce centers in their state of residence.
- Removes language explicitly stating that the online skills assessment offered by the department is voluntary.
- Requires that weekly, a claimant must complete at least one job application in person with an employer that has an expected job opening, and must certify and attest biweekly that they will appear for all scheduled interviews and actively seek work.

The bill adds more conditions that can disqualify an individual from receiving benefits including:

- Failing to contact at least five prospective employers per week, unless otherwise exempt;
- Failing to appear on three or more occasions for a scheduled job interview;
- Failing to accept suitable work within 2 business days of being offered; or
- Failing to return to the individual's self-employment when directed by the department, or when recalled to work by his or her former employer.

Under the bill, the department must maintain a web page and e-mail address for employers to report known or suspected violations of the disqualification for benefits provisions, and notify employers of the web page and e-mail address.

Additionally, the bill requires the department to verify the identity of each claimant who applies for reemployment assistance benefits before paying any benefits to that individual, and to weekly cross-check the information contained in the claim with various specified national and state databases.

The bill does not have a fiscal impact on state or local government revenues or local government expenditures. The bill may increase state expenditures. *See* Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Unemployment Compensation

The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.[1] The program is administered as a partnership between the federal government and the states.[2] The individual states collect unemployment compensation payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).[3] FUTA collections go to the states for costs of administering state unemployment compensation and job service programs. In addition, FUTA pays one-half of the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.[4]

States are permitted to set benefit eligibility requirements, the amount and duration of benefits, and the state tax structure, as long as state law does not conflict with FUTA or Social Security Act requirements. Florida's program was created by the Legislature in 1937.[5] The Department of Commerce[6] (department) is the current agency responsible for administering Florida's laws, primarily through its Division of Workforce Services. The department contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collections services.[7]

Florida Reemployment Assistance Benefits

In Florida, which rebranded the unemployment compensation program as the reemployment assistance program in 2012,[8] a qualified claimant may receive benefits equal to 25 percent of wages, not to exceed $6,325 in a benefit year.[9] Benefits range from a minimum of $32 per week to a maximum weekly benefit amount[10] of $275, for a maximum of between 12 weeks and 23 weeks,[11] depending on the claimant's length of prior employment and wages earned and the unemployment rate.[12]

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[1] U.S. Department of Labor, State Unemployment Insurance Benefits, *available at* https://oui.doleta.gov/unemploy/uifactsheet.asp (last visited Feb. 2, 2024).
[2] There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia. U.S. Department of Labor, Unemployment Compensation, Federal – State Partnership, *available at* https://oui.doleta.gov/unemploy/pdf/partnership.pdf (last visited Feb. 2, 2024).
[3] FUTA is codified at 26 U.S.C. § 3301-3309.
[4] U.S. Department of Labor, Unemployment Insurance Tax Topic, *available at* https://oui.doleta.gov/unemploy/uitaxtopic.asp#:~:text=FUTA%20taxes%20are%20calculated%20by,times%20the%20employer's%20taxable%20wages.&text=Employers%20who%20pay%20their%20state,tax%20paid%20to%20the%20state. (last visited Feb. 2, 2024).
[5] Ch. 18402, Laws of Fla.
[6] Chapter 443, F.S., refers to the department as the "Department of Economic Opportunity", however, HB 5 in 2023 changed the name of the department to the "Department of Commerce" and authorized the Division of Law Revision to update the name of the department throughout the Florida statutes. Ch. 2023-173, Las of Fla.
[7] S. 443.1316, F.S.
[8] Ch. 2012-30, Laws of Fla.
[9] S. 443.111(5), F.S. The maximum amount of benefits available is calculated by multiplying an individual's weekly benefit amount by the number of available benefit weeks.
[10] Pursuant to section 443.111(3), F.S., the "weekly benefit amount," is an amount equal to one twenty-sixth of the total wages for insured work paid during the quarter of the base period where the wages paid were highest.
[11] S. 443.111(5)(c), F.S. If the average unemployment rate for the 3 months in the most recent third calendar year quarter is at or below 5 percent, then the maximum weeks of benefits available is 12; for each 0.5 percent that the unemployment rate is above 5 percent, an additional week of benefits becomes available up to 23 weeks at an unemployment rate of 10.5 percent. On January 1, 2021, the maximum weeks of benefits increased from 12 weeks to 19 weeks based on the three month average of July, August, and September of 2020, which was 8.7 percent.
[12] The average weekly benefit amount for each quarter in 2020 was: first quarter – $254; second quarter – $236; third quarter – $227; and fourth quarter – $228. U.S. Department of Labor, Unemployment Insurance Data, run report for Florida, *available at* https://oui.doleta.gov/unemploy/data_summary/DataSum.asp. (last visited Feb. 2, 2024).

The maximum available weeks is set at the beginning of the year and applies for the entire calendar year. The maximum available weeks is based upon the average seasonally adjusted statewide unemployment rate for the months of July, August, and September.[13] If the average rate for that most recent third calendar year quarter is at or below 5 percent, then the maximum weeks of benefits available is 12 weeks. For each 0.5 percent step about 5 percent, an additional week of benefits is added to the maximum duration, up to 23 weeks of benefits if that average third quarter unemployment rate is 10.5 percent. On January 1, 2021, the maximum weeks of benefits increased from 12 weeks to 19 weeks based on the three month average of July, August, and September of 2020, which was 8.6 percent.[14]

To receive benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.[15]

Benefit Eligibility Conditions

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. Generally, these include efforts related to finding new employment, such as:[16]

- Completing the department's online work registration;[17]
- Reporting to the One-Stop Career Center when directed to do so by the local CareerSource board;
- Being able to and available for work;[18]
- Contacting at least 5 prospective employers each week or going to the One-Stop Career Center for reemployment services; and
- Participating in reemployment services.

For each week of benefits claimed, a claimant must submit to the department the name, address, and telephone number of each prospective employer contacted.[19] A claimant must be actively seeking work to be considered available for work. "This means engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed" or three prospective employers for individuals who live in small counties.[20] Proof of work search efforts cannot include the same prospective employer at the same location in three consecutive weeks, unless in the meantime the employer has indicated that it is hiring. The department conducts random audits of the submitted information to verify that claimants are meeting these requirements.

The requirement to be available for work and able to work applies to an individual during the major portion of the individual's customary work week. Consequently, individuals whose benefits are not based on full-time work are not required to seek or be available to accept full-time work.[21]

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[13] S. 443.111(5)(c), F.S. Typically in the calculation of monthly unemployment rates, a rate is published about midway through the following month and the revised rate is published about midway through the next month. *See* The Department of Commerce, Unemployment – Local Area Unemployment Statistics (LAUS) – Release Schedule, (2021), *available at* http://lmsresources.labormarketinfo.com/library/DataReleaseSchedule.pdf, (last visited Feb. 2, 2024).

[14] The Department of Commerce, Florida Department of Economic Opportunity Announces Florida Achieves Six Consecutive Months of Month-Over-Month Job Growth, (November 20, 2020), *available at* https://floridajobs.org/news-center/DEO-Press/2020/11/20/florida-department-of-economic-opportunity-announces-florida-achieves-six-consecutive-months-of-month-over-month-job-growth, (last visited Feb. 2, 2024).

[15] *See* S. 443.101, F.S.

[16] S. 443.091(1), F.S.,

[17] *See* S. 443.091(1)(b), F.S., and Employ Florida, *available at* https://www.employflorida.com/vosnet/Default.aspx, (last visited Feb. 2, 2024). Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and the Department of Commerce. It provides job-matching and workforce resources.

[18] "Able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought. "Available for work" means actively seeking and being ready and willing to accept suitable work. *See* S. 443.036(1) and (6), F.S. *See also* R. 73B-11.021(2), F.A.C.

[19] S. 449.091(1)(c)1., F.S.

[20] S. 443.091(1)(d), F.S. A "small county" is a county that has an unincarcerated population of 75,000 or less. S. 120.52(19), F.S.

[21] R. 73B-11.021(2), F.A.C.

An individual must make a thorough and continued effort to obtain work and take positive actions to become reemployed. To aid unemployed individuals, free reemployment services and assistance are available.[22]

The department's website provides links to local, state, and national employment databases and to resources for job training or further educational opportunities. The One-Stop Career Centers provide job search counseling and workshops, occupational and labor market information, referral to potential employers, and job training assistance. Claimants may also receive an e-mail from the Employ Florida Marketplace with information about employment services or available jobs. Additionally, a claimant may be selected to participate in reemployment assistance services, such as the Reemployment Services and Eligibility Assessment (RESEA) program, designed to address the reemployment needs of claimants.[23] Current law requires the department to offer an online assessment aimed at identifying an individuals' skills, abilities, and career aptitude and provides that the skills assessment must be voluntary.[24] This online assessment must be made available to any person seeking services from a One-Stop Career Center or from a local workforce development board.[25]

Currently, if you are a non-resident of Florida you are exempt from having to complete the department's online work registration and reporting to the one-stop career center as directed by the local workforce development board for reemployment services.

Disqualification for Reemployment Assistance Benefits

Current law specifies the circumstances under which an individual would be disqualified from receiving benefits. These circumstances include:[26]

- Voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work;[27]
- Failing to apply for available suitable work when directed by the department or the One-Stop Career Center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;[28]
- Making false or fraudulent representations in filing for benefits;
- Being discharged from employment due to drug use or rejection from a job offer for failing a drug test; and
- Becoming unavailable for work due to incarceration or imprisonment.

Current law also specifies the duration of the disqualification and the requirements for requalification for an individual's next benefit claim, depending on the reason for the disqualification.[29]

Effect of the Bill

The bill provides that it may be cited as the "Promoting Work, Deterring Fraud Act of 2024."

Under the bill, non-Florida residents would be required to seek reemployment assistance benefits to report to workforce centers in their state of residence.

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[22] R. 73B-11.011(12), F.A.C. "Reemployment services" is defined as job search assistance, job and vocational training referrals, employment counseling and testing, labor market information, employability skills enhancement, needs assessment, orientation, and other related services provided by One-Stop Career Centers operated by local regional workforce boards.
[23] RESEA services may include an orientation, initial assessment, labor market information, employability development plan, and work search services. The Department of Commerce, Program Description, *available at* https://floridajobs.org/office-directory/division-of-workforce-services/workforce-programs/reemployment-services-and-eligibility-assessment-program, (last visited Feb. 2, 2024). R. 73B-3.028, F.A.C., provides more information on reemployment services and requirements for participation.
[24] S. 443.091, F.S.
[25] *Id*.
[26] S. 443.101, F.S.
[27] An individual is not disqualified for voluntarily leaving temporary work to return to full time work, or to relocate with his or her military spouse due to relocation orders, or due to circumstances related to domestic violence.
[28] S. 443.101(2), F.S.
[29] S. 443.091, F.S.

The bill removes language in current law specifying that the online assessment the department must offer to identify skills, abilities, and career aptitude is voluntary.

Under the bill, a claimant must weekly complete at least one job application is person with an employer that has an expected job opening, and must certify and attest biweekly that they will appear for all scheduled interviews and actively seek work. The department must adopt rules regarding work search requirements for the purpose of ensuring claimants' good faith participation.

The bill amends the disqualification for benefits provisions in current law to add more conditions that can disqualify an individual from receiving benefits:

- Failing to contact at least five prospective employers per week, unless otherwise exempt;
- Failing to appear on three or more occasions for a scheduled job interview;
- Failing to accept suitable work within 2 business days of being offered; or
- Failing to return to the individual's self-employment when directed by the department, or when recalled to work by their former employer.

The bill provides that the department shall maintain a web page and e-mail address for employers to report known or suspected violations and that the department shall notify employers of this state the web page and e-mail address.

Under the bill, the department is required to verify the identity of each claimant who applies for reemployment assistance benefits before paying any benefits to that individual and to weekly cross-check the information contained in the claim with various specified national and state databases. The specified databases for the department to utilize include:

- The National Association of State Workforce Agencies Integrity Data Hub;[30]
- The United States Department of Health and Human Services National Directory of New Hires;[31]
- The State Directory of New Hires;[32]
- The Department of Corrections inmate database;
- The Social Security Administration (SSA) Prisoner Update Processing System[33]
- The Centers for Disease Control and Prevention National Vital Statistics System death records database;[34]
- The Department of Health Bureau of Vital Statistics death records database;[35]
- The United States Citizenship and Immigration Services SAVE database[36] – which allows federal, state, and local benefit-granting agencies to verify a benefit applicant's immigration status or naturalized/derived citizenship.

The bill provides that the department may not pay any claim that has not been cross-checked against all the sources listed above, or similar sources of information.

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[30] This is a free resource to state workforce agency staff with advanced data cross-matching and analysis capabilities that detects and prevents unemployment insurance fraud and improper payments. National Association of State Workforce Agencies Integrity Data Hub *available at* https://www.naswa.org/integrity-center/integrity-data-hub, (last visited Feb. 2, 2024).

[31] Which is a database that legally requires federal and state workforce agencies to report their new hires, quarterly wages, and unemployment insurance data, and is only available to authorized persons or entities for authorized purposes. A Guide to the National Directory of New Hires, (January 2023), *available at* https://www.acf.hhs.gov/sites/default/files/documents/ocse/a_guide_to_the_national_directory_of_new_hires.pdf, (last visited Feb. 2, 2024).

[32] The State Directory of New Hires is a database maintained by each state containing information regarding newly hired employees for the respective state. *See* S. 409.2576, F.S. and 42 U.S.C. § 653a.

[33] This system contains data reported to SSA and retained on the Prisoner Update Processing System. Examples of the data are confinement date, released date, reporter name and facility name and address. *See* the Social Security Administration Program Operations Manual System, Developing Prisoner Update Processing System Records and Alerts, GN 02607.600.

[34] This database collects and shares statistics about births, deaths, marriages, divorces, and fetal deaths. About the National Vital Statistics System, CTRS. FOR DISEASE CONTROL & PREVENTION, available at https://www.cdc.gov/nchs/nvss/about_nvss.htm, (last visited Feb. 2, 2024).

[35] This database collects all birth, marriage, and death certificates in Florida. *See* S. 20.43(1)(c), F.S.

[36] Allows federal, state, and local benefit-granting agencies to verify a benefit applicant's immigration status or naturalized/derived citizenship. *See* 42 U.S.C. § 1320b-7.

The bill also provides that the department must do all of the following:

- Investigate any claim indicating suspicious activity associated with a mailing address, a bank account, an e-mail address, a telephone number, or an internet protocol address that is associated with another existing claim for reemployment assistance benefits and verify that the claim is legitimate and not fraudulent before paying any benefits for the claim.
- Scrutinize any claim filed from a foreign Internet protocol address before paying any benefits for the claim.
- Work with the United States Department of Labor, other workforce agencies outside the state, the Office of the Attorney General, the Department of Law Enforcement, or other relevant law enforcement entities to share information related to fraudulent claims to the extent feasible for further investigation and prosecution.
- Each year, submit to the Legislature and make available on its website, a report identifying the number of fraudulent reemployment assistance claims identified for the prior year, the number of claims not paid due to successful detection of fraudulent intentions, the number of claims and the amount of reemployment assistance benefits paid against claims subsequently identified as fraudulent, the amount of fraudulent overpayments recovered, and the number of fraudulent claims referred for investigation and possible prosecution. The report must also list the sources of information that were used to cross-check claims during the reporting period.

The bill requires the department, in alignment with the Federal Regulations public labor exchange services systems requirements, to procure a modernized online workforce search and match tool that includes artificial intelligence generation for the purpose of matching participants to jobs and training opportunities. The tool must be interoperable through an application programming interface with the consumer-first workplace system and the tool must include a knowledge, skills, and interests assessment for the purpose of guiding participants to jobs and training opportunities.

The bill updates cross references to conform with the provisions of the bill.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Provides that the act may be cited as the “Promoting Work, Deterring Fraud Act of 2024.”

Section 2: Amends s. 443.091, F.S., relating to benefit eligibility conditions.

Section 3: Amends s. 443.101, F.S., relating to disqualification of benefits.

Section 4: Creates s. 443.1112, F.S., relating to verification of reemployment assistance benefit eligibility.

Section 5: Amends s. 443.121, F.S., relating to employing units affected.

Section 6: Amends s. 443.151, F.S., relating to procedure concerning claims.

Section 7: Amends s. 445.003, F.S., relating to implementation of the federal Workforce Innovation and Opportunity Act.

Section 8: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The department may incur initial and recurring costs to create and maintain the online workforce search and match tool, the website and e-mail address for employers to report suspected violations, and check the required databases. Provisions in the bill may also function to lower the amount of reemployment assistance benefits paid out.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. If provisions in the bill function to lower the amount of reemployment assistance benefits paid out, employers could see a reduction in their contribution rates over time.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the department to adopt rules regarding work search requirements for the purpose of ensuring claimants' good faith participation with weekly job search requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to verification of reemployment assistance benefit eligibility; providing a short title; amending s. 443.091, F.S.; providing requirements for reemployment assistance benefit conditions for non-Florida residents; removing requirements that certain skills assessments of claimants be voluntary; providing specified requirements for claimants; requiring the Department of Commerce to implement rules; amending s. 443.101, F.S.; making a technical change; revising circumstances under which the department disqualifies claimants from benefits; requiring the department to maintain a web page and an e-mail address for a specified purpose and to notify employers each year of the web page and e-mail address; creating s. 443.1112, F.S.; requiring the department to verify claimants' identities before paying benefits; requiring the department to weekly cross-check certain information; providing sources against which such information is cross-checked; prohibiting benefits from being paid for claims that have not been cross-checked; providing duties of the department; providing annual reporting requirements; amending ss. 443.121 and 443.151, F.S.; conforming a cross-reference; amending s. 445.003,

F.S.; requiring the department to procure an online workforce search and match tool for a specified purpose; providing requirements for such tool; providing an effective date.

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

Section 1. This act may be cited as the "Promoting Work, Deterring Fraud Act of 2024."

Section 2. Present subsections (2) through (5) of section 443.091, Florida Statutes, are redesignated as subsections (3) through (6), respectively, a new subsection (2) is added to that section, and subsection (1) of that section is amended, to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Commerce finds that:

(a) She or he has made a claim for benefits for that week in accordance with the rules adopted by the department.

(b) She or he has completed the department's online work registration and subsequently reports to the one-stop career center as directed by the local workforce development board for reemployment services, or to a workforce center in the state of his or her residence if he or she is a non-Florida resident. This requirement does not apply to persons who are:

~~1. Non-Florida residents;~~

1.~~2.~~ On a temporary layoff;

2.~~3.~~ Union members who customarily obtain employment through a union hiring hall;

3.~~4.~~ Claiming benefits under an approved short-time compensation plan as provided in s. 443.1116; or

4.~~5.~~ Unable to complete the online work registration due to illiteracy, physical or mental impairment, a legal prohibition from using a computer, or a language impediment. If a person is exempted from the online work registration under this subparagraph, then the filing of his or her claim constitutes registration for work.

(c) To make continued claims for benefits, she or he is reporting to the department in accordance with this paragraph and department rules. Department rules may not conflict with s. 443.111(1)(b), which requires that each claimant continue to report regardless of any pending appeal relating to her or his eligibility or disqualification for benefits.

1. For each week of unemployment claimed, each report must, at a minimum, include the name and address of each prospective employer contacted, or the date the claimant reported to a one-stop career center, pursuant to paragraph (d). For the purposes of this subparagraph, the term "address" means a website address, a physical address, or an e-mail address.

2. The department shall offer an online assessment aimed

at identifying an individual's skills, abilities, and career aptitude. ~~The skills assessment must be voluntary, and the department shall allow a claimant to choose whether to take the skills assessment.~~ The online assessment shall be made available to any person seeking services from a local workforce development board or a one-stop career center.

a. ~~If the claimant chooses to take the online assessment,~~ The outcome of the assessment shall be made available to the claimant, local workforce development board, and one-stop career center. The department, local workforce development board, or one-stop career center shall use the assessment to develop a plan for referring individuals to training and employment opportunities. Aggregate data on assessment outcomes may be made available to CareerSource Florida, Inc., for use in the development of policies related to education and training programs that will ensure that businesses in this state have access to a skilled and competent workforce.

b. Individuals shall be informed of and offered services through the one-stop delivery system, including career counseling, the provision of skill match and job market information, and skills upgrade and other training opportunities, and shall be encouraged to participate in such services at no cost to the individuals. The department shall coordinate with CareerSource Florida, Inc., the local workforce development boards, and the one-stop career centers to identify,

develop, and use best practices for improving the skills of individuals who choose to participate in skills upgrade and other training opportunities. The department may contract with an entity to create the online assessment in accordance with the competitive bidding requirements in s. 287.057. The online assessment must work seamlessly with the Reemployment Assistance Claims and Benefits Information System.

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed. Each week, a claimant must complete at least one job application in person with an employer that has an expected job opening. A claimant must certify and attest biweekly that he or she will, to the best of his or her ability, appear for all scheduled interviews and is actively seeking work. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in 3 consecutive weeks, unless the employer has indicated since the

time of the initial contact that the employer is hiring. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least five prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is

not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52(19), a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

(e) She or he participates in reemployment services, such as job search assistance services, whenever the individual has been determined, by a profiling system established by the rules of the department, to be likely to exhaust regular benefits and to be in need of reemployment services.

(f) She or he has been unemployed for a waiting period of 1 week. A week may be counted as a waiting week under this subsection only if:

1. It occurs within the benefit year that includes the week for which she or he claims payment of benefits;

2. Benefits have not been paid for that week; and

3. The individual was eligible for benefits for that week as provided in this section and s. 443.101, except for the requirements of this subsection and s. 443.101(5).

(g) She or he has been paid wages for insured work equal to 1.5 times her or his high quarter wages during her or his base period, except that an unemployed individual is not eligible to receive benefits if the base period wages are less than $3,400.

(h) She or he submitted to the department a valid social security number assigned to her or him. The department may verify the social security number with the United States Social Security Administration and may deny benefits if the department is unable to verify the individual's social security number, the social security number is invalid, or the social security number

is not assigned to the individual.

(2) The department shall adopt rules regarding work search requirements for the purpose of ensuring claimants' good faith participation.

Section 3. Subsection (2) of section 443.101, Florida Statutes, is amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(2) If the Department of Commerce ~~Economic Opportunity~~ finds that the individual has failed without good cause to apply for available suitable work, failed to contact at least five prospective employers per week in accordance with s. 443.091 unless otherwise exempt, failed to appear on three or more occasions for a scheduled job interview, failed to accept within 2 business days suitable work ~~when~~ offered to him or her, or failed to return to the individual's customary self-employment when directed by the department or when recalled to work by his or her former employer, the disqualification continues for the full period of unemployment next ensuing after he or she failed without good cause to apply for available suitable work, accept suitable work, or return to his or her customary self-employment, and until the individual has earned income of at least 17 times his or her weekly benefit amount. The department shall by rule adopt criteria for determining the "suitability of work," as used in this section. In developing these rules, the

department shall consider the duration of a claimant's unemployment in determining the suitability of work and the suitability of proposed rates of compensation for available work. Further, after an individual has received 25 weeks of benefits in a single year, suitable work is a job that pays the minimum wage and is 120 percent or more of the weekly benefit amount the individual is drawing.

(a) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk to the individual's health, safety, and morals; the individual's physical fitness, prior training, experience, prior earnings, length of unemployment, and prospects for securing local work in his or her customary occupation; and the distance of the available work from his or her residence.

(b) Notwithstanding any other provisions of this chapter, work is not deemed suitable and benefits may not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. The position offered is vacant due directly to a strike, lockout, or other labor dispute.

2. The wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

3. As a condition of being employed, the individual is required to join a company union or to resign from or refrain

from joining any bona fide labor organization.

(c) If the department finds that an individual was rejected for offered employment as the direct result of a positive, confirmed drug test required as a condition of employment, the individual is disqualified for refusing to accept an offer of suitable work.

(d) The department shall maintain a web page and an e-mail address through which employers may report known or suspected violations of this section. Each year the department shall notify employers in the state of this web page and e-mail address for reporting violations.

Section 4. Section 443.1112, Florida Statutes, is created to read:

443.1112 Verification of reemployment assistance benefit eligibility.—

(1) The Department of Commerce shall verify the identity of each claimant who applies for reemployment assistance benefits before paying any benefits to that individual.

(2) In determining the eligibility of a claim for reemployment assistance benefits, the department shall weekly cross-check the information contained in the claim with all of the following sources or similar sources of information:

(a) The National Association of State Workforce Agencies Integrity Data Hub.

(b) The United States Department of Health and Human

Services National Directory of New Hires.

(c) The State Directory of New Hires created in s. 409.2576.

(d) The Department of Corrections inmate database.

(e) The Social Security Administration Prisoner Update Processing System.

(f) The Centers for Disease Control and Prevention National Vital Statistics System death records database.

(g) The Department of Health Bureau of Vital Statistics death records database.

(h) The United States Citizenship and Immigration Services SAVE database.

(3) Reemployment assistance benefits administered by the department may not be paid for any claim that has not been cross-checked against all the sources specified in subsection (2) or similar sources of information.

(4) The department shall do all of the following:

(a) Investigate any claim indicating suspicious activity associated with a mailing address, a bank account, an e-mail address, a telephone number, or an Internet protocol address that is associated with another existing claim for reemployment assistance benefits and verify that the claim is legitimate and not fraudulent before paying any benefits for the claim.

(b) Scrutinize any claim filed from a foreign Internet protocol address before paying any benefits for the claim.

(c) Work with the United States Department of Labor, other workforce agencies outside the state, the Office of the Attorney General, the Department of Law Enforcement, or other relevant law enforcement entities to share information related to fraudulent claims or attempted fraudulent claims to the extent feasible for further investigation and prosecution.

(d) Each year, submit to the Legislature and make available on its website, a report identifying the number of fraudulent reemployment assistance claims identified for the prior year, the number of claims not paid due to successful detection of fraudulent intentions, the number of claims and the amount of reemployment assistance benefits paid against claims subsequently identified as fraudulent, the amount of fraudulent overpayments recovered, and the number of fraudulent claims referred for investigation and possible prosecution. The report must also list the sources of information that were used to cross-check claims during the reporting period.

Section 5. Paragraph (c) of subsection (3) of section 443.121, Florida Statutes, is amended to read:

443.121 Employing units affected.—

(3) ELECTIVE COVERAGE.—

(c) Certain services for political subdivisions.—

1. Any political subdivision of this state may elect to cover under this chapter, for at least 1 calendar year, service performed by employees in all of the hospitals and institutions

of higher education operated by the political subdivision. Election must be made by filing with the tax collection service provider a notice of election at least 30 days before the effective date of the election. The election may exclude any services described in s. 443.1216(4). Any political subdivision electing coverage under this paragraph must be a reimbursing employer and make reimbursements in lieu of contributions for benefits attributable to this employment, provided for nonprofit organizations in s. 443.1312(3) and (5).

2. The provisions of s. 443.091(4) ~~s. 443.091(3)~~ relating to benefit rights based on service for nonprofit organizations and state hospitals and institutions of higher education also apply to service covered by an election under this section.

3. The amounts required to be reimbursed in lieu of contributions by any political subdivision under this paragraph shall be billed, and payment made, as provided in s. 443.1312(3) for similar reimbursements by nonprofit organizations.

4. An election under this paragraph may be terminated after at least 1 calendar year of coverage by filing with the tax collection service provider written notice not later than 30 days before the last day of the calendar year in which the termination is to be effective. The termination takes effect on January 1 of the next ensuing calendar year for services performed after that date.

Section 6. Paragraph (b) of subsection (2) of section

443.151, Florida Statutes, is amended to read:

443.151 Procedure concerning claims.—

(2) FILING OF CLAIM INVESTIGATIONS; NOTIFICATION OF CLAIMANTS AND EMPLOYERS.—

(b) Process.—When the Reemployment Assistance Claims and Benefits Information System described in s. 443.1113 is fully operational, the process for filing claims must incorporate the process for registering for work with the consumer-first workforce system established under s. 445.011. Unless exempted under s. 443.091(1)(b)4. ~~s. 443.091(1)(b)5.~~, a claim for benefits may not be processed until the work registration requirement is satisfied. The department may adopt rules as necessary to administer the work registration requirement set forth in this paragraph.

Section 7. Subsection (8) is added to section 445.003, Florida Statutes, to read:

445.003 Implementation of the federal Workforce Innovation and Opportunity Act.—

(8) ONLINE WORKFORCE SEARCH AND MATCH TOOL.—The department, in alignment with the implementation of 20 C.F.R. s. 652.3 to administer a public labor exchange services system, shall procure a modernized online workforce search and match tool that includes artificial intelligence generation for the purpose of matching participants to jobs and training opportunities. The tool must be interoperable through an

application programming interface with the consumer-first workforce system implemented in s. 445.011, and the tool must include a knowledge, skills, and interests assessment for the purpose of guiding participants to jobs and training opportunities.

Section 8. This act shall take effect July 1, 2024.

REGULATORY REFORM & ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1289 by Rep. Abbott
Verification of Reemployment Assistance Benefit Eligibility

AMENDMENT SUMMARY
February 6, 2023

Amendment 1 by Rep. Abbott (line 35-364):

- Removes the requirement that non-Florida residents who seek reemployment assistance benefits from the Department of Commerce report to workforce centers in their state of residence.
- Makes 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: Regulatory Reform & Economic Development Subcommittee
Representative Abbott offered the following:

Amendment (with title amendment)

Remove lines 35-364 and insert:

Section 2. Subsection (2) of section 443.101, Florida Statutes, is amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(2) If the Department of Commerce ~~Economic Opportunity~~ finds that the individual has failed without good cause to apply for available suitable work, failed to contact at least five prospective employers per week in accordance with s. 443.091 unless otherwise exempt, failed to appear on three or more occasions for a scheduled job interview, failed to accept within

2 business days suitable work ~~when~~ offered to him or her, or failed to return to the individual's customary self-employment when directed by the department or when recalled to work by his or her former employer, the disqualification continues for the full period of unemployment next ensuing after he or she failed without good cause to apply for available suitable work, accept suitable work, or return to his or her customary self-employment, and until the individual has earned income of at least 17 times his or her weekly benefit amount. The department shall by rule adopt criteria for determining the "suitability of work," as used in this section. In developing these rules, the department shall consider the duration of a claimant's unemployment in determining the suitability of work and the suitability of proposed rates of compensation for available work. Further, after an individual has received 25 weeks of benefits in a single year, suitable work is a job that pays the minimum wage and is 120 percent or more of the weekly benefit amount the individual is drawing.

(a) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk to the individual's health, safety, and morals; the individual's physical fitness, prior training, experience, prior earnings, length of unemployment, and prospects for securing local work in his or her customary occupation; and the distance of the available work from his or her residence.

(b) Notwithstanding any other provisions of this chapter, work is not deemed suitable and benefits may not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. The position offered is vacant due directly to a strike, lockout, or other labor dispute.

2. The wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

3. As a condition of being employed, the individual is required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(c) If the department finds that an individual was rejected for offered employment as the direct result of a positive, confirmed drug test required as a condition of employment, the individual is disqualified for refusing to accept an offer of suitable work.

(d) The department shall maintain a web page and an e-mail address through which employers may report known or suspected violations of this section. Each year the department shall notify employers in the state of this web page and e-mail address for reporting violations.

Section 3. Section 443.1112, Florida Statutes, is created to read:

443.1112 Verification of reemployment assistance benefit eligibility.—

(1) The Department of Commerce shall verify the identity of each claimant who applies for reemployment assistance benefits before paying any benefits to that individual.

(2) In determining the eligibility of a claim for reemployment assistance benefits, the department shall weekly cross-check the information contained in the claim with all of the following sources or similar sources of information:

(a) The National Association of State Workforce Agencies Integrity Data Hub.

(b) The United States Department of Health and Human Services National Directory of New Hires.

(c) The State Directory of New Hires created in s. 409.2576.

(d) The Department of Corrections inmate database.

(e) The Social Security Administration Prisoner Update Processing System.

(f) The Centers for Disease Control and Prevention National Vital Statistics System death records database.

(g) The Department of Health Bureau of Vital Statistics death records database.

(h) The United States Citizenship and Immigration Services SAVE database.

(3) Reemployment assistance benefits administered by the department may not be paid for any claim that has not been cross-checked against all the sources specified in subsection (2) or similar sources of information.

(4) The department shall do all of the following:

(a) Investigate any claim indicating suspicious activity associated with a mailing address, a bank account, an e-mail address, a telephone number, or an Internet protocol address that is associated with another existing claim for reemployment assistance benefits and verify that the claim is legitimate and not fraudulent before paying any benefits for the claim.

(b) Scrutinize any claim filed from a foreign Internet protocol address before paying any benefits for the claim.

(c) Work with the United States Department of Labor, other workforce agencies outside the state, the Office of the Attorney General, the Department of Law Enforcement, or other relevant law enforcement entities to share information related to fraudulent claims or attempted fraudulent claims to the extent feasible for further investigation and prosecution.

(d) Each year, submit to the Legislature and make available on its website a report identifying the number of fraudulent reemployment assistance claims identified for the prior year, the number of claims not paid due to successful detection of fraudulent intentions, the number of claims and the amount of reemployment assistance benefits paid against claims

subsequently identified as fraudulent, the amount of fraudulent overpayments recovered, and the number of fraudulent claims referred for investigation and possible prosecution. The report must also list the sources of information that were used to cross-check claims during the reporting period.

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

Remove lines 4-25 and insert:

title; amending s. 443.101, F.S.; making a technical change; revising circumstances under which the department disqualifies claimants from benefits; requiring the department to maintain a web page and an e-mail address for a specified purpose and to notify employers each year of the web page and e-mail address; creating s. 443.1112, F.S.; requiring the department to verify claimants' identities before paying benefits; requiring the department to weekly cross-check certain information; providing sources against which such information is cross-checked; prohibiting benefits from being paid for claims that have not been cross-checked; providing duties of the department; providing annual reporting requirements; amending s. 445.003,

HB 1311

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1311 Office of the Blue Economy
SPONSOR(S): LaMarca and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1754

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Phelps	Anstead
2) Infrastructure & Tourism Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The blue economy, or the ocean economy, is a term used to describe the economic activities associated with the oceans and seas. Florida has the second longest coastline among US states and territories, which contains natural resources and infrastructure that represents a large portion of the state's economy. Recently, it has been found that in order to support Florida's coastal natural resources and infrastructure, and mitigate related threats, certain strategies and actions, such as developing and expanding the resources that support Florida's blue economy, would be beneficial.

Currently, the Department of Commerce (Department), assists the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to promote consistent economic opportunities for all Floridians. The Department is the state's chief agency for business recruitment and expansion and economic development. The Department includes the Division of Economic Development, Division of Community Development, Division of Workforce Services, Division of Finance and Administration, Division of Information Technology, Office of the Secretary, and Office of Economic Accountability and Transparency.

The bill:

- Establishes the Office of the Blue Economy (Office) as part of the Department.
- Requires the Office, in part, to connect the state's ocean and coastal resources to certain economic development strategies, survey state universities and colleges on the development of academic research, collaborate with relevant industries, develop and facilitate academic research and startup funding, and promote the state's blue economy role on national and international platforms.
- Creates the Marine and Maritime Resources Grant Program within the Office to connect the state's blue economy resources to Florida Universities and Colleges.
- Requires the Office to review and certify applications for grant funding from state universities and Florida College System institutions.
- Authorizes the Department to:
  - Identify projects and solicit applications for projects.
  - Administer contracts for projects that are approved and funded.
  - Adopt rules to administer the Grant Program.
- Requires the Department, by December 30, 2025, and annually thereafter, to report on the economic benefits of the Office and the development of emerging marine and maritime industries.
- Appropriates $1 million in nonrecurring funds from the General Revenue Fund to the Department to administer contracts funded by the Grant Program.

The bill provides an effective date of July 1, 2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Blue Economy

The blue economy, or the ocean economy, is a term used to describe the economic activities associated with the oceans and seas. Defined as the "sustainable use of ocean resources to benefit economies, livelihoods and ocean ecosystem health," the activities of a blue economy typically include maritime shipping, fishing and aquaculture, coastal tourism, renewable energy, water desalination, undersea cabling, seabed extractive industries and deep sea mining, marine genetic resources, and biotechnology.[1]

Globally, the blue economy is estimated to be worth over $1.5 trillion per year, provides over 30 million jobs and supplies certain foods to over three billion people. It is predicted that the ocean economy may double to $3 trillion by 2030.[2]

The US marine economy, including goods and services, contributed approximately $373 billion to the nation's gross domestic product in 2018 and grew faster than the nation's economy as a whole, according to statistics released by the US Department of Commerce.[3] The sectors making the largest contributions to the nation's gross domestic product, include:

- Tourism and recreation, including recreational fishing ($143 billion).
- National defense and public administration ($124 billion).
- Offshore minerals ($49 billion).
- Transportation and warehousing ($25 billion).
- Living resources, including commercial fishing and aquaculture ($13 billion).
- Ship and boat building ($9 billion).
- Power generation ($4 billion).
- Research and education ($3 billion).
- Construction ($2.5 billion).
- Professional and technical services ($31 million).

Strategic Plan for Florida's Oceans and Coasts

Recently, the Florida legislature awarded a grant to the Florida Ocean Alliance[4] to create the strategic policy plan for Florida's oceans and coasts (plan).[5] According to the plan, Florida has 8,436 miles of coastline, the second longest coastline among US states and territories, which contain essential, valuable, and iconic natural resources and human-built infrastructure. In 2018, Florida's coastal counties generated more than $797 billion of economic value, or 77 percent of the state's more than $1 trillion economy at the time. Direct and indirect use of ocean and coastal resources contributed to $73.9

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[1] The London School of Economics and Political Science, *What is the blue economy?* https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-role-of-the-blue-economy-in-a-sustainable-future/ (last visited Feb. 2, 2024).
[2] *Id.*
[3] National Oceanic and Atmospheric Administration, *Marine economy in 2018 grew faster than U.S. overall* (June 2, 2020), https://www.noaa.gov/media-release/marine-economy-in-2018-grew-faster-than-us-overall (last visited Feb. 2, 2024).
[4] The Florida Ocean Alliance is a nonpartisan organization dedicated to bringing together the private sector, academia, and nonprofit research organizations in Florida to protect and enhance Florida's coastal and ocean resources for continued social and economic benefits. Florida Ocean Alliance, https://www.floridaoceanalliance.org/ (last visited Feb. 2, 2024).
[5] Florida Ocean Alliance, *Securing Florida's Blue Economy: A Strategic Plan for Florida's Oceans and Coasts Florida Ocean Alliance, Executive Summary* (June 2020), https://static1.squarespace.com/static/614decce04ec1fe659b8317d5/t/616376221a6d513c75428a1a/1633908258963/2020+Securing+floridas+blue+economy.pdf (last visited Feb. 2, 2024).

billion to the state's economy, and more than one million jobs in Florida were directly and indirectly created by activities that used ocean and coastal resources.[6]

In order to support Florida's coastal natural resources and infrastructure, and mitigate related threats, the plan outlines the following strategies and actions:[7]

- Blue Economy: Developing and expanding the resources that support a major portion of Florida's economy.
- Ocean and coastal resilience: Ensuring the elements of Florida's Blue Economy are more resilient to the effects of local and global threats.
- Human and natural infrastructure: Improving the water, wastewater, stormwater, power infrastructure, and natural habitats that support Florida's diverse and valuable living resources.
- Implementation, outreach, and financing: Building and sustaining broad support and partnerships for executing the Plan with accountability and transparency.

According to the strategic plan, a top priority is to create a statewide, public-private partnership under the Executive Office of the Governor, similar to Space Florida, CareerSource Florida, and other executive-level state partnerships in order to provide a connected leadership that is critical to the implementation of the plan.[8]

Department of Commerce

In 2023, the Legislature renamed the Department of Economic Opportunity (DEO) the Department of Commerce (Department), eliminated Enterprise Florida, Inc., and moved all existing duties, functions, records, contracts, administrative authority and contracts from DEO to the Department.[9]

The purpose of the Department is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to promote consistent economic opportunities for all Floridians. The Department is the state's chief agency for business recruitment and expansion and economic development.[10]

In part, the Department is required to:[11]

- Facilitate the direct involvement of the Governor and the Lieutenant Governor in economic development and workforce development projects designed to create, expand, and retain businesses in this state.
- Recruit new businesses to this state and promote the expansion of existing businesses.
- Promote viable, sustainable communities by providing technical assistance and guidance on growth and development issues, grants, and other assistance to local communities.
- 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.
- Manage the activities of public-private partnerships and state agencies in order to avoid duplication and promote coordinated and consistent implementation of programs in areas including, but not limited to, tourism; international trade and investment; business recruitment, creation, retention, and expansion; minority and small business development; defense, space, and aerospace development; rural community development; and the development and promotion of professional and amateur sporting events.

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[6] Florida Ocean Alliance, *Securing Florida's Blue Economy: A Strategic Plan for Florida's Oceans and Coasts*, 1 (June 2020), https://static1.squarespace.com/static/614dece04ec1fe659b8317d5/t/616376221a6d513c75428a1a/1633908258963/2020+Securing+floridas+blue+economy.pdf (last visited Feb. 2, 2024).
[7] *Id.*
[8] *Id.*
[9] Ch. 2023-173, Laws of Fla.
[10] *See* s. 20.60, F.S.
[11] S. 20.60(4), F.S.

- Coordinate with state agencies on the processing of state development approvals or permits to minimize the duplication of information provided by the applicant and the time before approval or disapproval.
- Contract with the Florida Sports Foundation to guide, stimulate, and promote the sports industry in this state; to promote the participation of residents of this state in amateur athletic competition; and to promote this state as a host for national and international amateur athletic competitions.
- Encourage and oversee the coordination of international trade development efforts of public institutions, business associations, economic development councils, and private industry.
- Contract with the direct-support organization to assist with coordination of international trade efforts.
- Support Florida's defense, space, and aerospace industries, including research and development, and strengthen this state's existing leadership in defense, space, and aerospace activity and economic growth.
- Assist, promote, and enhance economic opportunities for this state's minority-owned businesses and rural and urban communities.
- Contract with the Florida Tourism Industry Marketing Corporation to execute tourism promotion and marketing services, functions, and programs for the state and advise the department on the development of domestic and international tourism marketing campaigns featuring this state.

Currently, the following divisions and offices are established within the Department:[12]

- The Division of Economic Development.
- The Division of Community Development.
- The Division of Workforce Services.
- The Division of Finance and Administration.
- The Division of Information Technology.
- The Office of the Secretary.
- The Office of Economic Accountability and Transparency.

Effect of the Bill

Office of the Blue Economy

The bill provides the following Legislative findings:

> The Florida Legislature finds that marine and maritime resources play a vital role in the state. The Legislature highly values the partnership between the state and its universities and the Florida College System and finds that through this collaboration significant innovation and investment are driven in targeted industries.

The bill creates the Office of the Blue Economy (Office) within the Department and provides legislative findings for the vital role marine and maritime resources play in Florida.

The bill defines "blue economy" as the economic uses of marine and maritime resources with a focus on sustainable practices that benefit the long-term outlook of relevant industry sectors and the competitive positioning of the state in a global economy.

The bill defines "marine and maritime resources" as ocean and coastal resources, including, but not limited to, marine and maritime industries such as shipyards, marinas, marine terminals, piers, fishing, aquaculture, seafood processing, commercial diving, and marine transportation; marine biomedical research; floating and amphibious housing; tourism; and outdoor recreational activities, including, but not limited to, boating and industry sectors dependent on such activities.

[12] S. 20.60(3)(a), F.S.

The bill defines "targeted industry" as any industry identified in the most recent list of target industries provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives in accordance with s. 288.005(7), F.S.

The bill requires the Office to:

- Support the state's economy by connecting the state's ocean and coastal resources to economic development strategies that enhance or contribute to the blue economy with a focus on:
    - Research and development,
    - Technological innovation,
    - Emerging industries,
    - Strategic business recruitment,
    - Public and private funding opportunities, and
    - Workforce training and education.
- Survey state universities and Florida College System institutions on the development of academic research relating to the blue economy across all disciplines, including:
    - Encourage collaboration between state universities and Florida College System institutions with overlapping areas of academic research.
    - Publish on the department's website information on such collaboration and the current research inventory.
- Collaborate with relevant industries to identify economic challenges that may be solved through innovation in the blue economy by commercializing or otherwise providing public access to academic research and resources.
- Develop and facilitate a pipeline of academic research, commercialization, accelerator programs, and startup funding.
- Publish on the Department website reports on the number, growth, and average wages of jobs included in the blue economy.
    - Such reports must identify and address any relevant labor shortages projected by the Labor Market Estimating Conference pursuant to s. 216.136(7), F.S.
- Educate other state and local entities on the interests of the blue economy and how such entities may positively address environmental issues while simultaneously considering the economic impact of their policies.
- Communicate the state's role as an integral component of the blue economy by promoting the state on national and international platforms and other appropriate forums as the premier destination for convening on pertinent subject matters.

Marine and Maritime Resources Grant Program

The bill creates the Marine and Maritime Resources Grant Program (Grant Program) within the Office by connecting the State’s marine and maritime resources to Florida universities and colleges to enhance relevant marine and maritime industry sectors.

The bill:

- Requires the Office to review and certify applications for grant funding from state universities and Florida College System institutions.
- Authorizes the Office to consult with the:
    - Department of Education,
    - CareerSource Florida, Inc.,
    - Office of Reimagining Education and Career Help, and
    - Other relevant agencies, as appropriate.
- Requires the Office to provide grant funds to projects that promote:
    - Research, development, and technical innovation with the goal of commercialization;
    - Strategic business recruitment and economic enhancement in a targeted industry with the goal of capital investment and high wage job growth; and
    - Workforce training and education.
- Authorizes the Department to administer contracts for projects approved and funded.

Contracts and Rules

The bill authorizes the Department to:

- Identify projects and solicit applications for projects that meet the requirements of the bill.
- Administer contracts for projects approved and funded pursuant to the bill.
- Adopt rules to administer the bill.

Annual Report

The bill requires the Department, by December 30, 2025, and each December 30 thereafter, to provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives a detailed report demonstrating the economic benefits of the Office and the development of emerging marine and maritime industries or technologies.

Appropriation

For the 2024-2025 fiscal year, the bill appropriates the sum of $1 million in nonrecurring funds from the General Revenue Fund to the Department to administer contracts funded by the Grant Program under s. 288.102, F.S.

Effective Date

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.60, F.S., relating to department of Commerce; creation; powers and duties.

Section 2: Creates s. 288.102, F.S., relating to Office of the Blue Economy; grant program.

Section 3: Provides an appropriation.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Creating a new office within a state agency that is required to administer a grant program may likely create a recurring and nonrecurring indeterminate negative fiscal impact on state funds resulting from staffing and related funding of the office, the cost of carrying out the duties and requirements of the office, and the cost of the awarding of grants and other requirements of the grant program.

The bill may have a positive fiscal impact on the public and private entities that are awarded such grant funds.

For the 2024-2025 fiscal year, the bill appropriates the sum of $1 million in nonrecurring funds from the General Revenue Fund to the Department to administer contracts funded by the Grant Program

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department to adopt rules to administer the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Office of the Blue Economy; amending s. 20.60, F.S.; establishing the Office of the Blue Economy within the Department of Commerce; creating s. 288.102, F.S.; providing legislative findings; providing definitions; providing duties of the Office of the Blue Economy; creating the Marine and Maritime Resources Grant Program within the Office of the Blue Economy; requiring the Office of the Blue Economy to review and certify certain applications; authorizing the Office of the Blue Economy to consult with certain entities; requiring the department to review certified applications and authorizing the department to provide grant funds to certain projects; authorizing the department to identify projects and solicit proposals that meet certain requirements; authorizing the department to administer certain contracts; authorizing the department to adopt rules; requiring the department to annually provide a certain report to the Governor and the Legislature; providing an appropriation; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section

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

20.60, Florida Statutes, is amended to read:

20.60 Department of Commerce; creation; powers and duties.—

(3)(a) The following divisions and offices of the Department of Commerce are established:

1. The Division of Economic Development.

2. The Division of Community Development.

3. The Division of Workforce Services.

4. The Division of Finance and Administration.

5. The Division of Information Technology.

6. The Office of the Secretary.

7. The Office of Economic Accountability and Transparency, which shall:

a. Oversee the department's critical objectives as determined by the secretary and make sure that the department's key objectives are clearly communicated to the public.

b. Organize department resources, expertise, data, and research to focus on and solve the complex economic challenges facing the state.

c. Provide leadership for the department's priority issues that require integration of policy, management, and critical objectives from multiple programs and organizations internal and external to the department; and organize and manage external communication on such priority issues.

d. Promote and facilitate key department initiatives to

address priority economic issues and explore data and identify opportunities for innovative approaches to address such economic issues.

e. Promote strategic planning for the department.

8. The Office of the Blue Economy.

Section 2. Section 288.102, Florida Statutes, is created to read:

288.102 Office of the Blue Economy; grant program.—

(1) The Florida Legislature finds that marine and maritime resources play a vital role in the state. The Legislature highly values the partnership between the state and its universities and the Florida College System and finds that through this collaboration significant innovation and investment are driven in targeted industries.

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

(a) "Blue economy" means the economic uses of marine and maritime resources with a focus on sustainable practices that benefit the long-term outlook of relevant industry sectors and the competitive positioning of the state in a global economy.

(b) "Marine and maritime resources" means ocean and coastal resources, including, but not limited to, marine and maritime industries such as shipyards, marinas, marine terminals, piers, fishing, aquaculture, seafood processing, commercial diving, and marine transportation; marine biomedical research; floating and amphibious housing; tourism; and outdoor

recreational activities, including, but not limited to, boating and industry sectors dependent on such activities.

(c) "Targeted industry" means any industry identified in the most recent list of target industries provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives in accordance with s. 288.005(7).

(3) The Office of the Blue Economy shall:

(a) Support the state's economy by connecting the state's ocean and coastal resources to economic development strategies that enhance or contribute to the blue economy with a focus on research and development, technological innovation, emerging industries, strategic business recruitment, public and private funding opportunities, and workforce training and education.

(b) Survey state universities and Florida College System institutions on the development of academic research relating to the blue economy across all disciplines. The office shall encourage collaboration between state universities and Florida College System institutions with overlapping areas of academic research. The office shall publish on the department's website information on such collaboration and the current research inventory.

(c) Collaborate with relevant industries to identify economic challenges that may be solved through innovation in the blue economy by commercializing or otherwise providing public access to academic research and resources.

(d) Develop and facilitate a pipeline of academic research, commercialization, accelerator programs, and startup funding.

(e) Publish on the department's website reports on the number, growth, and average wages of jobs included in the blue economy. Such reports shall identify and address any relevant labor shortages projected by the Labor Market Estimating Conference pursuant to s. 216.136(7).

(f) Educate other state and local entities on the interests of the blue economy and how such entities may positively address environmental issues while simultaneously considering the economic impact of their policies.

(g) Communicate the state's role as an integral component of the blue economy by promoting the state on national and international platforms and other appropriate forums as the premier destination for convening on pertinent subject matters.

(4) The Marine and Maritime Resources Grant Program is created within the Office of the Blue Economy to promote economic development by connecting the state's marine and maritime resources to state universities and Florida College System institutions to contribute or enhance relevant industry sectors.

(a) The Office of the Blue Economy shall review and certify applications for grant funding from state universities and Florida College System institutions and may consult with the

Department of Education, CareerSource Florida, Inc., the Office of Reimagining Education and Career Help, and other relevant agencies, as appropriate.

(b) The department shall review applications certified by the Office of the Blue Economy under paragraph (a) and may authorize and provide grant funds to projects that promote:

1. Research and development and technological innovation with the goal of commercialization.

2. Strategic business recruitment and economic enhancement in a targeted industry with the goal of capital investment and high wage job growth.

3. Workforce training and education in support of subparagraph 1. or subparagraph 2.

(c) The department may identify projects and solicit applications for projects that meet the requirements of paragraph (b).

(d) The department may administer contracts for projects approved and funded pursuant to this section.

(5) The department may adopt rules to administer this section.

(6) By December 30, 2025, and each December 30 thereafter, the department shall provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives a detailed report demonstrating the economic benefits of the Office of the Blue Economy and the development of emerging

marine and maritime industries or technologies.

Section 3. For the 2024-2025 fiscal year, the sum of $1 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Commerce to administer contracts funded by the Marine and Maritime Resources Grant Program under s. 288.102, Florida Statutes.

Section 4. This act shall take effect July 1, 2024.

REGULATORY REFORM & ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1311 by Rep. LaMarca
Office of the Blue Economy

AMENDMENT SUMMARY
February 6, 2023

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

- Creates the Office of the Blue Economy within the State University System, instead of within the Department of Commerce.
- Requires the Office to be administered by the Board of Governors of the State University System.
- Provides requirements for the Office, including:
    - Connecting the state's ocean and coastal resources to economic development strategies;
    - Surveying universities and colleges on academic research;
    - Collaborating with certain industries;
    - Developing and facilitating certain research and funding;
    - Publishing reports on blue economy jobs;
    - Educating of other states and local entities on the blue economy;
    - Communicating the state's role in the blue economy on national and international platforms; and
    - Maintaining a website.
- Removes the creation of the Marine and Maritime Resources Grant Program.
- Removes the $1 million appropriation to the Department of Commerce.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform & Economic Development Subcommittee
Representative LaMarca offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 288.102, Florida Statutes, is created to read:

288.102 Office of the Blue Economy.—

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

(a) "Blue economy" means the economic uses of ocean and coastal resources with a focus on sustainable practices that benefit the long-term outlook of relevant industry sectors and the competitive positioning of the state in a global economy, including, but not limited to, maritime industries such as shipyards, marinas, marine terminals, piers, fishing,

aquaculture, seafood processing, commercial diving, and marine transportation; floating and amphibious housing; tourism; and outdoor recreational activities, including, but not limited to, boating and industry sectors dependent on such activities.

(b) "Office" means the Office of the Blue Economy.

(2) The Office of the Blue Economy is created within the State University System to promote economic development by connecting the state's research institutions with financial resources to facilitate the transfer of innovative technology into marketable goods and services. The Office shall be housed within a state university and administered by the Board of Governors of the State University System.

(3) The Office of the Blue Economy shall:

(a) Support the state's economy by connecting the state's ocean and coastal resources to economic development strategies that enhance or contribute to the blue economy with a focus on research and development, technological innovation, emerging industries, strategic business recruitment, public and private funding opportunities, and workforce training and education.

(b) Survey state universities and Florida College System institutions on the development of academic research relating to the blue economy across all disciplines. The Office shall encourage collaboration between state universities and Florida College System institutions that have overlapping areas of academic research. The Office shall publish on the Office’s

website information on such collaboration and the current research inventory.

(c) Collaborate with relevant industries to identify economic challenges that may be solved through innovation in the blue economy by commercializing or otherwise providing public access to academic research and resources.

(d) Develop and facilitate a pipeline of academic research, commercialization, accelerator programs, and startup funding.

(e) Publish on the Office’s website reports on the number, growth, and average wages of jobs included in the blue economy. Such reports must identify and address any relevant labor shortages projected by the Labor Market Estimating Conference pursuant to s. 216.136(7).

(f) Educate other state and local entities on the interests of the blue economy and how such entities may positively address environmental issues while simultaneously considering the economic impact of their policies.

(g) Communicate the state's role as an integral component of the blue economy by promoting the state on national and international platforms and other appropriate forums as the premier destination for convening on pertinent subject matters.

(h) Maintain a website on which the Office shall publish information as required under this subsection.

(4) Beginning January 1, 2025, by December 30 of each

year, the Office shall provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives a detailed report demonstrating the economic benefits of the Office of the Blue Economy and the development of emerging blue economy industries.

Section 2. This act shall take effect July 1, 2024.

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

Remove lines 3-21 and insert:

A bill to be entitled

creating s. 288.102, F.S.; providing definitions; creating the Office of the Blue Economy; providing that the Office of the Blue Economy shall be housed within a state university and administered by the Board of Governors; providing duties of the Office of the Blue Economy; requiring the Office of the Blue Economy to annually report to the Governor and the Legislature; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1541 Transparency In Social Media
SPONSOR(S): Fine
TIED BILLS: **IDEN./SIM. BILLS:** SB 1448

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

SUMMARY ANALYSIS

Social media includes forms of electronic communication, such as websites for social networking and microblogging, through which users create online communities to share information, ideas, videos, personal messages, and other content. In 2023, an estimated 4.9 billion people worldwide used social media. Recently, there has been growing concerns of influence over social media platforms by foreign adversaries.

The bill requires each foreign-adversary-owned entity operating a social media platform in Florida to:

- Publicly disclose the core functional elements of the social media platform's content curation and algorithms. Such disclosure must identify:
  - The factors that influence content ranking and visibility.
  - Measures taken to address misinformation and harmful content.
  - The process of personalization and targeting of content.
- Make publicly available the source code of its algorithms through an open-source license.
- Implement a user verification system for each user and organization that purchases advertisements concerning social or political issues.
  - The system must verify key identifying information, including:
    - Citizenship,
    - Residency, and
    - Age of the user or the individuals that own the organization.
  - Once verified, the identity of the purchaser of each social or political advertisement must be disclosed with the advertisement.

The bill defines the following terms:

- "Foreign-adversary-owned entity" means a social media company that is owned or substantially controlled by nationals, governments, or corporations domiciled, incorporated, or otherwise holding residence in a country designated as a foreign adversary.
- "Social media platform" means a public online service that allows users to create and share or participate in social networking.
- "Social or political advertising" means any advertisement on a social media platform that discusses social or political issues or is intended to influence public opinion or electoral outcomes.

The bill provides that a foreign-adversary-owned entity that violates the requirements of the bill is liable up to $10,000 for each discrete violation, and requires the Department of Legal Affairs to enforce the bill.

The bill will have an indeterminate, negative fiscal impact on state government, and no impact on local government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Internet and Social Media Platforms

There are many ways in which individuals access computer systems and interact with systems and other individuals on the Internet. Examples include:

- Social media sites, which are websites and applications that allow users to communicate informally with others, find people, and share similar interests;[1]
- Internet platforms, which are servers used by an Internet provider to support Internet access by their customers;[2]
- Internet search engines, which are computer software used to search data (such as text or a database) for specified information;[3] and
- Access software providers, which are providers of software (including client or server software) or enabling tools for content processing.[4]

Such platforms earn revenue through various modes and models. Examples include:

- Data monetization.[5] This uses data that is gathered and stored on the millions of users that spend time on free content sites, including specific user location, browsing habits, buying behavior, and unique interests. This data can be used to help e-commerce companies tailor their marketing campaigns to a specific set of online consumers. Platforms that use this model are typically free for users to use.[6]
- Subscription or membership fees. This model requires users pay for a particular or unlimited use of the platform infrastructure.[7]
- Transaction fees. This model allows platforms to benefit from every transaction that is enabled between two or more actors. An example is AirBnB, where users transacting on the site are charged a fee.[8]

Trade Secrets

Generally, trade secrets are intellectual property rights on confidential information that are used by a business and provide an economic advantage to that business.[9]

Section 812.081, F.S., defines a "trade secret" as information[10] used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who

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[1] DelValle Institute Learning Center, *Social Media Platforms*, *available at* https://delvalle.bphc.org/mod/wiki/view.php?pageid=65 (last visited Jan. 29, 2024).
[2] IGI Global, *Internet Platform*, *available at* https://www.igi-global.com/dictionary/internet-platform/15441 (last visited Jan. 29, 2024).
[3] Merriam Webster, *Search Engine*, *available at* https://www.merriam-webster.com/dictionary/search%20engine (last visited Jan. 29, 2024).
[4] 47 U.S.C. § 230(f)(4) defining "access software provider to mean a provider of software (including client or server software), or enabling tools that do any one or more of the following: (i) filter, screen, allow, or disallow content; (ii) pick, choose, analyze, or digest content; or (iii) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.
[5] The Alexander von Humboldt Institute for Internet and Society, *How do digital platforms make their money?*, July 29, 2019, *available at* https://www.hiig.de/en/how-do-digital-platforms-make-their-money/ (last visited Jan. 29, 2024).
[6] Investopedia, *How Do Internet Companies Profit with Free Services?, available at* https://www.investopedia.com/ask/answers/040215/how-do-internet-companies-profit-if-they-give-away-their-services-free.asp#:~:text=Profit%20Through%20Advertising,content%20is%20through%20advertising%20revenue.&text=Each%20of%20these%20users%20represents,and%20services%20via%20the%20Internet (last visited Jan. 29, 2024).
[7] HIIS, *supra* note 5.
[8] *Id.*
[9] *See* The Florida Bar, *Trade Secret* (Dec. 14, 2022) https://www.floridabar.org/practice-areas/trade-secrets/ (last visited Jan. 29, 2024).
[10] A trade secret may manifest as any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Section 812.081, F.S.

do not know or use it. The test provided for in statute, and adopted by Florida courts,[11] requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret's owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.[12]

Florida law criminalizes the disclosure or theft of trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony[13] for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that are trade secrets that reside or exist internal or external to a computer, computer system, computer network, or electronic device.[14]
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article that represents a trade secret, when done with an intent to:
    - Deprive or withhold from the trade secret's owner the control of a trade secret, or
    - Appropriate a trade secret to his or her own use or to the use of another.

Florida SB 7072 (2021)

In 2021, the Florida Legislature passed SB 7072, which addressed concerns related to social media platforms. SB 7072 was signed by the Governor on May 24, 2021.[15] Section 501.2041, F.S., was created, which provides that a social media platform must:

- Publish standards used for determining how to censor, deplatform, and shadow ban users, and apply such standards in a consistent manner;
- Inform each user about any changes to its user rules, terms, and agreements before implementing the changes and not make changes more than once every 30 days;
- Notify a user in a specified manner censoring or deplatforming the user;
- Allow a user to request the number of other individuals who were shown the user's content or posts, and provide such information upon such request by the user;
- Provide users with an option to opt out of post-prioritization and shadow banning algorithms to allow sequential or chronological posts and content;
- Provide users with an annual notice on the use of algorithms for post-prioritization and shadow banning and reoffer annual notice on the use of algorithms for post-prioritization and shadow banning;
- Ensure that posts by or about candidates for office in Florida are not shadow banned;
- Allow a user who has been deplatformed to access or retrieve all of the user's information, content, material, and data for at least 60 days after the user receives the required notice; and
- Ensure that journalistic enterprises are not censored, deplatformed, or shadow banned.

In s. 501.2041, F.S., "Social media platform" is defined as any information service, system, Internet search engine, or access software that:

- Provides or enables computer access by multiple users to a computer server, including an Internet platform and/or a social media site;
- Operates as a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity;
- Does business in Florida; and
- Satisfies at least one of the following thresholds:

[11] See, e.g., *Sepro Corp. v. Dep't. of Envt'l. Prot.*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[12] Section 812.081(1)(c), F.S.
[13] A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. *See* ss. 775.082 and 775.083, F.S.
[14] The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.
[15] Ch. 2021-32, L.O.F.

- Annual gross revenues in excess of $100,000,000, as adjusted in January of each odd numbered year to reflect any increase in the Consumer Price Index; or
- At least 100,000,000 monthly individual platform participants globally.

Section 501.2041, F.S., also provides for enforcement by permitting the Department of Legal Affairs (DLA) to find a social media platform who fails to comply with the requirements stated above to be in violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). Additionally, a user may bring a private cause of action against a social media platform for failing to consistently apply certain standards for censoring or deplatforming without proper notice.

Litigation History

Immediately after the bill was signed by the Governor, but prior to the bill's effective date of July 1, 2021, the plaintiff filed a complaint in the U.S. District Court for the Northern District of Florida challenging the constitutionality of many of the bill's provisions and exceptions, and immediately moved the Court for a preliminary injunction. The District Court granted the preliminary injunction on June 30, 2021.[16]

The filed complaint alleges the following:
- Count 1 of the complaint alleges the Act "violates the First Amendment's free-speech clause by interfering with the providers' editorial judgment, compelling speech, and prohibiting speech."
- Count 2 alleges the Act "is vague in violation of the Fourteenth Amendment."
- Count 3 alleges the Act "violates the Fourteenth Amendment's equal protection clause by impermissibly discriminating between providers that are or are not under common ownership with a large theme park and by discriminating between providers that do or do not meet the Act's size requirements."
- Count 4 alleges the Act "violates the Constitution's dormant commerce clause."
- Count 5 alleges the Act "is preempted by 47 U.S.C. § 230(e)(3), which, together with § 230(c)(2)(A), expressly prohibits imposition of liability on an interactive computer service—this includes a social-media provider—for action taken in good faith to restrict access to material the service finds objectionable."[17]

The District Court indicated that the law was not clearly settled related to issues about First Amendment treatment of social-media providers: "The plaintiffs say, in effect, that they should be treated like any other speaker. The State says, in contrast, that social-media providers are more like common carriers, transporting information from one person to another much as a train transports people or products from one city to another. The truth is in the middle."[18]

The District Court determined that strict scrutiny applied as the standard to be used:

"Viewpoint- and content-based restrictions on speech are subject to strict scrutiny. A law restricting speech is content-based if it "applies to particular speech because of the topic discussed or the idea or message expressed." Laws that are facially content-neutral, but that cannot be justified without reference to the content of the regulated speech, or that were adopted because of disagreement with the speaker's message, also must satisfy strict scrutiny."[19]

The District Court enjoined the State from enforcing any provision of s. 501.2041, F.S., on preemption and First Amendment grounds.

The State filed an appeal of the District Court's decision in the U.S. Court of Appeals for the Eleventh Circuit.

[16] *NetChoice, LLC v. Moody*, 546 F. Supp. 3d 1082 (N.D. Fla. 2021) (NetChoice, LLC, and the Computer & Communications Industry Association are trade associations whose members include social media providers).
[17] *NetChoice, LLC,* 546 F. Supp. 3d at 1085.
[18] *NetChoice, LLC*, 546 F. Supp. 3d at 1091.
[19] *NetChoice, LLC*, 546 F. Supp. 3d at 1093.

On May 23, 2022, the U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's preliminary injunction in part, and vacated and remanded it in part.[20]
The Eleventh Circuit found the following provisions of SB 7072, to likely violate the First Amendment:

- Section 106.072(2), F.S., which pertains to candidate deplatforming;
- Section 501.2041(2)(h), F.S., which pertains to the use of algorithms for the purpose of post-prioritization or shadow banning candidates;
- Section 501.2041(2)(j), F.S., which pertains to journalistic enterprises;
- Section 501.2041(2)(b), F.S., which pertains to the consistent application of censorship, deplatforming, and shadow banning standards;
- Section 501.2041(2)(c), F.S., which limits the number of changes that can be made to once every 30 days;
- Sections 501.2041(2)(f) and 501.2041(2)(g), F.S., which pertain to categorizing algorithms used for post-prioritization and shadow banning, as well as allowing for user opt-outs; and
- Section 501.2041(2)(d), F.S., which pertains to notifying a user when their content is censored or shadow banned.

However, the Eleventh Circuit found the following provisions of SB 7072, to likely not violate the First Amendment:

- Section 501.2041(2)(a), F.S., which pertains to the publication of standards used for determining how to censor, deplatform, and shadow ban;
- Section 501.2041(2)(c), F.S., which pertains to informing users to any changes to its user rules, terms, and agreements before implementing the changes;
- Section 501.2041(2)(e), F.S., which pertains to user view counts;
- Section 501.2041(2)(i), F.S., which pertains to user data access; and
- Section 106.072(4), F.S., which pertains to free advertising for a candidate.[21]

The United States Supreme Court is set to hear oral arguments on February 26, 2024.

Florida Data Privacy Regulations

In 2023, the Florida Legislature passed SB 262, which created a unified scheme to allow Florida's consumers to control the digital flow of their personal information. SB 262 was signed by the Governor on June 6, 2023.[22] Among other things, SB 262 created ch. 501, part V, F.S., which takes effect on July 1, 2024, and gives Florida consumers the right to:

- Confirm and access their personal data;
- Delete, correct, or obtain a copy of that personal data;
- Opt out of the processing of personal data for the purposes of targeted advertising, the sale of personal data, or profiling in furtherance of a decision that produces a legal or similarly significant effect concerning a consumer;
- Opt out of the collection or processing of sensitive data, including precise geolocation data; and
- Opt out of the collection of personal data collected through the operation of a voice recognition or facial recognition feature.

The data privacy provisions of ch. 501, part V, F.S., generally apply to "controllers," businesses that collect Florida consumers' personal data, make in excess of $1 billion in global gross annual revenues, and meet one of the following thresholds:

- Derives 50 percent or more if its global gross annual revenues from the online sale of advertisements, including from providing targeted advertising or the sale of ads online;
- Operates a consumer smart speaker and voice command component service with an integrated virtual assistant connected to a cloud computing service that uses hands-free verbal activation; or
- Operates an app store or digital distribution platform that offers at least 250,000 different software applications for consumers to download and install.

[20] *Moody v. NetChoice, LLC*, 34 F.4th 1196 (11th Cir. 2022).
[21] *Moody,* 34 F.4th 1196.
[22] *See* ch. 2023-201, Laws of Fla.

A controller who operates an online search engine is required to make available an up-to date plain language description of the main parameters that are most significant in determining ranking and the relative importance of those main parameters, including the prioritization or deprioritization of political partisanship or political ideology in search results. A controller must also conduct and document a data protection assessment of certain processing activities involving personal data. Additionally, a controller is required to provide consumers with a reasonably accessible and clear privacy notice, updated at least annually.

A violation of ch. 501, part V, F.S is an unfair and deceptive trade practice actionable under FDUTPA, to be enforced by DLA. The DLA may provide a right to cure a violation of ch. 501, part V, F.S., by providing written notice of the violation and then allowing a 45-day period to cure the alleged violation. The DLA is required to make a report publicly available by February 1 each year on the DLA's website that describes any actions it has undertaken to enforce ch. 501, part V, F.S.

SB 262 also created s. 112.23, F.S., which prohibits employees of a governmental entity from using their position or any state resources to communicate with a social media platform to request that it remove content or accounts. Additionally, a governmental entity cannot initiate or maintain any agreements with a social media platform for the purpose of content moderation. These prohibitions do not apply to routine account maintenance, attempts to remove accounts or content pertaining to the commission of a crime, or efforts to prevent imminent bodily harm, loss of life, or property damage.

Montana TikTok Law

On May 17, 2023, SB 419 was signed into law in Montana, which specifically banned TikTok in the state.[23] However, on November 30, 2023, the law was preliminarily enjoined, based on several constitutional concerns, including those related to bills of attainder, the Commerce Clause, the First Amendment, and the Supremacy Clause, therefore preventing Montana from enforcing the ban on TikTok's operations.[24]

The law lists concerns, including the People's Republic of China's (PRC's) status as "an adversary," as well as TikTok's status as a "subsidiary of . . . a Chinese corporation" over which "the [PRC] exercises control and oversight," improper procurement and sharing of user data, and promotion of "dangerous content."[25]

SB 419 would ban TikTok in Montana by:

- Prohibiting mobile application stores from making the TikTok app available to users in Montana;
- Prohibiting TikTok's operation in all places subject to Montana's criminal jurisdiction; and
- Including penalties and enforcement provisions.[26]

According to the Congressional Research Service, to date, no other states have enacted a ban this broad against TikTok or any other social media platform. Instead, more than half of U.S. states prohibit the use of TikTok on at least some state-issued devices, and a number of public postsecondary institutions have followed suit, enacting policies that prevent university Wi-Fi or university-issued devices from being used to access the app.[27]

Freedom of Speech and Internet Platforms

Section 230

[23] Montana.gov, *Governor Gianforte Bans TikTok in Montana*, May 17, 2023, https://news.mt.gov/Governors-Office/Governor_Gianforte_Bans_TikTok_in_Montana (last visitedFeb. 2, 2024).
[24] Congressional Research Service, *Montana's TikTok Ban, an Injunction, and Pending Legal Actions* (December 8, 2023), *available at* https://crsreports.congress.gov/product/pdf/LSB/LSB10972#:~:text=Commerce%20Clause%3A%20The%20court%20found,concept%20Montana%20did%20not%20contest. (last visited Feb. 2, 2024).
[25] *Id.*
[26] *Id.*
[27] *Id.*

The federal Communications Decency Act (CDA) was passed in 1996 "to protect children from sexually explicit Internet content."[28] 47 U.S. Code § 230 (Section 230) was added as an amendment to the CDA to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the medium to a minimum."[29]

Congress stated in Section 230 that "[i]t is the policy of the United States—(1) to promote the continued development of the Internet and other interactive computer services and other interactive media; [and] (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."[30]

Specifically, Section 230 states that no provider or user of an interactive computer service may be held liable on account of:[31]

- Any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
- Any action taken to enable or make available to information content providers or others the technical means to restrict access to material from any person or entity that is responsible for the creation or development of information provided through any interactive computer service.

Section 230 eased Congressional concern regarding the outcome of two inconsistent judicial decisions,[32] both of which applied traditional defamation law to internet providers.[33] The first decision held that an interactive computer service provider could not be liable for a third party's defamatory statement, however the second decision imposed liability where a service provider filtered content in an effort to block obscene material.[34] To provide clarity, Section 230 provides that "[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."[35] In light of the objectives of Congress, the Circuits are in general agreement that the text of Section 230(c)(1) should be construed broadly in favor of immunity.[36]

Section 230 specifically addresses how the federal law affects other laws. Section 230 prohibits all inconsistent causes of action and prohibits liability imposed under any state or local law.[37] However, Section 230 does not affect federal criminal law, intellectual property law, the Electronic Communications Privacy Act of 1986, or sex trafficking law.

There have been criticisms of the broad immunity provisions or liability shields which force individuals unhappy with third-party content to sue the user who posted it. While this immunity has fostered the free flow of ideas on the Internet, critics have argued that Section 230 shields publishers from liability for allowing harmful content.[38] Congressional and executive proposals to limit immunity for claims relating to platforms purposefully hosting content from those engaging in child exploitation, terrorism, and cyber-stalking have been introduced.[39] Bills have been filed that would require internet platforms to have clear content moderation policies, submit detailed transparency reports, and remove immunity for

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[28] *See 1 Force v. Facebook, Inc.,* 934 F.3d 53, 63 (2d Cir. 2019) (citing *FTC v. LeadClick Media, LLC,* 838 F.3d 158, 173 (2d Cir. 2016) (citing 141 Cong. Rec. S1953 (daily ed. Feb. 1, 1995) (statement of Sen. Exon)).
[29] *Force*, 934 F.3d at 63 (quoting *Ricci v. Teamsters Union Local* 456, 781 F.3d 25, 28 (2d Cir. 2015) (quoting *Zeran v. Am. Online, Inc.,* 129 F.3d 327, 330 (4th Cir. 1997)).
[30] 47 U.S.C. § 230(b)(1)–(2).
[31] 47 U.S.C. § 230(c).
[32] *Cubby, Inc. v. CompuServe, Inc.,* 776 F. Supp. 135 (S.D.N.Y. 1991) and *Stratton Oakmont, Inc. v. Prodigy Servs. Co.,* No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995).
[33] *Force*, 934 F.3d at 63 (quoting *LeadClick*, 838 F.3d at 173).
[34] *Force,* 934 F.3d at 63 (quoting *LeadClick,* 838 F.3d at 173 (citing 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox))).
[35] 47 U.S.C. § 230(c)(1).
[36] *Force*, 934 F.3d at 63.
[37] 47 U.S.C. § 230(e).
[38] Zoe Bedell and John Major, What's Next for Section 230? A Roundup of Proposals Lawfare, (July 29, 2020) https://www.lawfareblog.com/whats-next-section-230-roundup-proposals (last visited Feb. 2, 2024).
[39] *Id.*

platforms that engage in certain behavioral advertising practices.[40] Proposals have also been offered to limit the liability shield for internet providers who restrict speech based on political viewpoints.[41]

Recently, the United States Supreme Court heard *Twitter, Inc. v. Taamneh* and *Gonzalez v. Google*; these cases alleged that Twitter and Google aided and abetted terrorists who posted content to their platforms, and a key issue in both cases was whether social media companies can be held liable for their targeted recommendation algorithms.[42] However, the court decided both cases on alternative grounds, which leaves the question unanswered.

Freedom of Speech

The First Amendment of the United States Constitution protects the right to freedom of expression from government interference. The First Amendment is applicable to the states through the Due Process Clause of the Fourteenth Amendment.[43] "The First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well."[44] "Online speech is equally protected under the First Amendment as there is 'no basis for qualifying the level of First Amendment scrutiny that should be applied' to online speech."[45]

It is well established that a government regulation based on the content of speech is presumptively invalid and will be upheld only if it is necessary to advance a compelling governmental interest, precisely tailored to serve that interest, and is the least restrictive means available for establishing that interest.[46] The government bears the burden of demonstrating the constitutionality of any such content-based regulation.[47]

The United States Supreme Court has recognized that First Amendment protection extends to corporations.[48] "This protection has been extended by explicit holdings to the context of political speech."[49] Under these precedents, it is well settled that political speech does not lose First Amendment protection "simply because its source is a corporation."[50] Generally, the government may not require a corporation to host another's speech absent a showing of a compelling state interest.[51]

Supremacy Clause, Commerce Clause, and Bills of Attainder

The U.S. Constitution's Supremacy Clause establishes that federal statutes, treaties, and the U.S. Constitution are the "supreme Law of the Land."[52]

Federal law may preempt state action that thwarts federal law in three ways:

- By an express statement of its intent to occupy a field. Express preemption need not be total, however—it can preempt all state laws or only certain state laws.

[40] *Id.*; PACT Act, S.4066, 116th Cong. (2020); BAD ADS Act, S.4337, 116th Cong. (2020).
[41] Bedell, *supra* note 38; Limiting Section 230 Immunity to Good Samaritans Act, S.3983, 116th Cong. (2020).
[42] *See Twitter, Inc. v. Taamneh,* 143 S. Ct. 1206 (2023) and *Gonzalez v. Google LLC*, 143 S. Ct. 1191 (2023).
[43] *See De Jonge v. Oregon*, 299 U.S. 353, 364–65(1937)(incorporating right of assembly);(incorporating right of freedom of speech).
[44] *Douglas v. City of Jeannette (Pennsylvania)*, 319 U.S. 157, 179, (1943) (Jackson, J., concurring in result).
[45] *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997).
[46] *Ashcroft v. Am. Civil Liberties Union,* 542 U.S. 656, 665-66 (2004).
[47] *Ashcroft,* 542 U.S. 656, at 660.
[48] *Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010).
[49] *Id.* (citing *NAACP v. Button v.* 371 U.S.415, 428-429 (1963); *Grosjean v. American Press Co.,* 297 U.S. 233, 244 (1936)).
[50] *Id.* (citing *First Nat. Bank of Boston v. Bellotti,* 435 U.S. at 784 (1978); *Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.,* 475 U.S. 1, 8, 106 S.Ct. 903, 89 L.Ed.2d 1 (1986) (plurality opinion) ("The identity of the speaker is not decisive in determining whether speech is protected. Corporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster" (quoting *Bellotti,* 435 U.S., at 783)).
[51] *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1980); *First National Bank of Boston v. Belliotti*, 438 U.S. (1978); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974); *Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986).
[52] U.S. CONST., Art. VI, cl. 2.

- With "a framework of regulation so pervasive that Congress left no room for the States to supplement it or where the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."[53]
- Where state law conflicts, leaving an actor to choose whether to adhere to state or federal law.[54] The state law may also be subject to conflict preemption where it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[55]

The federal government's authority to act in the realm of foreign affairs is vested by the U.S. Constitution.[56] State laws that intrude into this field of foreign affairs, even where not preempted by prior federal action, improperly impact foreign affairs and are therefore invalid.[57] Courts have generally held, however, that the state's intrusion must have more than an "incidental effect" on foreign affairs in order to be considered an encroachment onto the federal government's powers.[58]

Article I, section 8, clause 3 of the U.S. Constitution grants Congress the power to "regulate commerce with foreign nations ...." Conversely, this provision serves as a limitation on states' authority to encroach onto the realm of foreign commerce where such action creates a risk of conflicts with foreign governments or impedes the federal government's ability to speak with one voice in regulating industry affairs with foreign states.[59] The "dormant foreign commerce power"[60] voids state acts upon foreign commerce because of the Constitution's overriding concern for national uniformity in foreign commerce—even in instances when Congress has not affirmatively acted.[61] Courts also generally subject state action to a heightened scrutiny that assumes the supremacy of federal action in the realm of foreign relations.[62]

Additionally, Congress has the power to regulate commerce among the states.[63] Though phrased as a grant of regulatory power to Congress, the Commerce Clause has long been understood to have a negative or dormant aspect that denies the states the power to unjustifiably discriminate against or burden the interstate flow of articles of commerce.[64]

Article I, section 9, of the U.S. Constitution provides that Congress shall pass "No Bill of Attainder or ex post facto Law." Similarly, Article I, section 10, of the U.S. Constitution prohibits the states from enacting bills of attainder. The Supreme Court has described a bill of attainder as "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of judicial trial."[65]

The International Emergency Economic Powers Act

The International Emergency Economic Powers Act (IEEPA) gives the President of the United States regulatory authority over a variety of economic transactions in the event of a national emergency that constitutes an unusual and extraordinary threat.[66] The IEEPA, like the Trading with the Enemy Act from

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[53] *Arizona v. U.S.*, 567 U.S. 387, 399 (2012).
[54] *Crosby v. Nat'l. Foreign Trade Council*, 530 U.S. at 372 (2000).
[55] *Nat'l Foreign Trade Council, Inc. v. Giannoulias*, 523 F. Supp. 2d 731 (N.D. Ill. Feb. 23, 2007), *quoting Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).
[56] *See, e.g.*, U.S. CONST., Art. I, s. 8 (power to declare war, maintain a military, and regulate foreign commerce); U.S. CONST., Art. II, s. 2 (power to enter into treaties); U.S. CONST., Art. III, s. 2 (power to hear case involving foreign states and citizens).
[57] *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass'n. v. Garamendi*, 539 U.S. 396 (2003) (finding that the President's powers in foreign policy were so great as to outweigh any need for a direct expression of preemption.)
[58] *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).
[59] *Japan Line v. County of Los Angeles*, 441 U.S. 434, 446 (1979).
[60] *See generally*, Stephen Mulligan, Congressional Research Service, *Constitutional Limits on States' Power over Foreign Affairs*, 3-4 (Aug. 15, 2022), *available at* https://crsreports.congress.gov/product/pdf/LSB/LSB10808 (last visited Feb. 2, 2024).
[61] *United States v. Davila-Mendoza*, 972 F.3d 1264 (11th Cir. 2020).
[62] "The premise […] is that the Commerce Clause analysis is identical, regardless of whether interstate or foreign commerce is involved. This premise […] must be rejected. When construing Congress' power to 'regulate Commerce with foreign Nations,' a more extensive constitutional inquiry is required." *Japan Line* at 446.
[63] U.S. CONST., Art. I, s. 8
[64] *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality of Or.*, 511 U.S. 93, 98 (1994).
[65] *See Nixon v. Administrator of General Services,* 433 U.S. 425 (1977).
[66] *See* CRS, *supra* note 24. *See also* 50 U.S.C. § 1701.

which it branched, sits at the center of the modern U.S. sanctions regime. As of September 1, 2023, Presidents had declared 69 national emergencies invoking IEEPA, 39 of which are ongoing.[67]

Executive Orders 13,873,[68] which prevents certain transactions with foreign adversaries, and 14,034, which imposed a restriction on TikTok, invoked IEEPA authority in response to concerns about foreign adversaries' access to American digital data.[69] However, the executive branch withdrew Executive Order 14,034 with specific IEEPA-based restrictions on TikTok.[70]

Executive Order 13,873, references risks posed by foreign adversaries, which the order defines as any foreign government or foreign person "engaged in a long-term pattern or serious instances of conduct significantly adverse" to U.S. security or the safety of U.S. persons.[71]

Subsequently, the Department of Commerce identified China (including Hong Kong), Cuba, Iran, North Korea, Russia, and the Nicolás Maduro regime in Venezuela as foreign adversaries.[72]

Effect of the Bill

The bill defines the following terms:

- "Algorithm" has the same meaning as in s. 501.2041(1), F.S.[73]
- "Foreign-adversary-owned entity" means a social media company that is owned or substantially controlled by nationals, governments, or corporations domiciled, incorporated, or otherwise holding residence in a country designated as a foreign adversary under 15 C.F.R. 7.4.[74]
- "Social media platform" means a public online service that allows users to create and share or participate in social networking.
- "Social or political advertising" means any advertisement on a social media platform that discusses social or political issues or is intended to influence public opinion or electoral outcomes.

The bill requires each foreign-adversary-owned entity operating a social media platform in Florida to:

- Publicly disclose the core functional elements of the social media platform's content curation and algorithms. Such disclosure must identify:

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[67] *See* Congressional Research Service, *The International Emergency Economic Powers Act: Origins, Evolution, and Use* (September 28, 2023), *available at* https://crsreports.congress.gov/product/pdf/R/R45618 (last visited Feb. 2, 2024).

[68] The Supply Chain Rule implements Executive Orders 13873 and 14034, titled Securing the Information and Communications Technology and Services Supply Chain (ICTS). Invoking National Emergencies Act (50 U.S.C. § 1601) and citing the International Emergency Economic Powers Act (50 U.S.C. §1701), then-President Trump declared a national emergency because of the threat of foreign adversaries exploiting vulnerabilities in ICTS. In response to this threat, Executive Order 13873 prohibits transactions involving foreign-owned ICTS that present (1) an undue risk of sabotage or subversion to ICTS in the United States, (2) an undue risk of catastrophic effects on the security or resiliency of critical infrastructure or the digital economy in the United States, or (3) an unacceptable risk to U.S. national security or the security and safety of U.S. persons. The order delegates implementation to the Department of Commerce. In June 2021, President Biden issued Executive Order 14034, which directed the Secretary of Commerce to evaluate the risks posed by connected software applications, commonly called "apps." The order identified additional criteria for Commerce to consider when evaluating transactions involving apps under the Supply Chain Rule. Factors include the app's capacity to enable espionage and the sensitivity of data collected. In June 2023, Commerce published a final rule (88 FR 39353), effective July 17, 2023, that expressly includes apps in the definition of ICTS and adds app-specific risk factors to the Supply Chain Rule. See Congressional Research Service, *The Information and Communications Technology and Services (ICTS) Rule and Review Process* (June 22, 2023), *available at* https://crsreports.congress.gov/product/pdf/IF/IF11760 (last visited Feb. 2, 2024).

[69] See Congressional Research Service, *Montana's TikTok Ban, an Injunction, and Pending Legal Actions* (December 8, 2023), *available at* https://crsreports.congress.gov/product/pdf/LSB/LSB10972#:~:text=Commerce%20Clause%3A%20The%20court%20found,concept%20Montana%20did%20not%20contest (last visited Feb. 2, 2024).

[70] *Id*.

[71] *Id*.

[72] 15 CFR § 7.4.

[73] Section 501.2041(1)(a), F.S. defines "algorithm" as a mathematical set of rules that specifies how a group of data behaves and that will assist in ranking search results and maintaining order or that is used in sorting or ranking content or material based on relevancy or other factors instead of using published time or chronological order of such content or material.

[74] The following foreign governments or foreign non-government persons constitute foreign adversaries:
The People's Republic of China, including the Hong Kong Special Administrative Region (China); Republic of Cuba (Cuba); Islamic Republic of Iran (Iran); Democratic People's Republic of Korea (North Korea); Russian Federation (Russia); and Venezuelan politician Nicolás Maduro (Maduro Regime).

    - The factors that influence content ranking and visibility.
    - Measures taken to address misinformation and harmful content.
    - The process of personalization and targeting of content.
- Make publicly available the source code of its algorithms through an open-source license.
- Implement a user verification system for each user and organization that purchases advertisements concerning social or political issues.
    - The system must verify key identifying information, including:
        - Citizenship,
        - Residency, and
        - Age of the user or the individuals that own the organization.
    - Once verified, the identity of the purchaser of each social or political advertisement must be disclosed with the advertisement.

The bill provides that a foreign-adversary-owned entity operating a social media platform that violates the requirements of the bill is liable up to $10,000 for each discrete violation.

The bill requires DLA to enforce the bill.

The bill, titled the "Transparency in Social Media Act," makes the following findings:

- Social media platforms play a significant role in shaping public discourse and opinion.
- Algorithms used by social media platforms can influence user behavior and content visibility.
- Transparency in the functioning of such algorithms and in political and social advertising is vital for safeguarding democratic values and user privacy.
- Ownership of social media platforms by foreign entities can raise concerns regarding foreign influence and data security.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 501.20411, F.S.; related to requirements for certain social media companies.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There may be an increase in civil penalties collected by DLA.

2. Expenditures:

   There may be an increase of regulatory costs to DLA from enforcing the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain social media entities will need to implement new procedures for sharing certain algorithm information, user verification, and advertisement disclosures.

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:

Freedom of Speech

It is well established that a government regulation based on the content of speech is presumptively invalid and will be upheld only if it is necessary to advance a compelling governmental interest, precisely tailored to serve that interest, and is the least restrictive means available for establishing that interest.[75] The government bears the burden of demonstrating the constitutionality of any such content-based regulation.[76]

The United States Supreme Court has recognized that First Amendment protection extends to corporations.[77] "This protection has been extended by explicit holdings to the context of political speech."[78] Under these precedents, it is well settled that political speech does not lose First Amendment protection "simply because its source is a corporation."[79] Generally, the government may not require a corporation to host another's speech absent a showing of a compelling state interest.[80]

Supremacy Clause

The U.S. Constitution's Supremacy Clause establishes that federal statutes, treaties, and the U.S. Constitution are the "supreme Law of the Land."[81]

Federal law may preempt state action that thwarts federal law in three ways:

- By an express statement of its intent to occupy a field. Express preemption need not be total, however—it can preempt all state laws or only certain state laws.
- With "a framework of regulation so pervasive that Congress left no room for the States to supplement it or where the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."[82]
- Where state law conflicts, leaving an actor to choose whether to adhere to state or federal law.[83] The state law may also be subject to conflict preemption where it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[84]

[75] *Ashcroft* 542 U.S. 656, at 665-66.
[76] *Ashcroft,* 542 U.S. 656, at 660.
[77] *Citizens United*, 558 U.S. 310, at 342.
[78] *Id.*
[79] *Id*.
[80] *Consolidated Edison Co.*, 447 U.S. 530; *First National Bank of Boston*, 438 U.S. 1978; *Miami Herald Publishing Co.*, 418 U.S. 241; *Pacific Gas & Electric Co*, 475 U.S.1.
[81] U.S. CONST., Art. VI, cl. 2.
[82] *Arizona v. U.S.*, 567 U.S. 387, 399.
[83] *Crosby*, 530 U.S. at 372.
[84] *Nat'l Foreign Trade Council, Inc.*, 523 F. Supp. 2d 731.

The federal government's authority to act in the realm of foreign affairs is vested by the U.S. Constitution.[85] State laws that intrude into this field of foreign affairs, even where not preempted by prior federal action, improperly impact foreign affairs and are therefore invalid.[86] Courts have generally held, however, that the state's intrusion must have more than an "incidental effect" on foreign affairs in order to be considered an encroachment onto the federal government's powers.[87]

Article I, section 8, clause 3 of the U.S. Constitution grants Congress the power to "regulate commerce with foreign nations ...." Conversely, this provision serves as a limitation on states' authority to encroach onto the realm of foreign commerce where such action creates a risk of conflicts with foreign governments or impedes the federal government's ability to speak with one voice in regulating industry affairs with foreign states.[88] The "dormant foreign commerce power"[89] voids state acts upon foreign commerce because of the Constitution's overriding concern for national uniformity in foreign commerce—even in instances when Congress has not affirmatively acted.[90] Courts also generally subject state action to a heightened scrutiny that assumes the supremacy of federal action in the realm of foreign relations.[91]

Additionally, Section 230 of the federal Communications Decency Act (CDA),[92] in part, specifies that "[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider"[93] and specifically prohibits all inconsistent causes of action and liability imposed under any State or local law.[94]

Contracts

Article I, Section 10 of the United States Constitution prohibits a state from passing any law impairing the obligation of contracts. Article I, Section 10 of the Florida Constitution also prohibits the passage of laws impairing the obligation of contracts.

B. RULE-MAKING AUTHORITY:

There is no allowance for DLA to adopt rule pursuant to the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is unclear by what it mean to be "owned" or "controlled" by certain people or entities of a foreign adversary.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[85] *See, e.g.*, U.S. CONST., Art. I, s. 8; U.S. CONST., Art. II, s. 2; U.S. CONST., Art. III, s. 2.
[86] *Zschernig*, 389 U.S. 429; *American Ins. Ass'n.*, 539 U.S. 396.
[87] *Hines*, 312 U.S. 52, at 67.
[88] *Japan Line*, 441 U.S. 434, at 446.
[89] *See generally*, Stephen Mulligan, Congressional Research Service, *Constitutional Limits on States' Power over Foreign Affairs*, 3-4 (Aug. 15, 2022), *available at* https://crsreports.congress.gov/product/pdf/LSB/LSB10808 (last visited Feb. 2, 2024).
[90] *United States v. Davila-Mendoza*, 972 F.3d 1264.
[91] "The premise […] is that the Commerce Clause analysis is identical, regardless of whether interstate or foreign commerce is involved. This premise […] must be rejected. When construing Congress' power to 'regulate Commerce with foreign Nations,' a more extensive constitutional inquiry is required." *Japan Line,* 441 U.S. 434,at 446.
[92] *Force*, 934 F.3d at 63.
[93] 47 U.S.C. § 230(c)(1).
[94] 47 U.S.C. § 230(e).

A bill to be entitled

An act relating to transparency in social media; creating s. 501.20411, F.S.; providing a short title; providing legislative findings; providing definitions; requiring foreign-adversary-owned entities operating social media platforms in the state to publicly disclose specified information in a certain manner; requiring foreign-adversary-owned entities operating social media platforms to implement a user verification system for certain entities; providing penalties; requiring enforcement by the Department of Legal Affairs; providing an effective date.

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

Section 1. Section 501.20411, Florida Statutes, is created to read:

501.20411 Transparency in Social Media Act.—

(1) This section may be cited as the "Transparency in Social Media Act."

(2) The Legislature finds that:

(a) Social media platforms play a significant role in shaping public discourse and opinion.

(b) Algorithms used by social media platforms can influence user behavior and content visibility.

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

(c) Transparency in the functioning of such algorithms and in political and social advertising is vital for safeguarding democratic values and user privacy.

(d) Ownership of social media platforms by foreign entities can raise concerns regarding foreign influence and data security.

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

(a) "Algorithm" has the same meaning as in s. 501.2041(1).

(b) "Foreign-adversary-owned entity" means a social media company that is owned or substantially controlled by nationals, governments, or corporations domiciled, incorporated, or otherwise holding residence in a country designated as a foreign adversary under 15 C.F.R. s. 7.4.

(c) "Social media platform" means a public online service that allows users to create and share or participate in social networking.

(d) "Social or political advertising" means any advertisement on a social media platform that discusses social or political issues or is intended to influence public opinion or electoral outcomes.

(4)(a) Each foreign-adversary-owned entity operating a social media platform in the state must publicly disclose the core functional elements of the social media platform's content curation and algorithms.

(b) The disclosure must identify:

1. The factors that influence content ranking and visibility.

2. Measures taken to address misinformation and harmful content.

3. The process of personalization and targeting of content.

(5) Each foreign-adversary-owned entity operating a social media platform must make publicly available the source code of its algorithms through an open-source license.

(6)(a) Each foreign-adversary-owned entity operating a social media platform must implement a user verification system for each user and organization that purchases advertisements concerning social or political issues. The system must verify key identifying information, including citizenship, residency, and age of the user or the individuals that own the organization, as applicable.

(b) Once verified, the identity of the purchaser of each social or political advertisement must be disclosed with the advertisement.

(7)(a) A foreign-adversary-owned entity operating a social media platform that violates this section is liable up to $10,000 for each discrete violation.

(b) The Department of Legal Affairs shall enforce this section.

Section 2. This act shall take effect July 1, 2024.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1541 by Rep. Fine
Transparency In Social Media

AMENDMENT SUMMARY
February 6, 2024

Amendment 1 by Rep. Fine (line 34):

- Provides a definition for “control” and “own,” to mean that a foreign adversary has power:
  - Over the election of the directors, or of individuals exercising similar functions, for the entity; or
  - To exercise influence over the management of the entity.
- Provides that a foreign adversary must have 15 percent ownership or control over the social media company to be a foreign-adversary-owned entity.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Regulatory Reform & Economic Development Subcommittee
Representative Fine offered the following:

Amendment

Remove lines 34-38 and insert:

(b) "Foreign-adversary-owned entity" or "entity" means a social media company that is more than 15 percent owned or controlled by nationals, governments, or corporations domiciled, incorporated, or otherwise holding residence in a country designated as a foreign adversary under 15 C.F.R. s. 7.4. As used in this paragraph, the terms "owned" and "controlled" mean that a foreign adversary national, government, or corporation has power:

1. Over the election of the directors, or of individuals exercising similar functions, for the entity; or

2. To exercise influence over the management of the entity.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1099 Food Delivery Platforms
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform & Economic Development Subcommittee		Fletcher	Anstead

SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division), housed within the Department of Business and Professional Regulation, is responsible for enforcing laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety and welfare.

Florida statute defines “public food service establishment” as any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption, subject to certain exceptions. The regulation of public food service establishments in Florida is preempted to the state.

Third-party food delivery platforms are third-party apps that consumers can use to order delivery from public food service establishments for a fee. Once an order is placed, the food delivery platform sends an individual to pick up the food from the food establishment and deliver it to the consumer. These types of platforms are becoming increasingly popular, but are not currently regulated by the state.

The bill:

- Creates definitions for the terms "food delivery platform" and “food service establishment" for purposes of the bill’s provisions;
- Requires a food delivery platform to itemize and clearly disclose the cost breakdown of each transaction to a consumer, including, but not limited to, certain specified information;
- Requires a food delivery platform that does not have a relationship with a food service establishment to provide notice to the consumer that the food delivery platform does not have any such relationship;
- Authorizes the Division to:
  - Issue a notice to cease and desist to a food delivery platform for violations,
  - Enforce a cease and desist notice or issue an administrative fine if the food delivery platform does not cure a violation within 7 days, and
  - Receive and investigate complaints of a food delivery platform’s violation;
- Expressly preempts regulation of food delivery platforms to the state; and
- Provides rule-making authority to the Division.

The bill has no effect on local or state government revenues or expenses. The bill has an indeterminate positive and negative impact on the private sector.

The bill shall become effective upon becoming a law.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Division of Hotels and Restaurants

The Division of Hotels and Restaurants (Division) is a division of the Department of Business Regulation.[1] The Division is responsible for enforcing laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety and welfare.[2]

Public Food Service Establishments

Florida statute[3] defines "public food service establishment" as any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

There are several exclusions from the definition of the term, including:

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty, or temporarily to serve events such as fairs, carnivals, and athletic contests;
- Any eating place maintained and operated by a church or religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests;
- Any eating place located on an airplane, train, bus, or watercraft that is a common carrier;
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families;
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services;
- Any vending machine that dispenses any food or beverage other than potentially hazardous food;
- Any place of business serving only ice, beverages, popcorn, and prepackaged items; and
- Any research and development test kitchen limited to use by employees and not open to the general public.[4]

Under Florida law, the regulation of public food service establishments is preempted to the state.[5]

Off-Premises Options for Public Food Service Establishments

As a result of the loss of business that occurred during the coronavirus pandemic, many public food service establishments added off-premises options for serving food.[6] According to the National

[1] Office of Program Policy Analysis and Government Accountability, *Department of Business and Professional Regulation: Hotel and Restaurant Regulation*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4016 (last visited Jan. 31, 2024).
[2] S. 509.032(1), F.S.
[3] S. 509.013(5)(a), F.S.
[4] S. 509.013(5)(b), F.S.
[5] S. 509.032(7), F.S.
[6] National Restaurant Association, *Consumers respond to new off-premises options at restaurants*, https://restaurant.org/education-and-resources/resource-library/consumers-respond-to-new-off-premises-options-at-restaurants/ (last visited Jan. 31, 2024).

Restaurant Association, the most common off-premises addition was curbside takeout by 67 percent of operators nationwide.[7] An additional 17 percent added in-house delivery options, and 27 percent added food delivery by third-party food delivery platforms,[8] which are third-party apps that consumers can use to order delivery from public food service establishments for a fee.[9] Once an order is placed, the food delivery platform sends an individual to pick up the food from the food establishment and deliver it to the consumer.[10]

Regulation of Food Delivery Platforms

Food delivery platforms are not currently regulated by the State of Florida. However, the United States Food and Drug Administration (FDA), in coordination with the U.S. Department of Agriculture and the Centers for Disease Control and Prevention, have developed best practices recommendations for the safe delivery of food, including for when ordering food from online platforms, produce and meal-kit subscription services, ghost kitchens (which only prepare and fulfill orders for delivery, without a physical storefront), and third-party delivery services and programs.[11]

A proposed ordinance in Miami-Dade County would regulate food delivery platforms,[12] seemingly the first local ordinance of its kind in the United States.[13] The ordinance would:

- Require the food delivery service to itemize and clearly disclose the cost breakdown of each transaction;
- Permit public food service establishments to access the information about the customers who place orders for their food through a third-party food delivery application, including the consumer's name and address; and
- Prohibit a food delivery platform from unreasonably restricting a public food service establishment from marketing to or contacting a customer under certain circumstances.

The Miami-Dade Board of County Commissioners has deferred action on this proposed ordinance.[14]

Effect of the Bill

The bill creates definitions for the following terms:

- "Food delivery platform" means a business that acts as a third-party intermediary by taking and arranging for the delivery or pickup of orders from multiple food service establishments for the consumer. The term does not include:
    - Delivery or pickup orders placed directly with, and fulfilled by, a food service establishment.
    - Websites, mobile applications, or other electronic services that do not post food service establishment menus, logos, or pricing information on their platforms.

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[7] Id.
[8] Id.
[9] Hsu Kuan Liu, *A Study on Consumers' Perception of Food Delivery Platforms* (July 22, 2023), Qeios, https://www.qeios.com/read/FFSG78#:~:text=Food%20delivery%20platforms%20primarily%20allow,the%20meals%20to%20the%20consumers. (last visited Jan. 31, 2024).
[10] *Id.*
[11] U.S. Food and Drug Administration, *FDA Highlights Best Practices on Food Safety for Online Delivery Services* (Dec. 9, 2022), https://www.fda.gov/food/cfsan-constituent-updates/fda-highlights-best-practices-food-safety-online-delivery-services (last visited Feb. 2, 2024).
[12] *See Memorandum to Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners* (Sep. 11, 2023), https://www.miamidade.gov/govaction/legistarfiles/Matters/Y2023/231055.pdf (last visited Feb. 2, 2024).
[13] Jesse Scheckner, *Miami-Dade sets table for food delivery app regulations amid privacy concerns* (Aug. 29, 2023), https://floridapolitics.com/archives/631690-miami-dade-sets-table-for-food-delivery-app-regulations-amid-privacyconcerns/ (last visited Feb. 2, 2024).
[14] *See* Miami-Dade Legislative Item File Number: 231055, https://www.miamidade.gov/govaction/matter.asp?matter=231055&file=true&fileAnalysis=false&yearFolder=Y2023 (last visited Feb. 2, 2024).

- "Food service establishment" has the same meaning as the term "public food service establishment" as currently defined by Florida statute.

The bill requires a food delivery platform to itemize and clearly disclose the cost breakdown of each transaction to a consumer, including, but not limited to:

- The purchase price of the food and beverage, or any other item, and clearly indicate if such prices exceed the food service establishment's pricing.
- Any commission, delivery fee, or promotional fee charged to the customer by the food delivery platform.
- Any tip or gratuity.
- Any taxes due on the transaction.

If a food delivery platform does not have a relationship with a food service establishment, the bill requires the food delivery platform to provide clear and conspicuous notice to the consumer that the food delivery platform does not have any relationship with such food service establishment.

If the Division has reason to believe a food delivery platform has violated the provisions of the bill, or any rules adopted pursuant to the bill, the following rules apply:

- The Division may issue to the food delivery platform a notice to cease and desist from the violation, but the issuance of a notice to cease and desist does not constitute agency action for which a hearing under Florida law may be sought.
- The Division must provide the food delivery platform 7 business days in which to cure the violation before imposing a civil penalty or commencing any legal proceeding.
- For the purpose of enforcing a cease and desist notice, the Division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who fails to comply with the notice.
- If the Division is required to seek enforcement of the notice for a penalty, it is entitled to collect attorney fees and costs, together with any cost of collection.

The bill allows the Division to impose a civil penalty on a food delivery platform in an amount not to exceed $1,000 per offense for each violation of the bill's provisions, provided such food delivery platform is given 7 days to cure the violation. The division may regard as a separate offense each day or portion of a day in which there has been a violation.

Additionally, the bill authorizes the Division to receive and investigate complaints that allege a food delivery platform has violated the bill's provisions.

The bill expressly preempts regulation of food delivery platforms to the state, and grants the Division rule-making authority to administer the section of law proposed by the bill.

B. SECTION DIRECTORY:

Section 1. Creates s. 509.103, F.S., relating to food delivery platforms.

Section 2. Provides the bill will become effective 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 has a positive impact on the private sector to the extent that the bill creates a regulatory framework for food delivery platforms operating in Florida, thus enhancing consumer protections for individuals in the state that use such platforms.

The bill has an indeterminate negative impact on the private sector to the extent that food delivery platforms will now have to comply with the bill's provisions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Division with rule-making authority to administer the proposed s. 509.103, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to food delivery platforms; creating s. 509.103, F.S.; providing definitions; requiring food delivery platforms to disclose certain information to the consumer; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to issue a notice to cease and desist to a food delivery platform for violations; providing that such notice does not constitute agency action; requiring the division to allow a food delivery platform to cure any violation within a specified timeframe before enforcing a notice or imposing a civil penalty; authorizing the division to enforce such notice and collect attorney fees and costs under certain circumstances; authorizing the division to impose a specified civil penalty; authorizing the division to receive and investigate complaints of violations; preempting regulation of food service platforms to the state; providing the division with rule-making authority; providing an effective date.

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

Section 1. Section 509.103, Florida Statutes, is created

to read:

509.103 Food delivery platforms.—

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

(a)1. "Food delivery platform" means a business that acts as a third-party intermediary by taking and arranging for the delivery or pickup of orders from multiple food service establishments for the consumer.

2. The term does not include:

a. Delivery or pickup orders placed directly with, and fulfilled by, a food service establishment.

b. Websites, mobile applications, or other electronic services that do not post food service establishment menus, logos, or pricing information on their platforms.

(b) "Food service establishment" has the same meaning as the term "public food service establishment" as defined in s. 509.013(5).

(2) A food delivery platform shall itemize and clearly disclose the cost breakdown of each transaction to the consumer, including, but not limited to, the following information:

(a) The purchase price of the food and beverage, or any other item, and clearly indicate if such prices exceed the food service establishment's pricing.

(b) Any commission, delivery fee, or promotional fee charged to the customer by the food delivery platform.

(c) Any tip or gratuity.

(d) Any taxes due on the transaction.

(3) If a food delivery platform does not have a relationship with a food service establishment, the food delivery platform must provide clear and conspicuous notice to the consumer that the food delivery platform does not have any relationship with such food service establishment.

(4) If the division has reason to believe a food delivery platform has violated this section or any rules adopted pursuant to this section, the division may issue to the food delivery platform a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under s. 120.569 or s. 120.57 may be sought. The division shall provide the food delivery platform 7 business days in which to cure the violation before imposing a civil penalty under subsection (5) or commencing any legal proceeding under this subsection. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who fails to comply with the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, it is entitled to collect attorney fees and costs, together with any cost of collection.

(5) The division may impose a civil penalty on a food delivery platform in an amount not to exceed $1,000 per offense

for each violation of this section or of a division rule, subject to the provisions of subsection (4). For purposes of this subsection, the division may regard as a separate offense each day or portion of a day in which there has been a violation of this section or rules of the division.

(6) The division may receive and investigate any complaint which alleges that a food delivery platform has violated an applicable provision of this section or rules adopted under this section.

(7) Regulation of food delivery platforms is expressly preempted to the state.

(8) The division shall adopt rules to administer this section.

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

Presentation 1

Miami-Dade Construction Mining Pilot Program Update

Division of State Fire Marshal, Director JoAnne E. Rice

Legislative Background

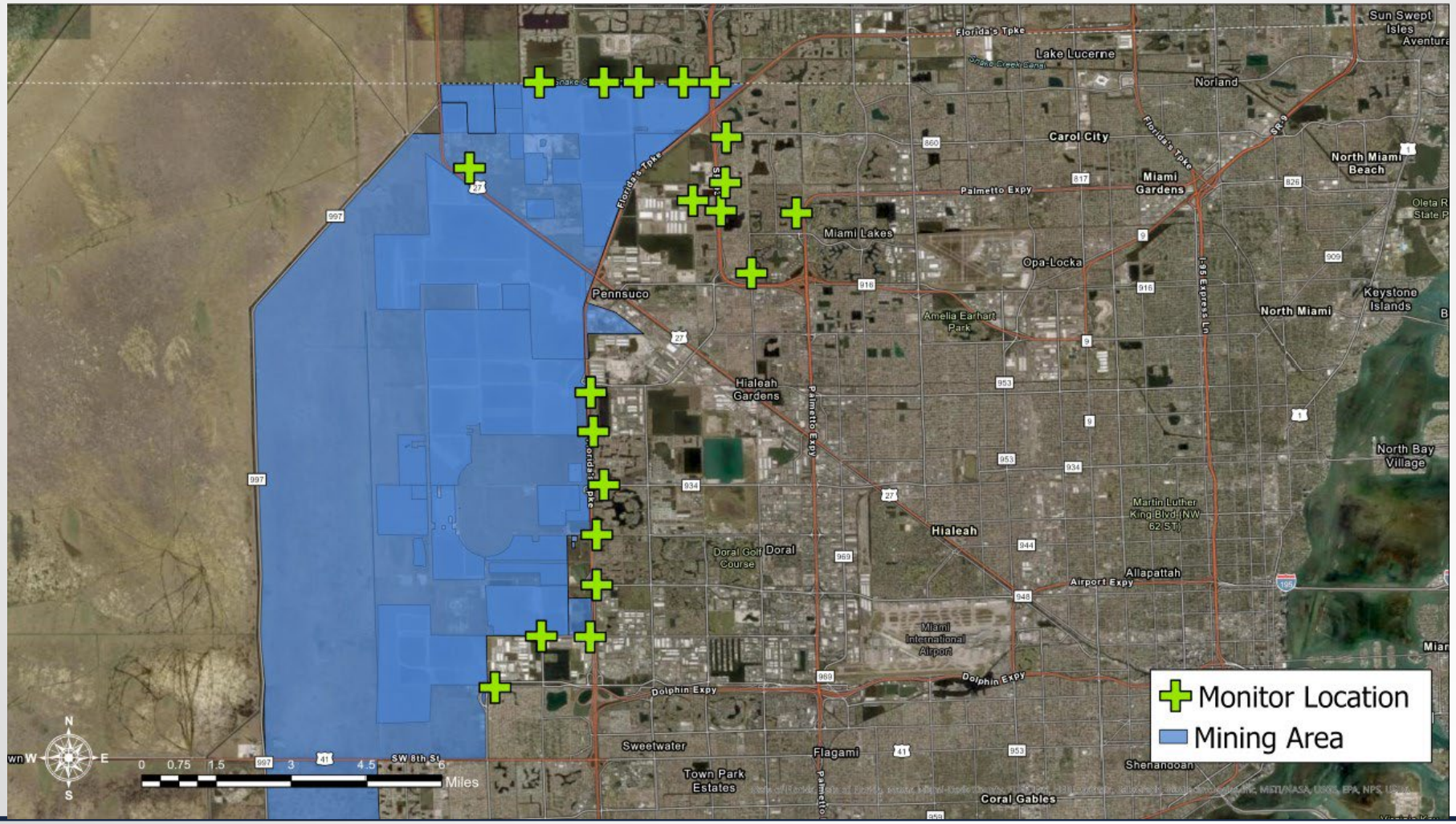
- Legislature Appropriated Funds in 2017
- HB 1189 in 2019
- HB 1047 in 2020
- Current Governing Law:
  - Section 552.30, Florida Statutes; and
  - Florida Administrative Code Rule 69A-2.024

Implementation and Regulation

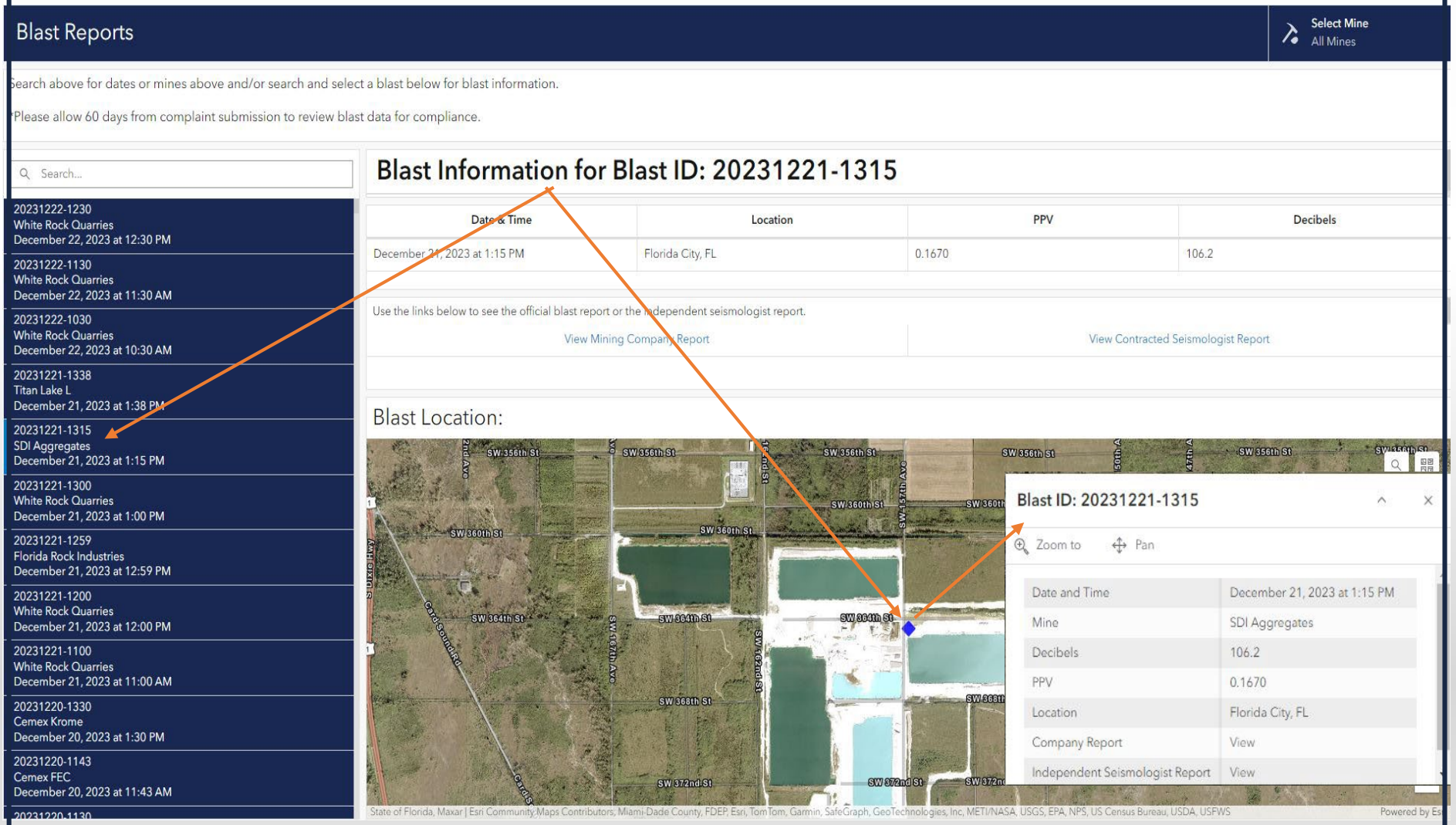
- Miami-Dade Construction Mining Pilot Program within the Division of State Fire Marshal
- Regulate blasting limits
- Operate Mine Activity Clearinghouse website
- Monitor Blasting Activities Reports
- Contracted seismologist and monitor the seismograph reports for compliance
- Certificate holders not compliant with Florida laws are subject to a disciplinary action

Seismograph Locations

Miami-Dade Northern Monitoring Area



ArcGIS Platform





QUESTIONS?

Division of State Fire Marshal, Director JoAnne E. Rice

Presentation 2

What are Aggregates?



Rock mined and processed for construction of roads, bridges, buildings.

Uses of Limestone Aggregates







Limestone is one of the building blocks of our modern civilization. For nearly six decades, the quarries in Florida have supplied limestone for our:

- Homes
- Airports & Seaports
- Roadways
- Hospitals and office buildings
- Building materials including: tile, glass, and plaster
- In short, limestone quarried in Florida is used in virtually every construction project across the state.

Examples of Aggregates

#89 Limestone - Coarse Aggregate from Miami



#57 Limestone - Coarse Aggregate from Miami



#57 Granite - Coarse Aggregate from Nova Scotia



- Bulky and heavy rock materials
- Crushed stone used in construction with concrete and asphalt
- Hardness and durability demonstrated by FDOT testing
- Limestone mined in Florida
- Granite imported primarily from Georgia, Alabama, and Canada

Aggregates Used in Asphalt and Concrete

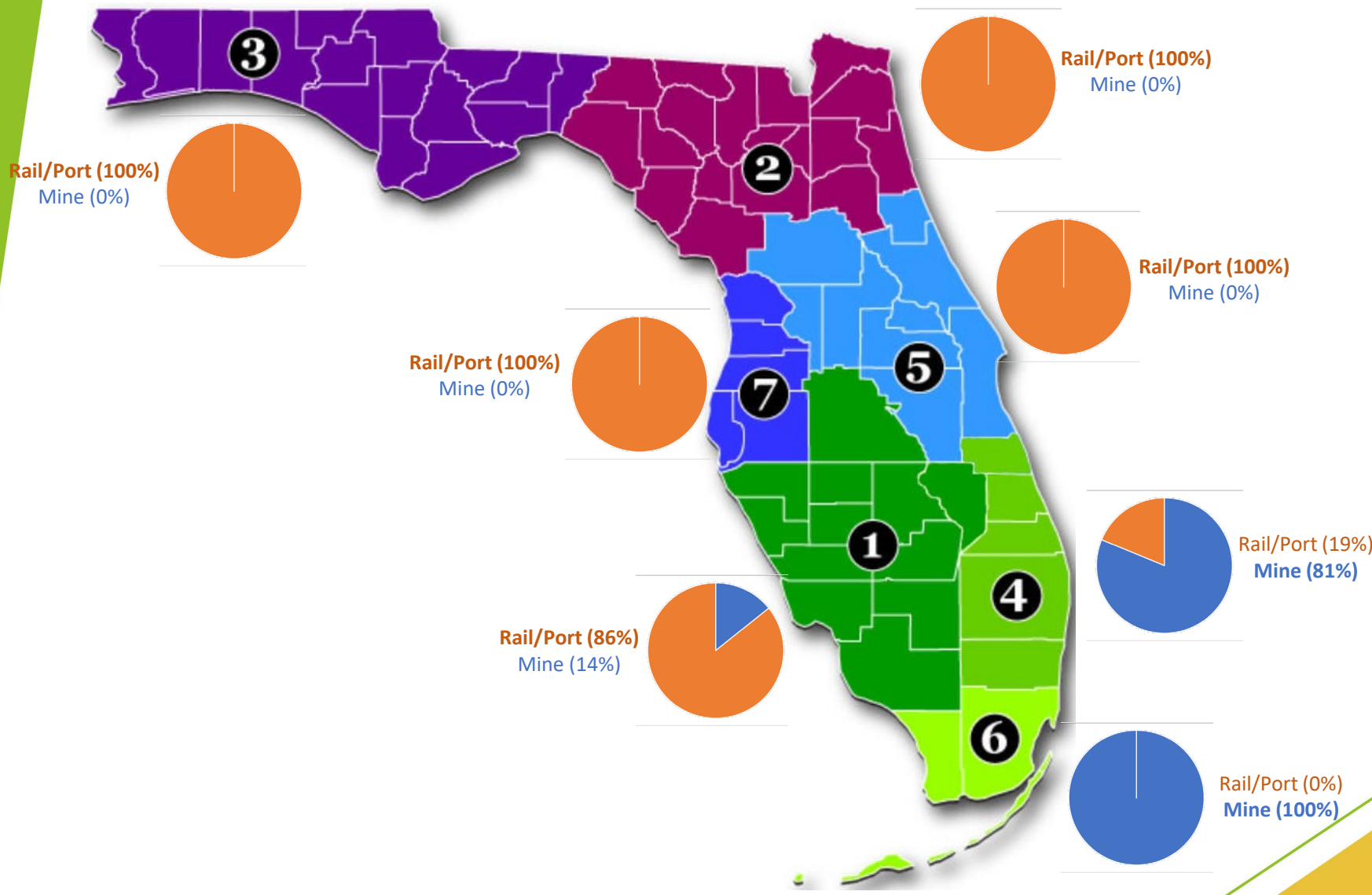
Asphalt



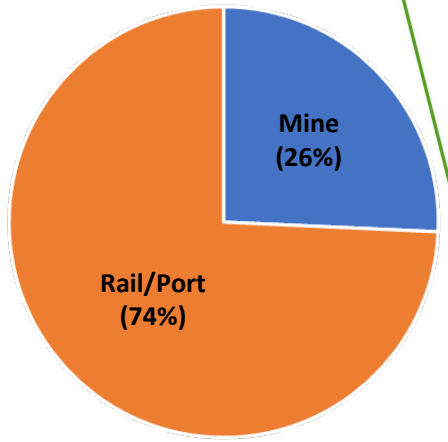
Concrete



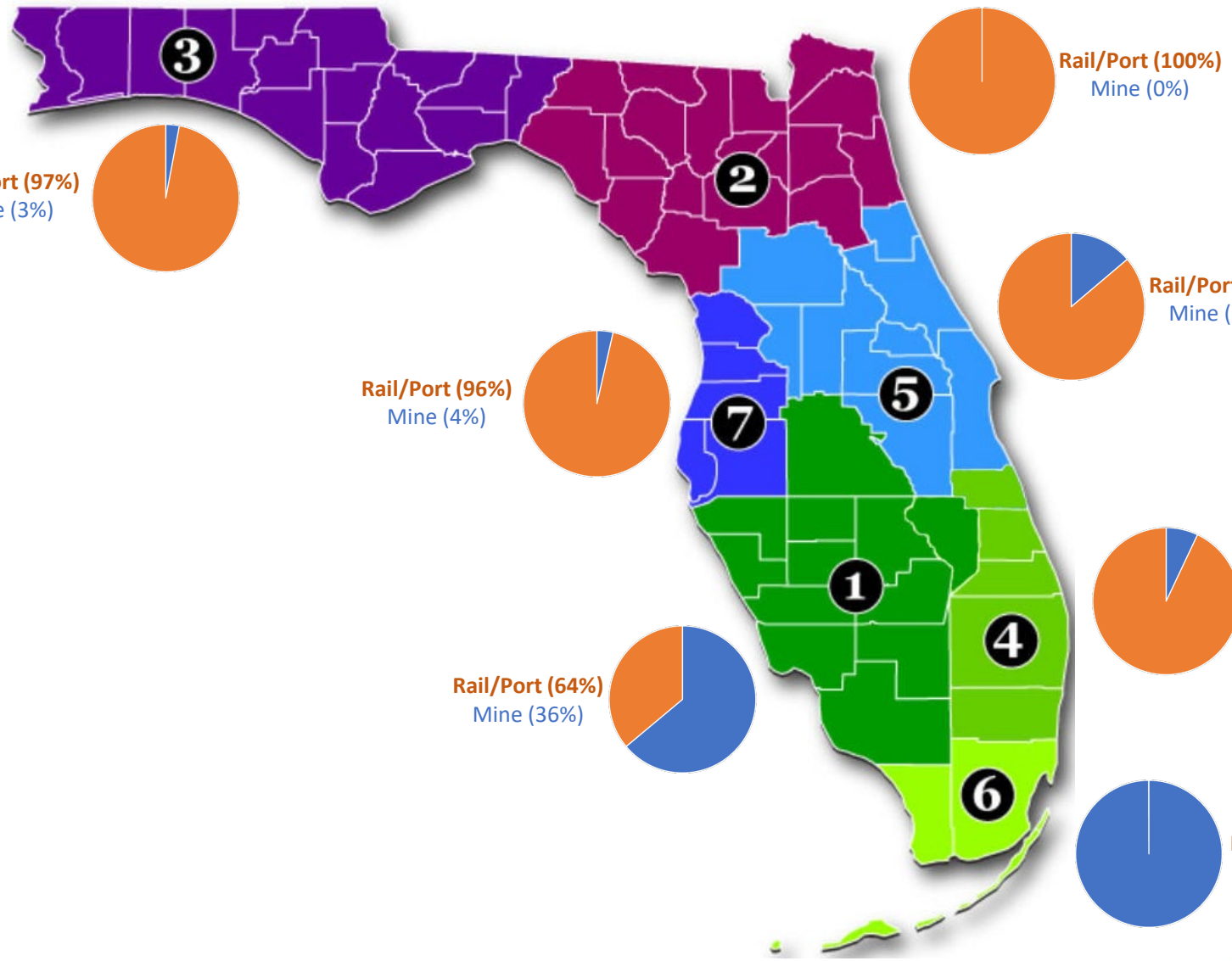
FDOT Demand for Asphalt Aggregate (est. 2023)



Statewide Demand



FDOT Demand for Concrete Aggregate (est. 2023)



Rail/Port (97%)
Mine (3%)

Rail/Port (100%)
Mine (0%)

Rail/Port (86%)
Mine (14%)

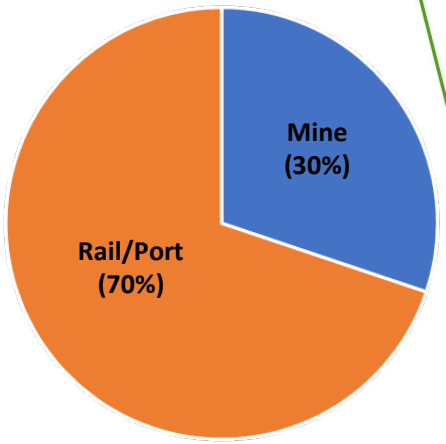
Rail/Port (96%)
Mine (4%)

Rail/Port (93%)
Mine (7%)

Rail/Port (64%)
Mine (36%)

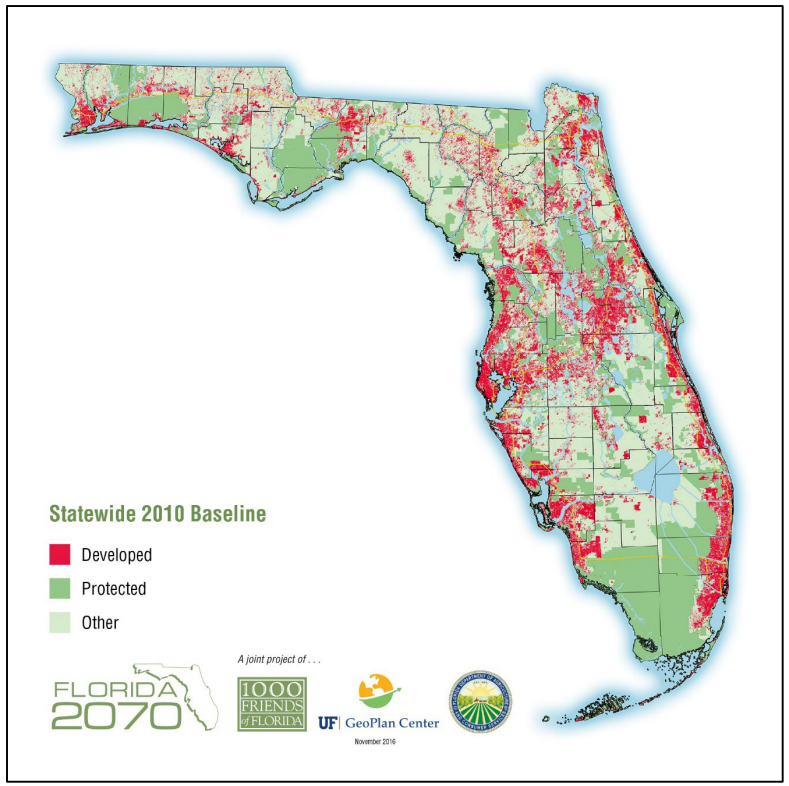
Rail/Port (0%)
Mine (100%)

Statewide Demand

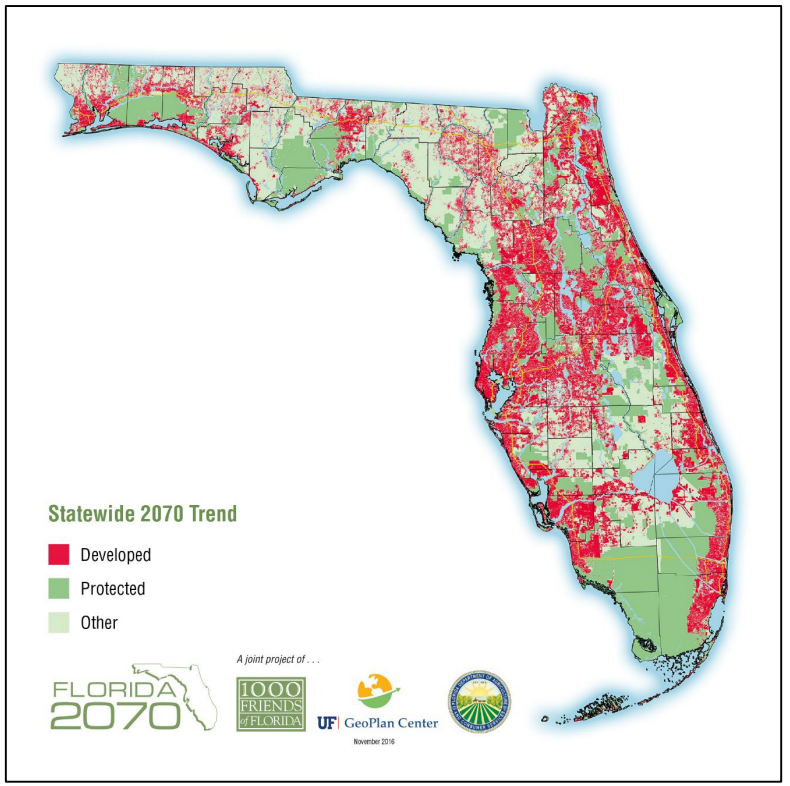


Aggregate Demand Expected to Increase with Population Growth

Statewide 2010 Trend

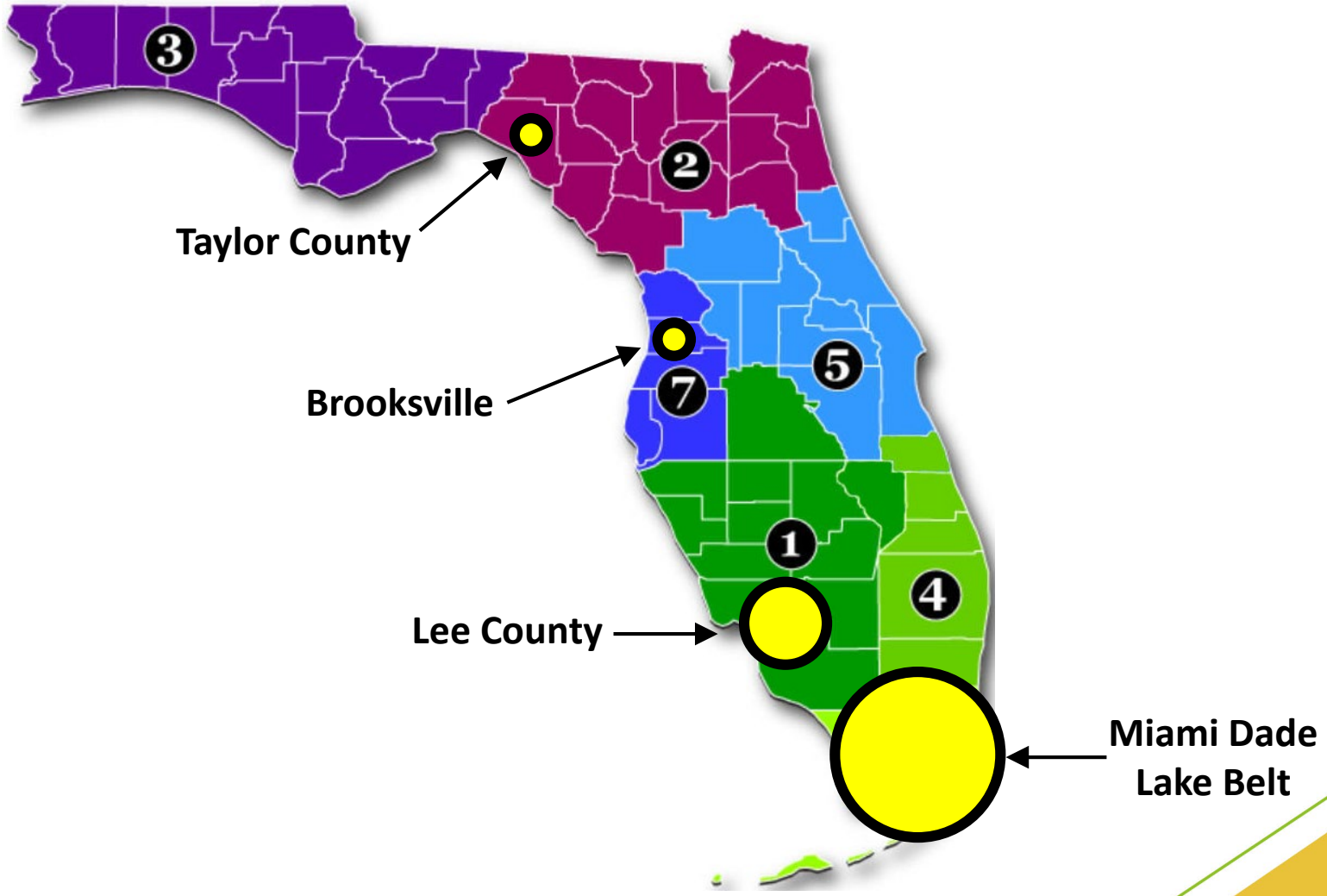


Statewide 2070 Trend



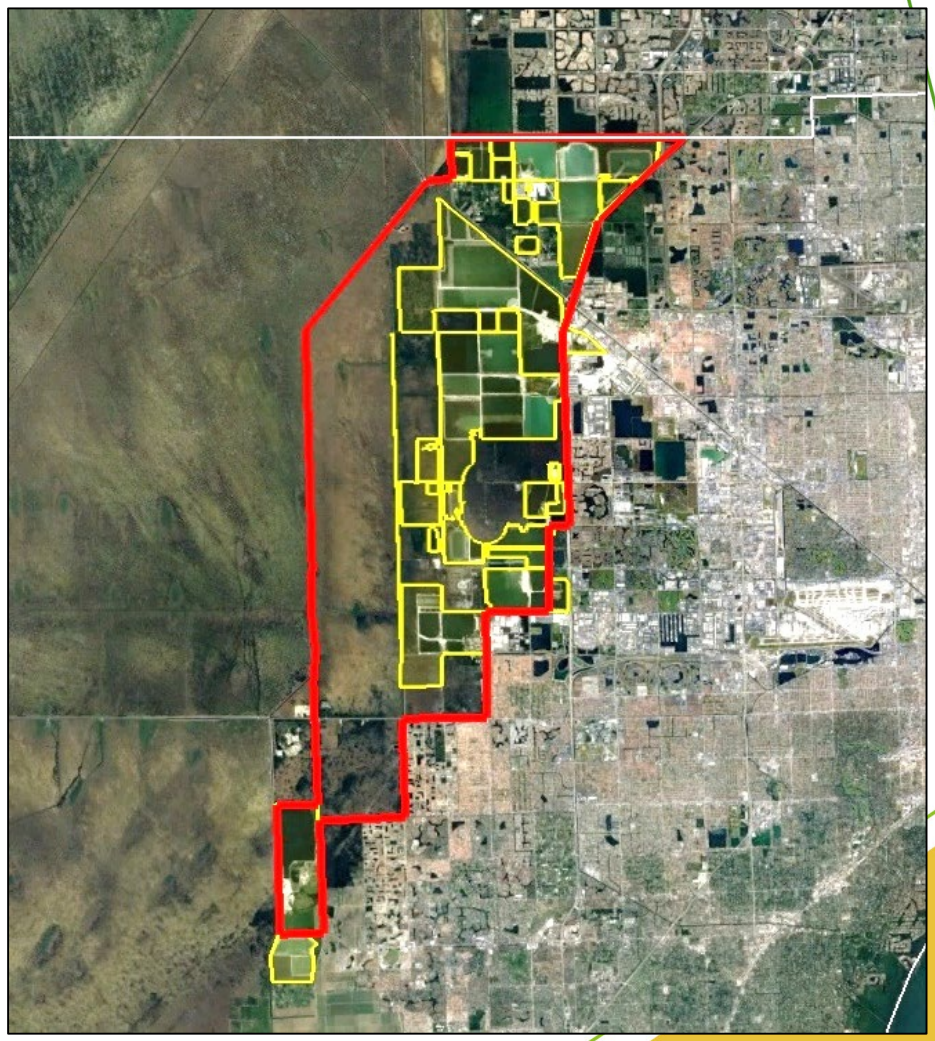
"Moderate projections indicate that by 2070, Florida's population will reach approximately 33.7 million residents, close to 15 million more than in 2010." – UF GeoPlan Center (www.geoplan.ufl.edu/portfolio/fl-2070/)

Relative Proportions of FDOT-Quality Aggregates



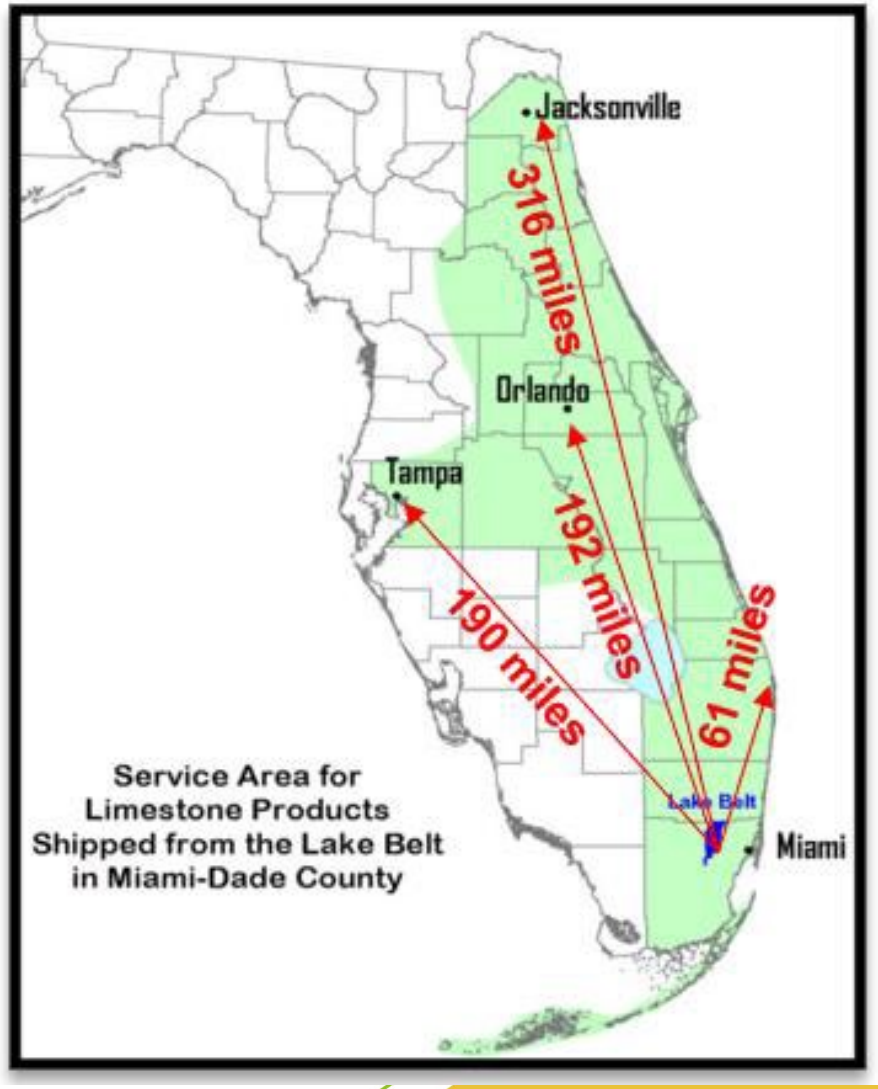
Miami-Dade Lake Belt

- Produces 45-50 million tons of aggregate per year.
- Large mines efficiently supply Florida markets via trucks and rail
- Decades of potential reserves feed into east coast demand
- Issues:
  - Urban growth crowds the mines
  - Everglades restoration
  - Water quality and supply



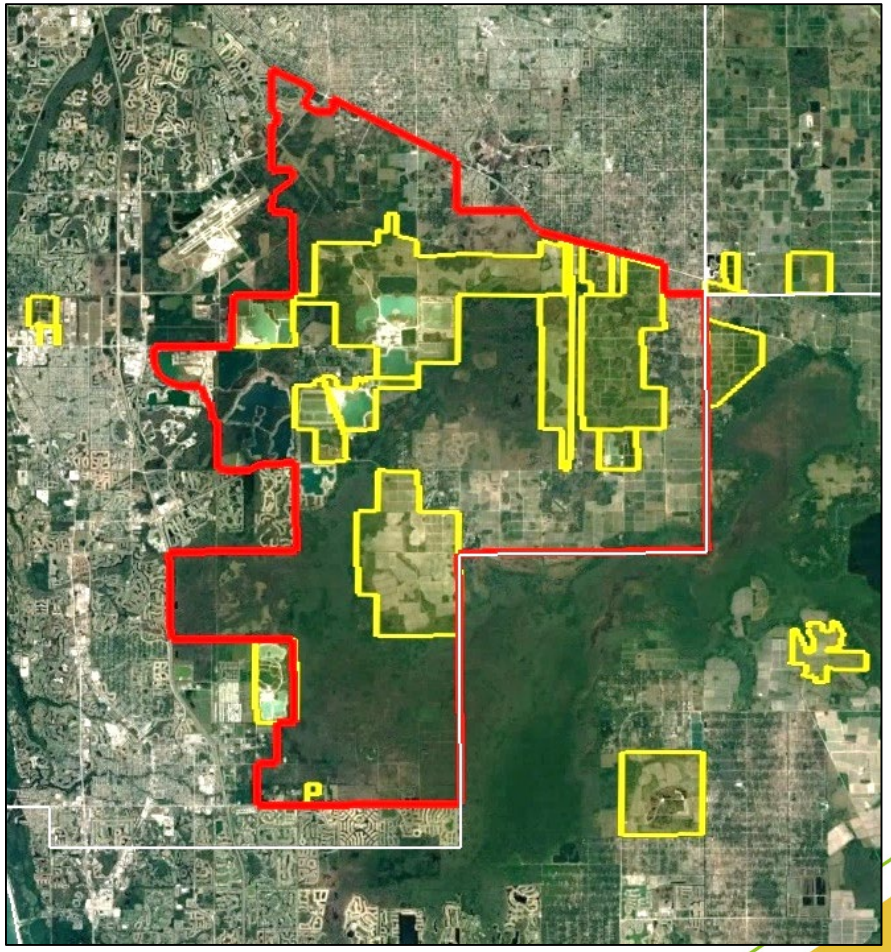
Significance of Miami Lake Belt Supply

- Florida consumes over 130M Tons of Construction Aggregate
- Miami-Dade quarries produce app. 50M Tons of high-quality aggregate per year
- Miami Rock is shipped to Tampa, Orlando and Jacksonville
- Florida is a net importer of aggregate (Georgia, Mexico, Bahamas, Canada)
- Highest recorded import volume is 9M Tons
- Even a 10% curtailment of Miami production will lead to a net shortage of aggregate in Florida



Lee County Mining Area

- Rock supply compromised by urban expansion while mine production declines
- Present day needs augmented with expensive aggregate trucked from Lake Belt and Tampa ports and rail terminals
- Majority of aggregate needed in Southwest Florida expected to be imported within 10 years



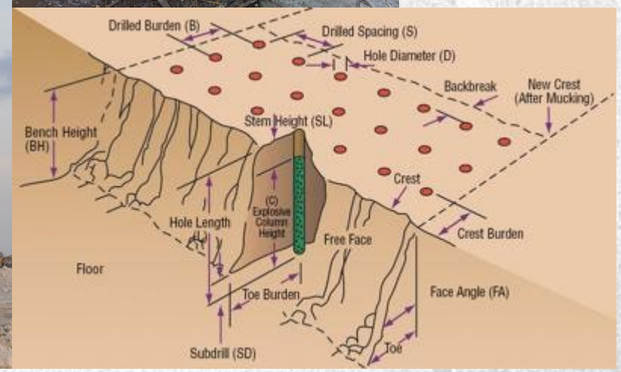
Presentation 3

Blasting Operations

- Scientific approach to all blasting
  - Blasting Plan Developed for the overall site and specific plans for each blast
  - Site locations identified for all blasts
    - Consists of location of holes – Multiple holes surveyed
    - Depth and hole diameter are developed by professional blasting contractors licensed in Florida
    - Explosive loading calculations are designed to use the minimum amount of materials necessary for each location
  - Drilling is completed by specialty drills
  - Professional licensed explosives contractors load and detonate all blasts





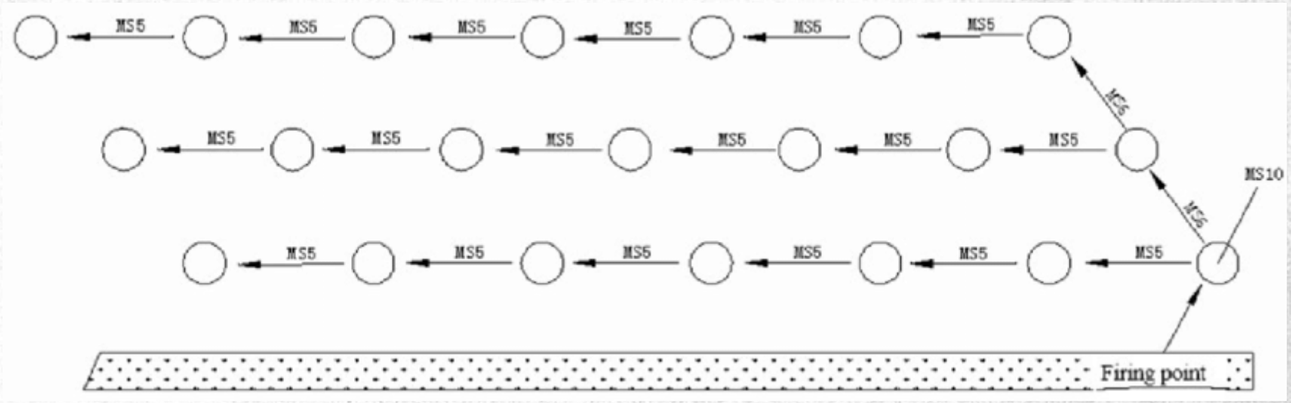


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Blasting Activity Designs

- Blast loading is conducted and introduces an emulsion product into the blast hole.
- Each hole has an electronic delay to separate each hole in milliseconds (thousands) apart.
- Delay increases breakage and reduces vibration off-site
- Specific delay timing is calculated to have waves offset each other

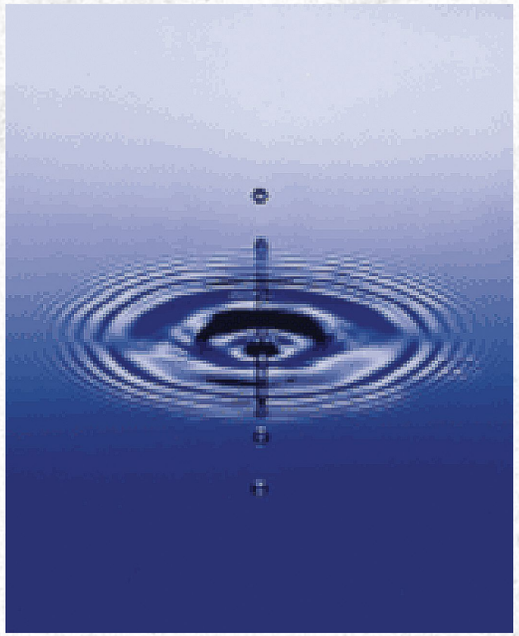
- Pattern design also uses “Directional Blasting” to reduce off-site vibration.
  - As individual holes detonate the blaster orients the direction of initiation to progress away from adjacent homes
  - Proven scientific technique to reduce vibration



GeoSonics

Vibration

- Vibration – after rock breakage occurs vibration waves moves outward from blast site – continually decreasing in intensity
  - Similar to dropping a rock in a quiet pond. We cannot visually see waves.
  - Perceptible but not capable of creating damage if it is within legal limits
- Measure Particle Velocity–speed of oscillation of ground particles



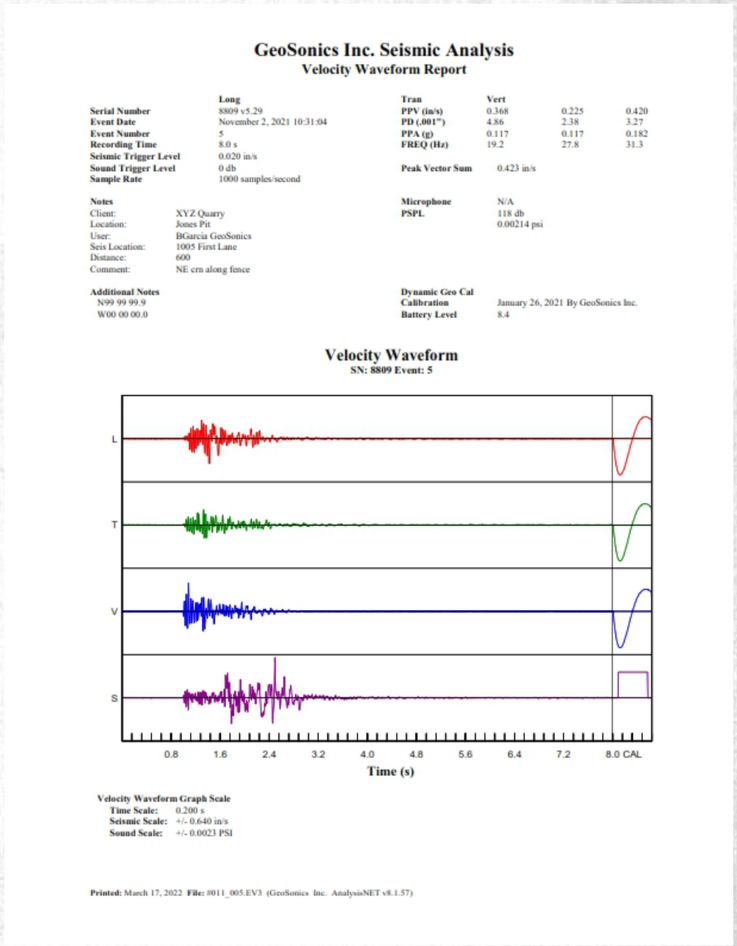
GeoSonics

Vibration Monitoring

- All blasts measured by seismographs per current state law
  - Operated by independent third party professional firms
  - Trained operators install equipment in accordance to standards from the International Society of Explosives Engineers
  - Seismographs calibrated to standards of International Society of Explosives Engineers Standards
  - Seismographs are not adjustable in field – Require specialized equipment to calibrate – Fire Marshal reviews calibration certificates upon inspections
- Vibration waveforms maintained and evaluated following each blast and for each upcoming blast







GeoSonics Inc. Seismic Analysis
Velocity Waveform Report

	Long	Tran	Vert	
Serial Number	8809 v5.29	**PPV (in/s)**	0.368	0.225	0.420
Event Date	November 2, 2021 10:31:04	**PD (.001")**	4.86	2.38	3.27
Event Number	5	**PPA (g)**	0.117	0.117	0.182
Recording Time	8.0 s	**FREQ (Hz)**	19.2	27.8	31.3
Seismic Trigger Level	0.020 in/s				
Sound Trigger Level	0 db	**Peak Vector Sum**	0.423 in/s		
Sample Rate	1000 samples/second				

Notes		**Microphone**	N/A
Client:	XYZ Quarry	**PSPL**	118 db
Location:	Jones Pit		0.00214 psi
User:	BGarcia GeoSonics		
Seis Location:	1005 First Lane		
Distance:	600		
Comment:	NE crn along fence		
Additional Notes		**Dynamic Geo Cal**	
N99 99 99.9		**Calibration**	January 26, 2021 By GeoSonics Inc.
W00 00 00.0		**Battery Level**	8.4

Velocity Waveform
SN: 8809 Event: 5

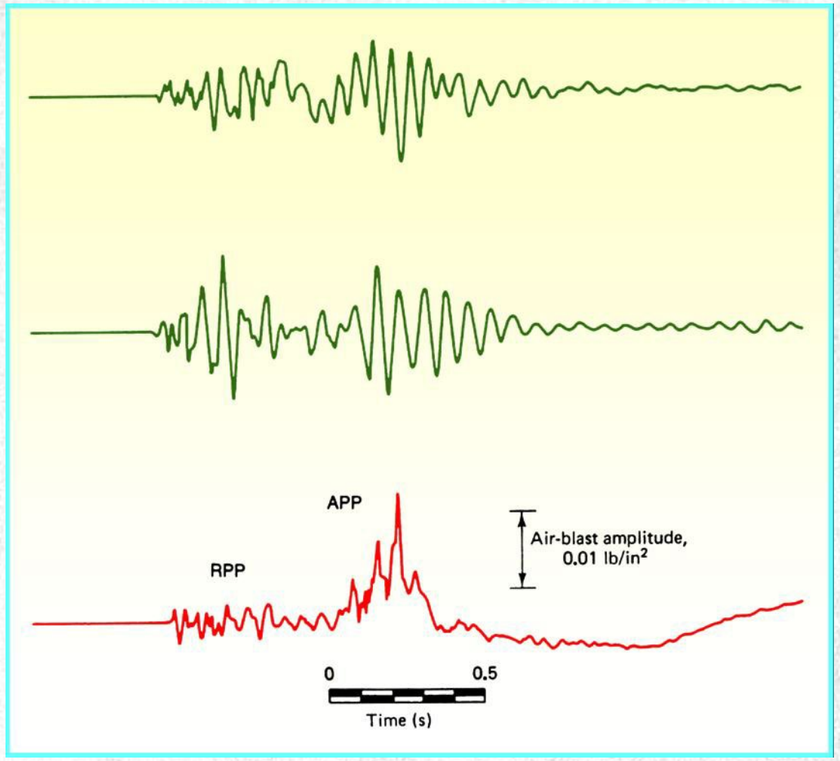
Velocity Waveform Graph Scale
Time Scale: 0.200 s
Seismic Scale: +/- 0.640 in/s
Sound Scale: +/- 0.0023 PSI

Printed: March 17, 2022 **File:** 8011_005.EV3 (GeoSonics Inc. AnalysisNET v8.1.57)

GeoSonics

Air Overpressure

- Sound – Air Overpressure created as gas vents
- Sound is similar to distant thunder
- Measured for each blast

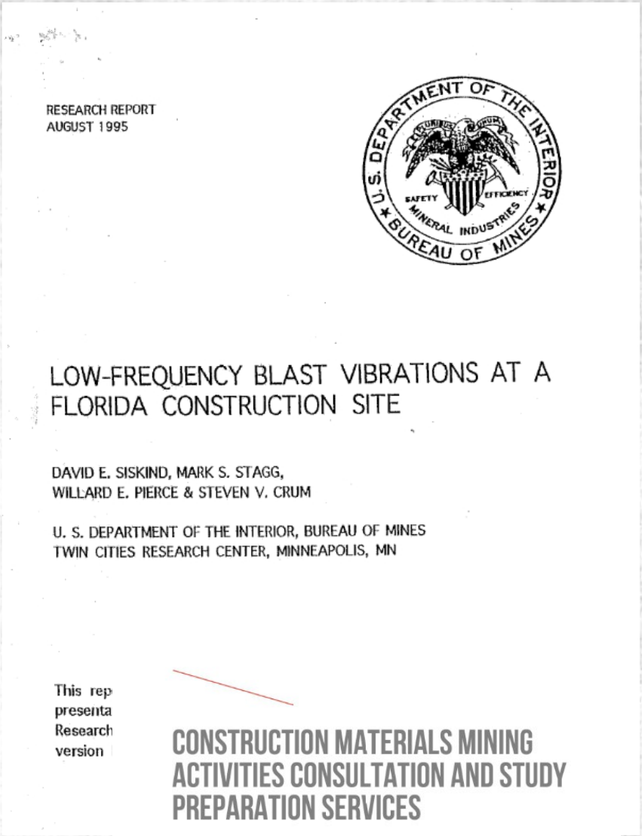


GeoSonics

Vibration Research

- Vibration Research covers construction materials within structures
  - Includes plaster, drywall, stucco, mortar and reinforced concrete
- Previous comments have said no scientific study was done in Florida.
- Incorrect Statement
  - US Bureau of Mines – August 1995 - Weston
  - Miami Dade County Blasting Task Force – May 31, 2000
  - State Fire Marshal – Study – July 2018







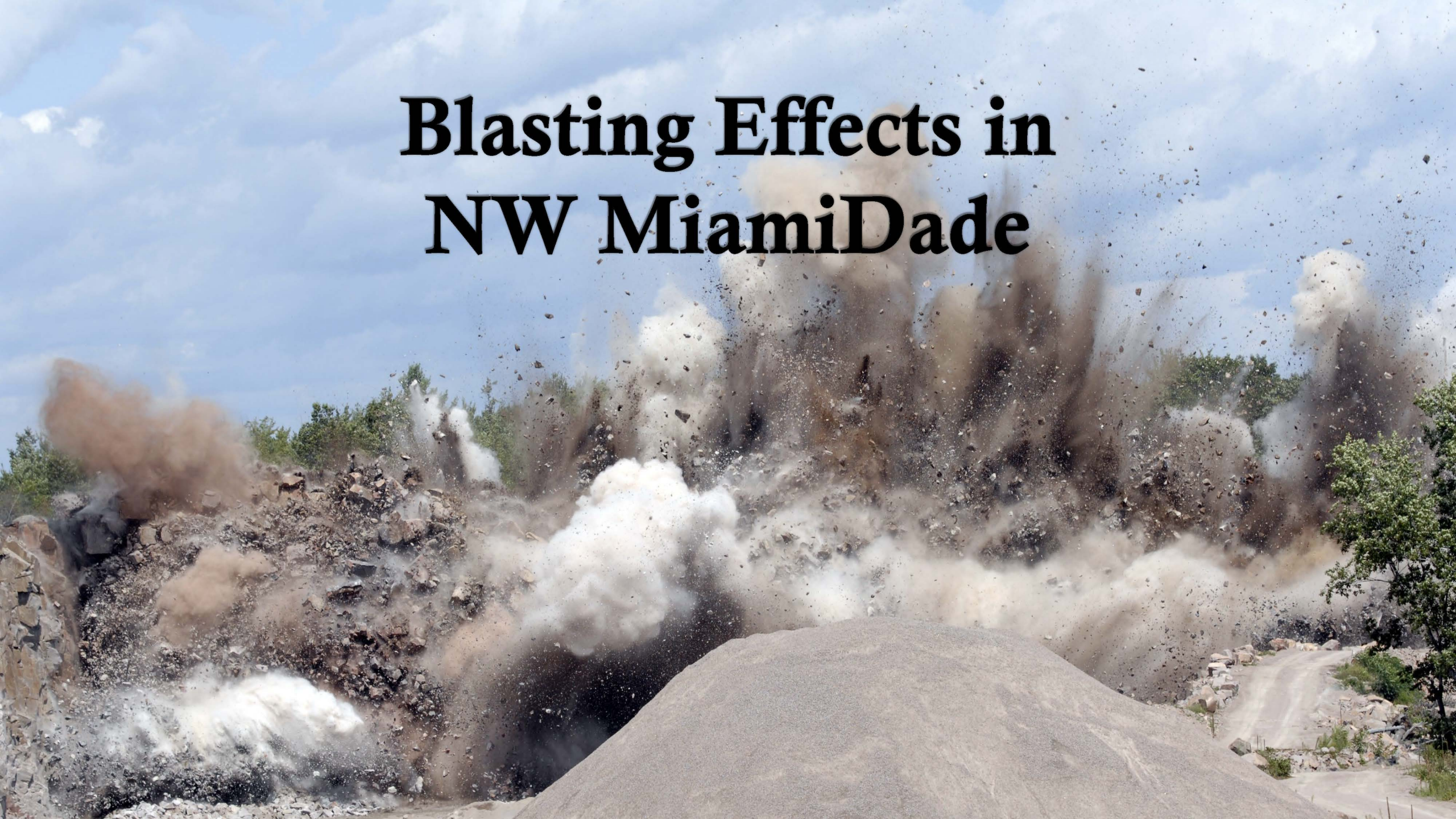
GeoSonics

Conclusion

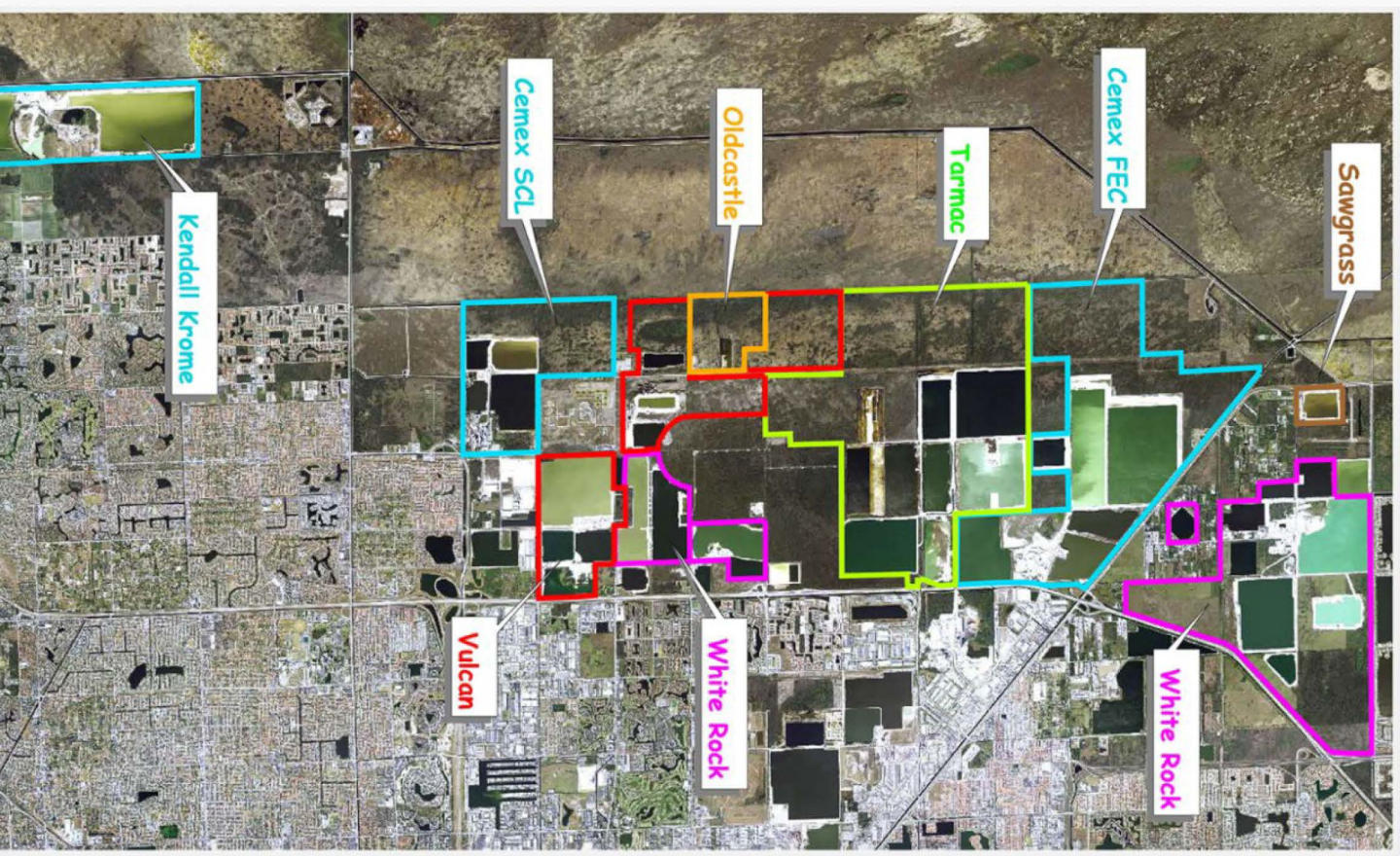
- Research and technical studies indicate that there is no scientific basis to reduce levels below the current regulations
- Vibration level limits as discussed would reduce the aggregate supply needed for the State
- The reduction in vibration to 0.15 in./sec. would increase blasting activity to meet the demand for Commercial Aggregate Production
- Jobs will be lost with the reduction of limits
- There are sufficient safeguards within current State law

Presentation 4

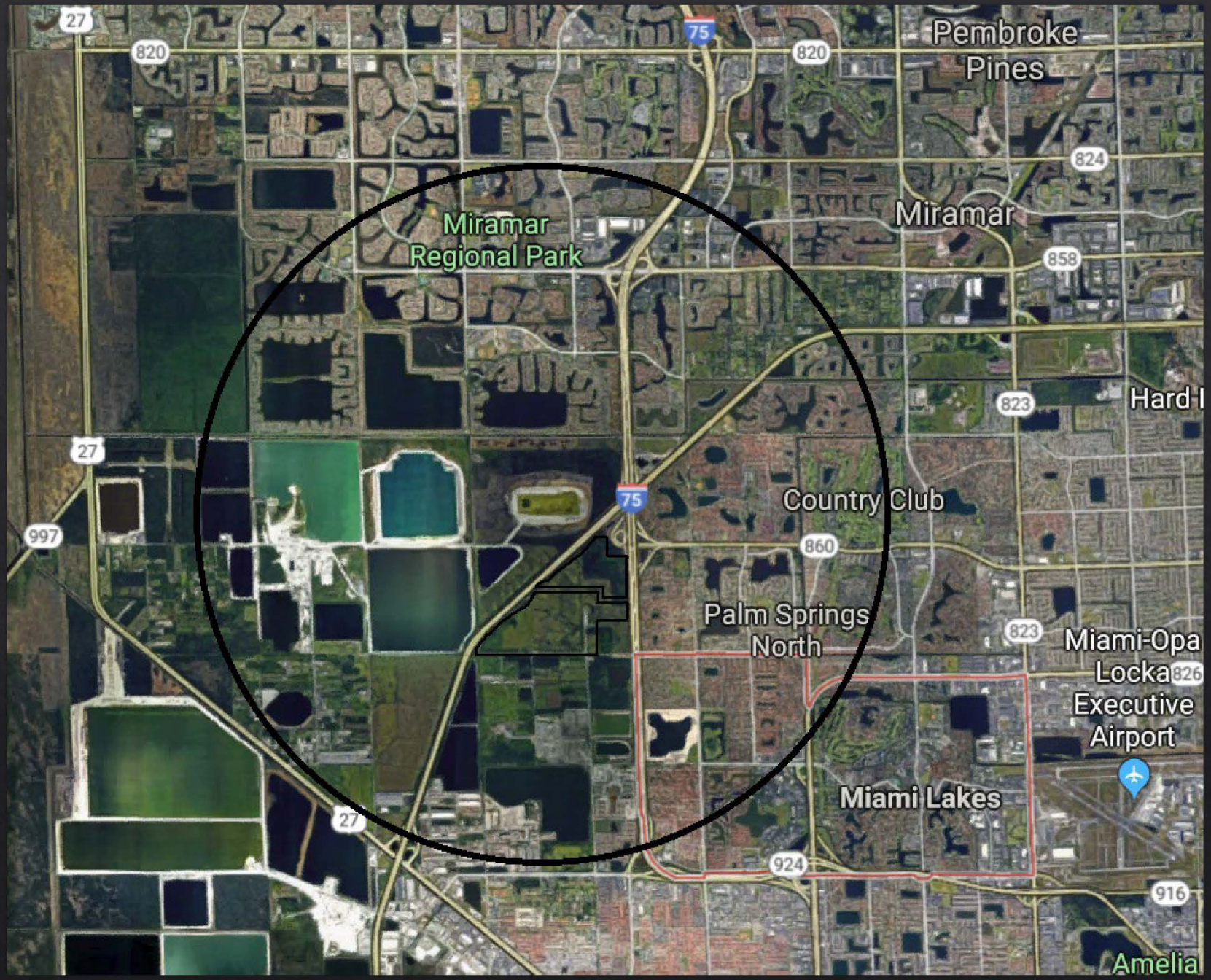
Blasting Effects in NW MiamiDade



Quarries in MiamiDade County



Location


Pembroke Pines
Miramar Regional Park
Miramar
Hard I
Country Club
Palm Springs North
Miami-Opa Locka Executive Airport
Miami Lakes
Amelia
27
820
75
824
858
823
997
860
826
924
916

Florida Strata by Region

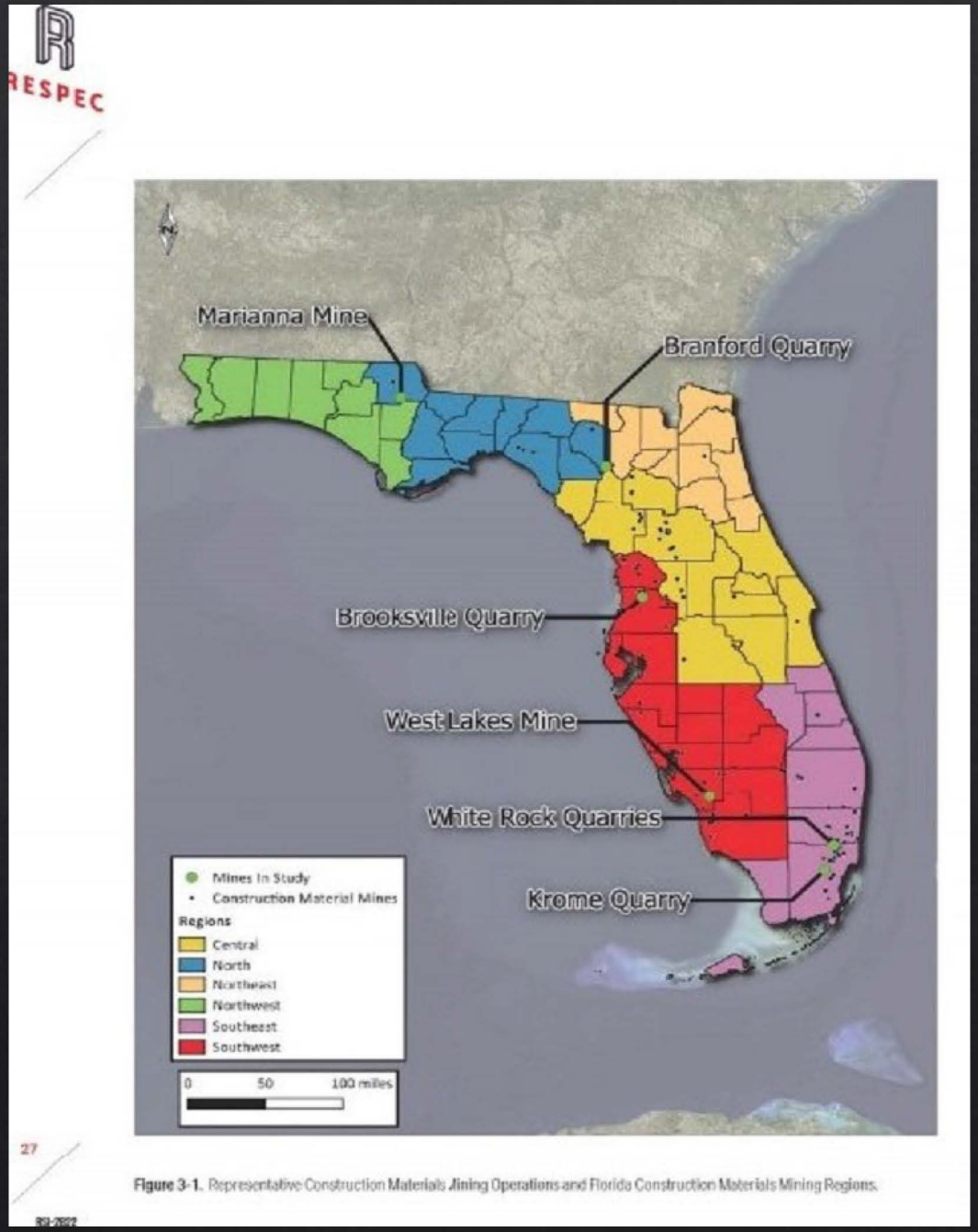
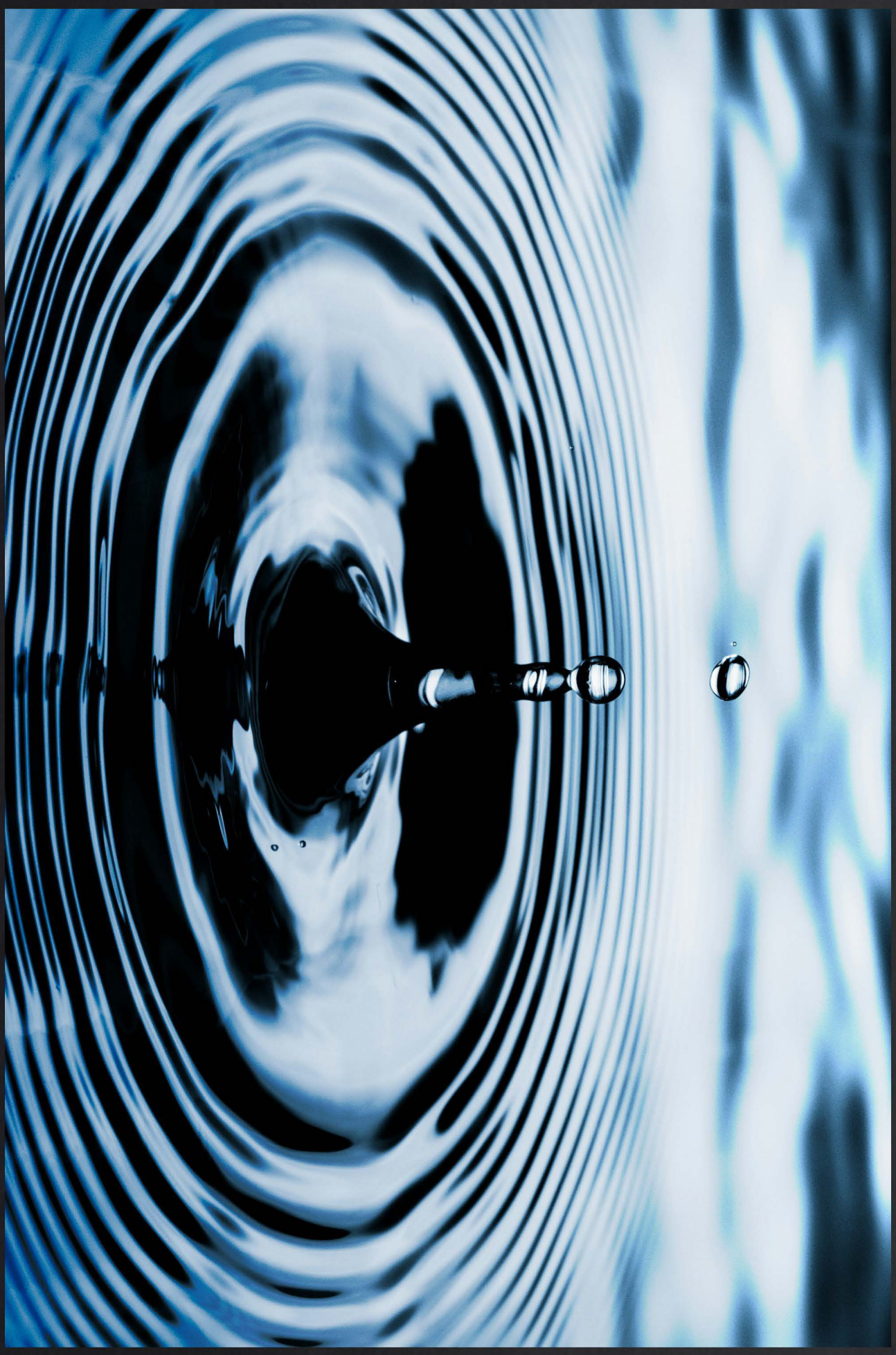
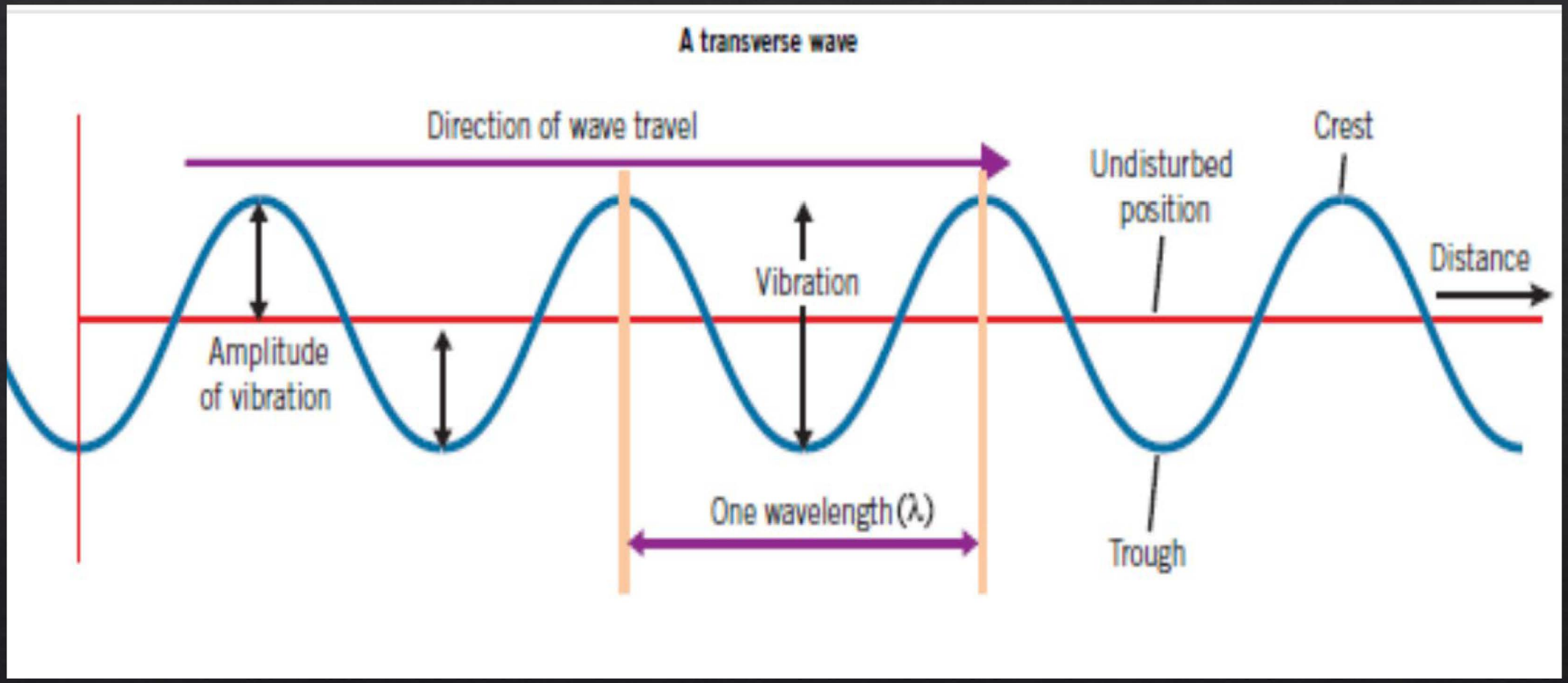


Figure 3-1. Representative Construction Materials Mining Operations and Florida Construction Materials Mining Regions.

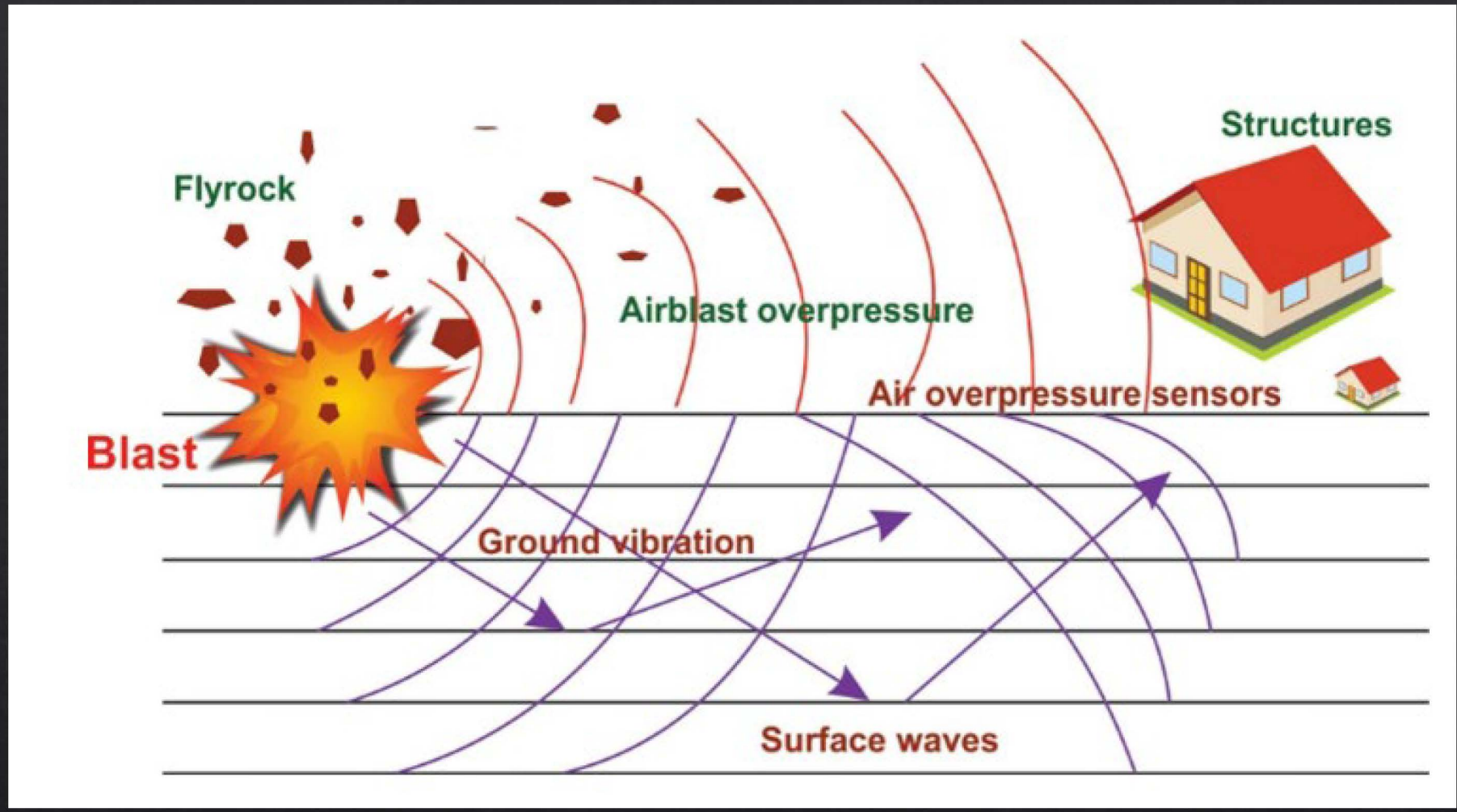
Energy in Water



Energy Wave

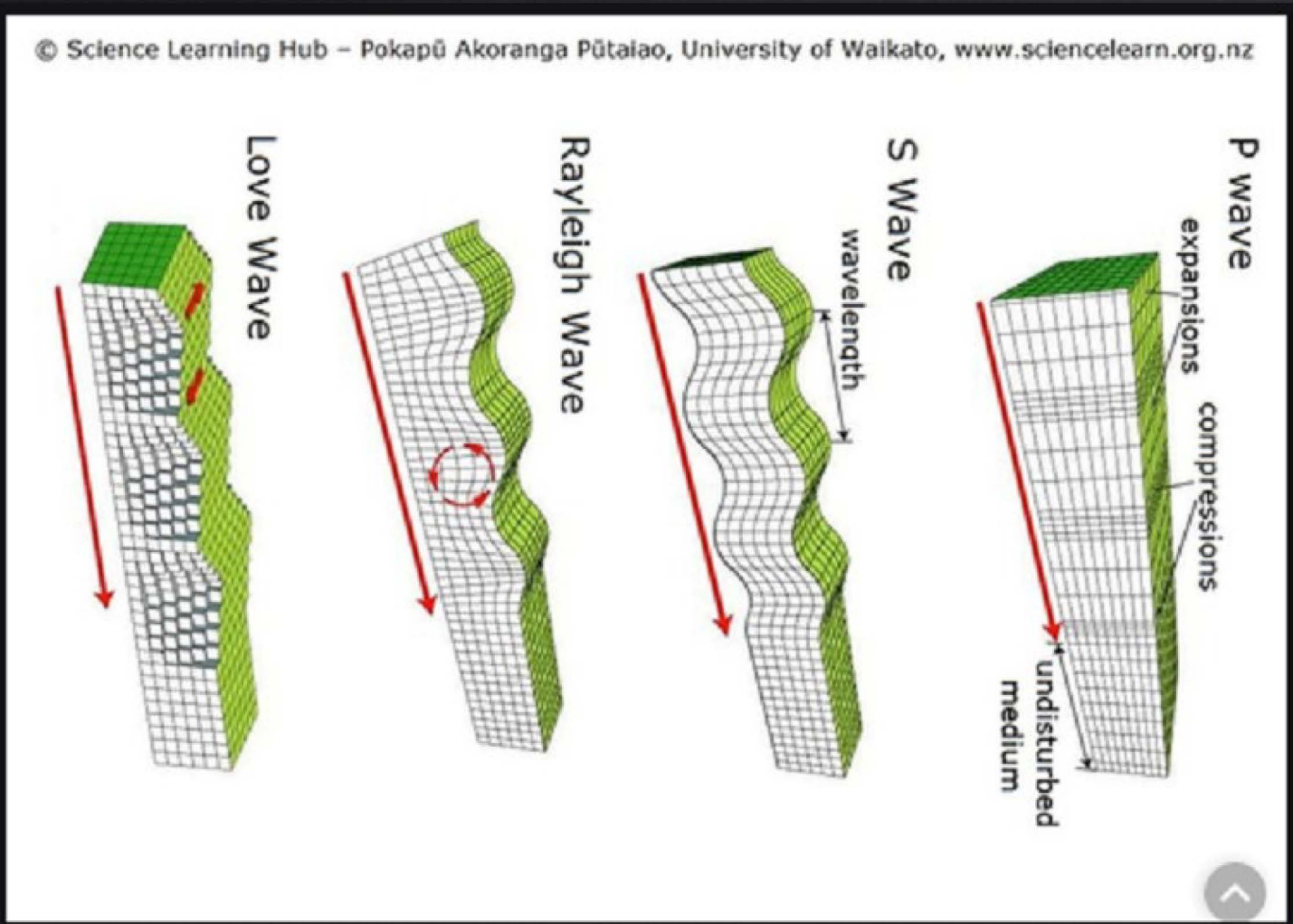

A transverse wave
Direction of wave travel
Crest
Undisturbed position
Distance
Vibration
Amplitude of vibration
One wavelength (λ)
Trough

Air Pressure

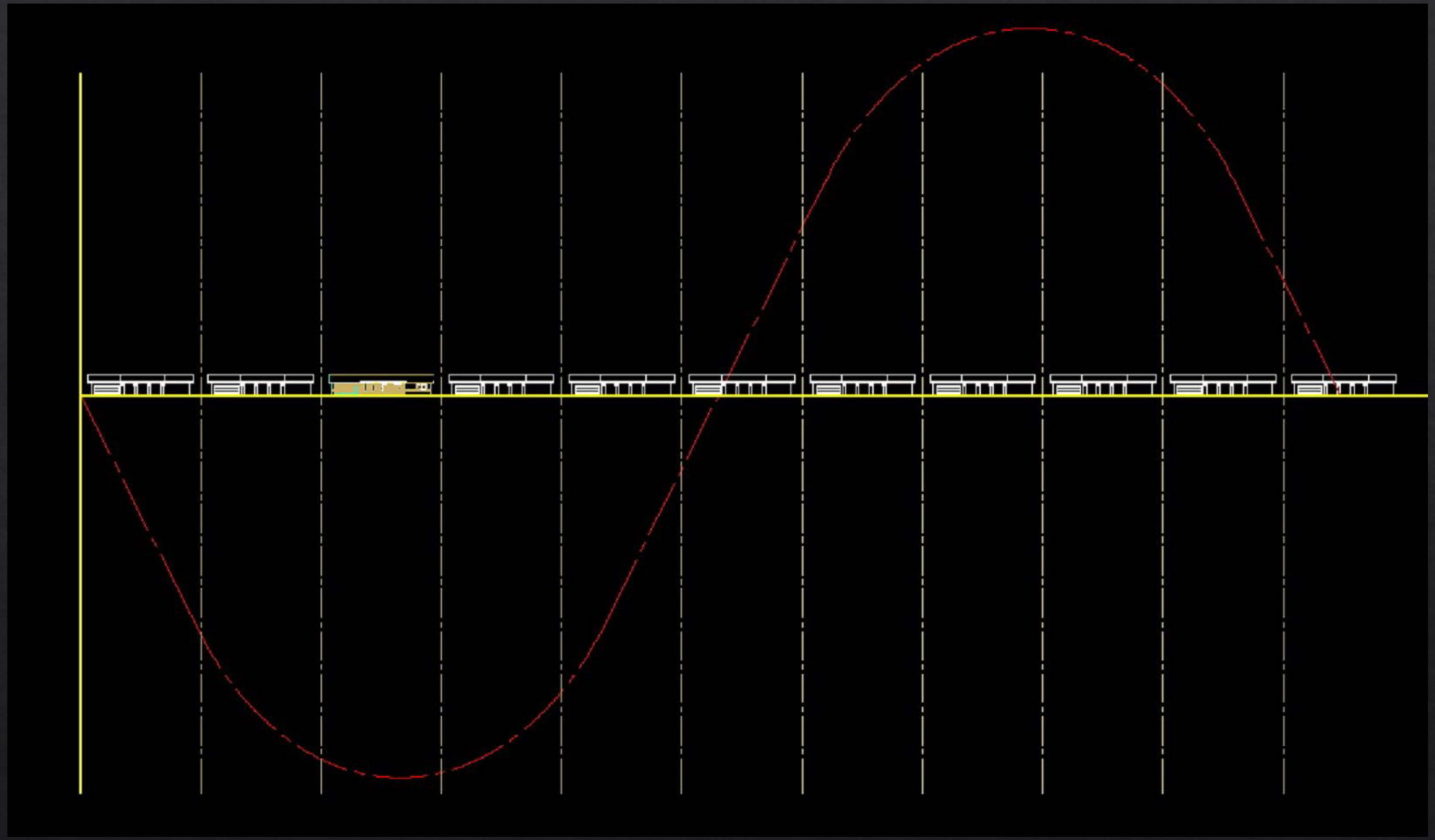


Nguyen, Hoang, et al. *A Comparative Study of Empirical and Ensemble Machine Learning Algorithms in Predicting Air over-Pressure in Open-Pit Coal Mine*. Acta Geophysica, Jan. 2020, www.researchgate.net/publication/338922856_A_comparative_study_of_empirical_and_ensemble_machine_learning_algorithms_in_predicting_air_over-pressure_in_open-pit_coal_mine.

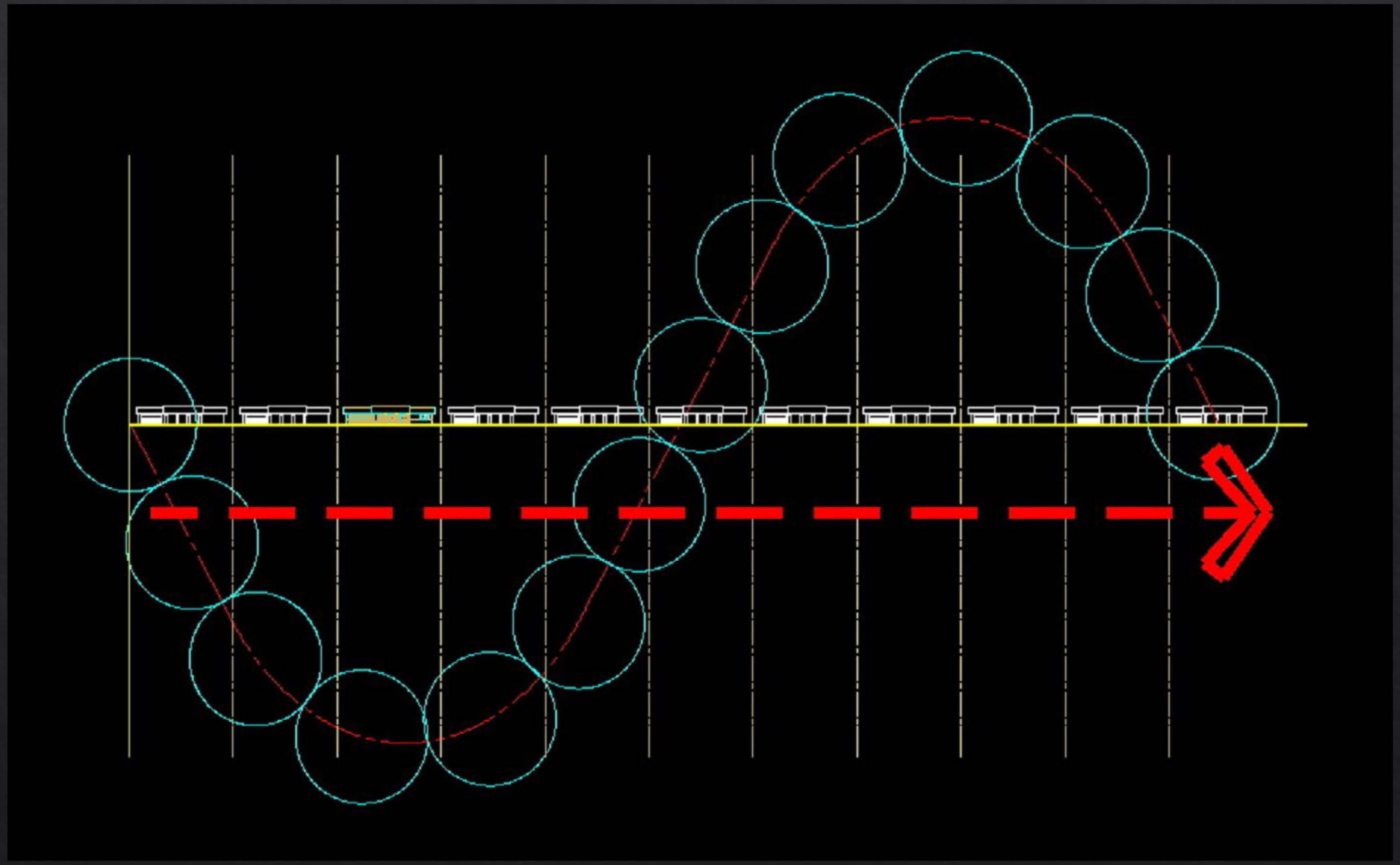
Seismic Energy Waves



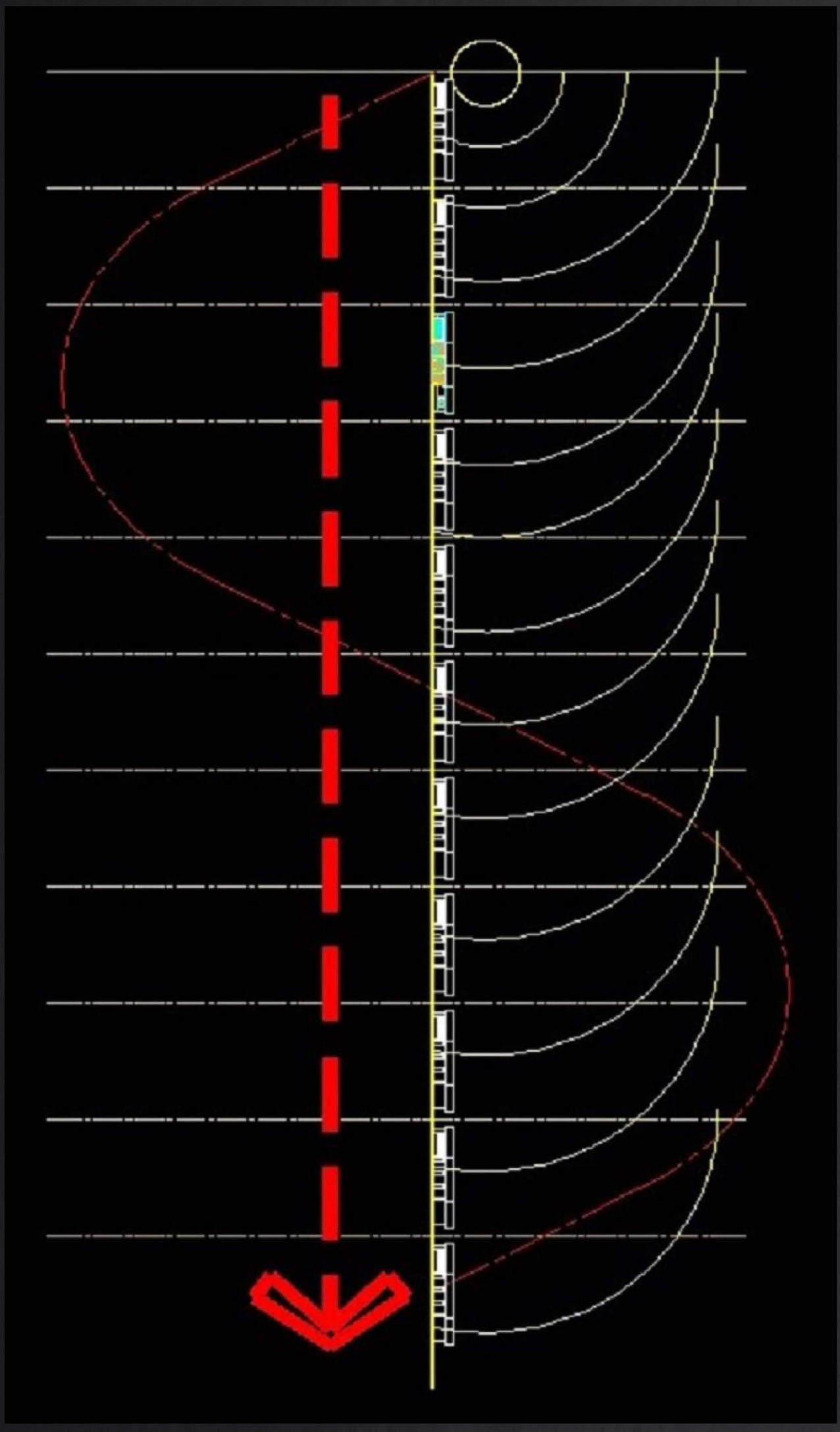
Seismic Wave Path



Seismic Wave PPV



Full Impact on Structure



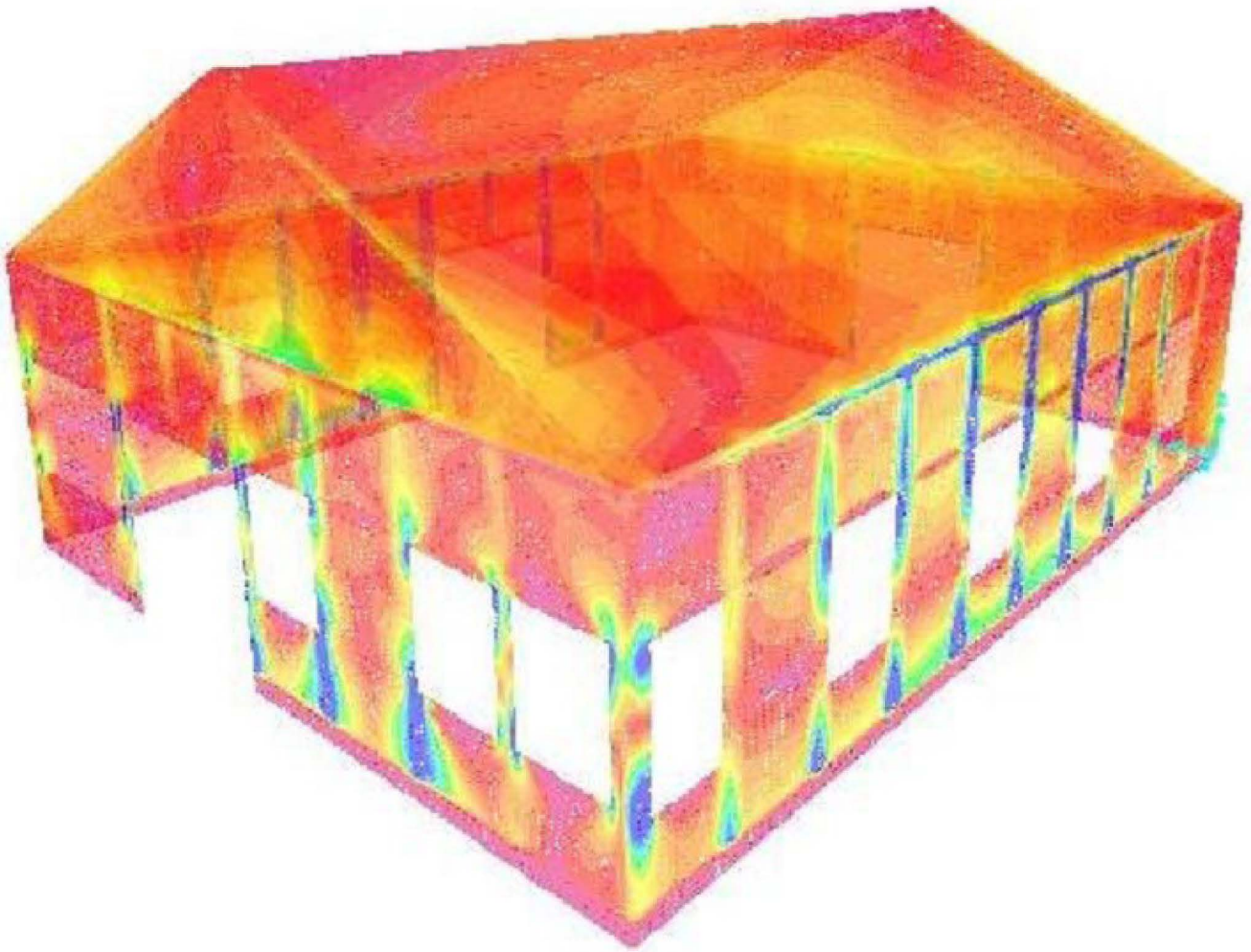
Energy Wave Effect



Shake Table of Recorded Energy



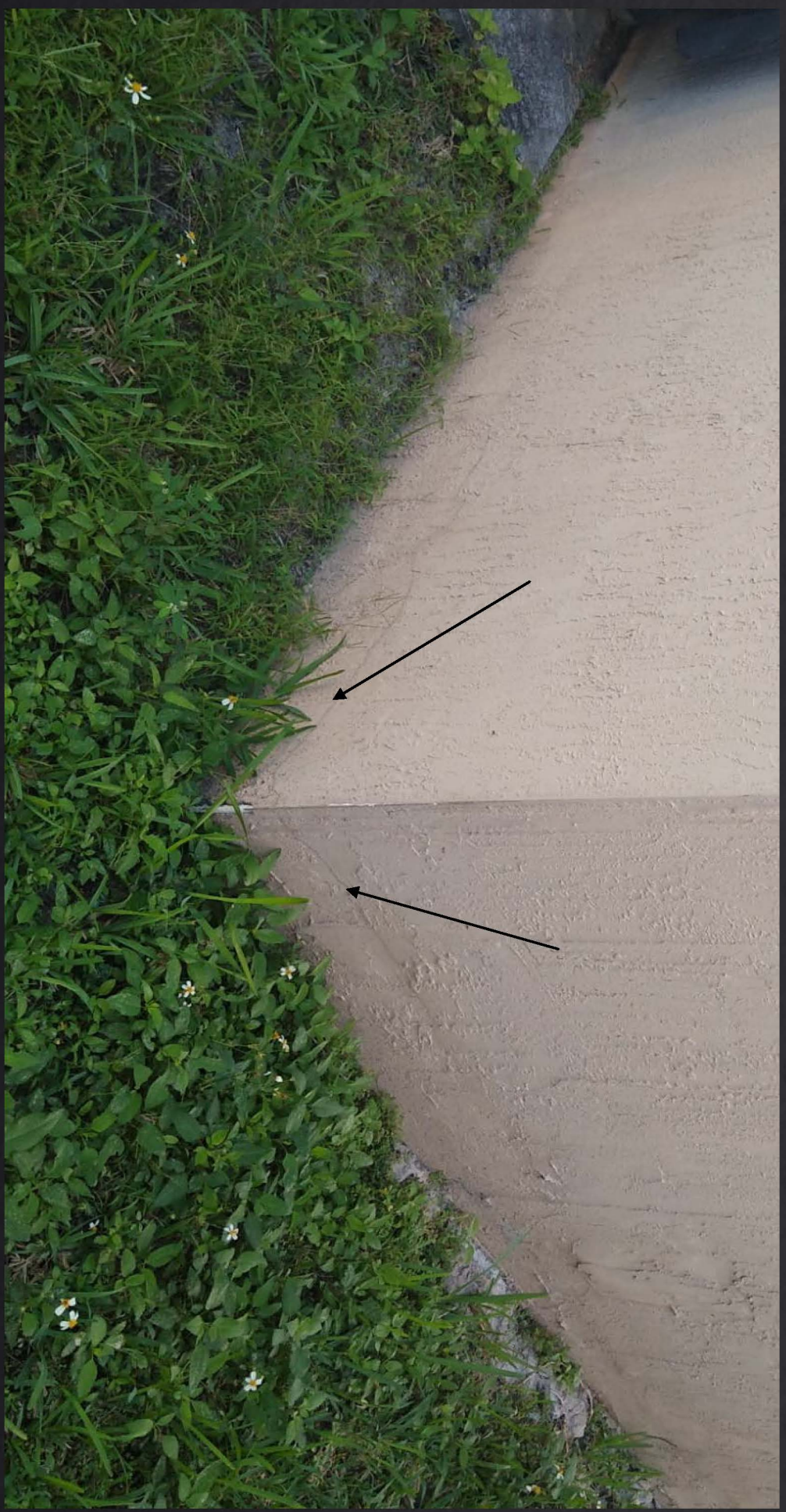
Reinforced Masonry Response



Computer Model of Response



Initial Seismic Damage



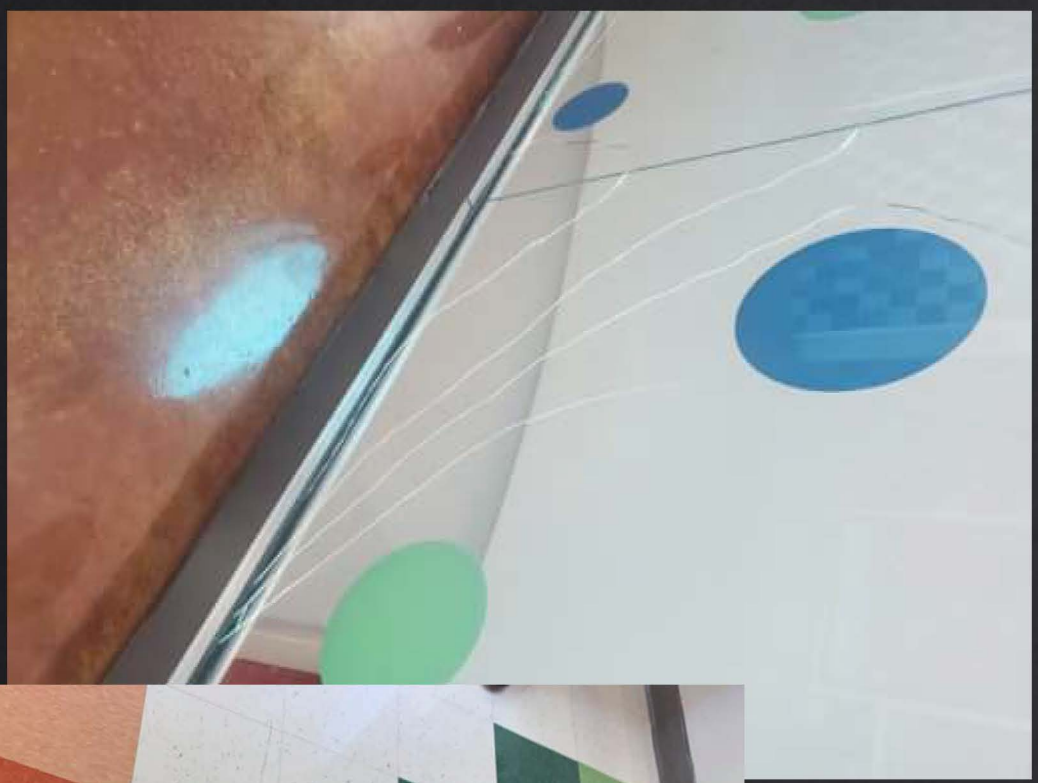
Seismic Damage



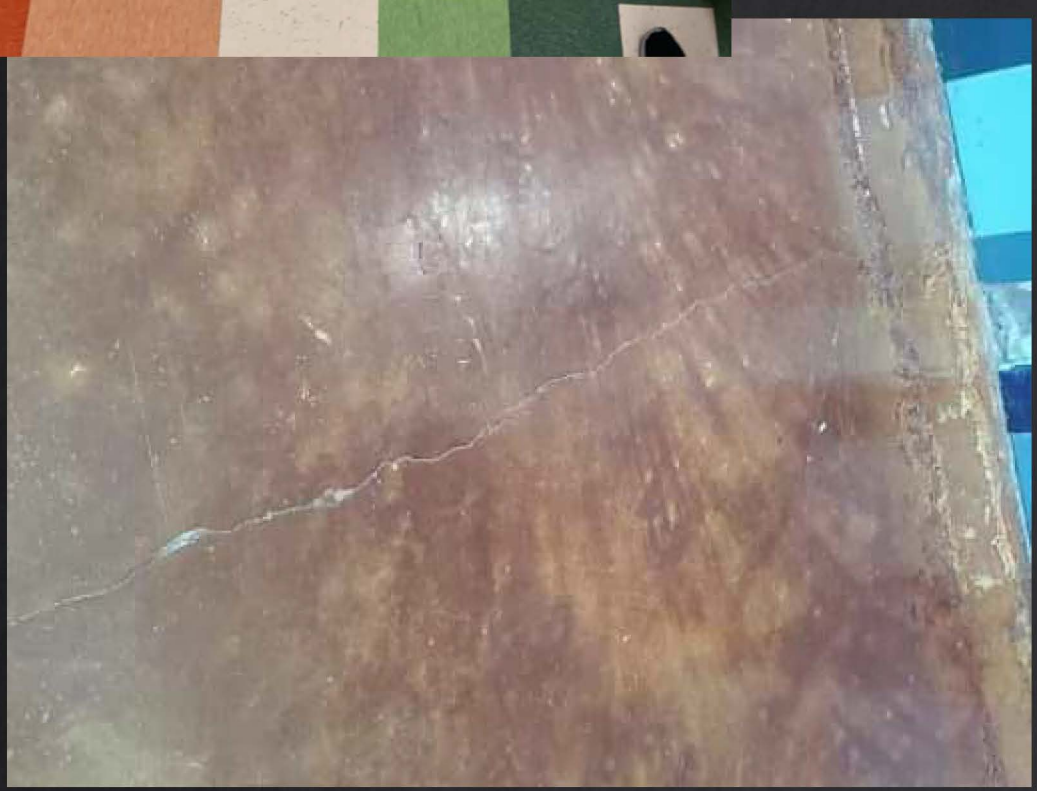
Seismic Damage



Seismic Damage
Spanish Lakes Elementary







Seismic Damage

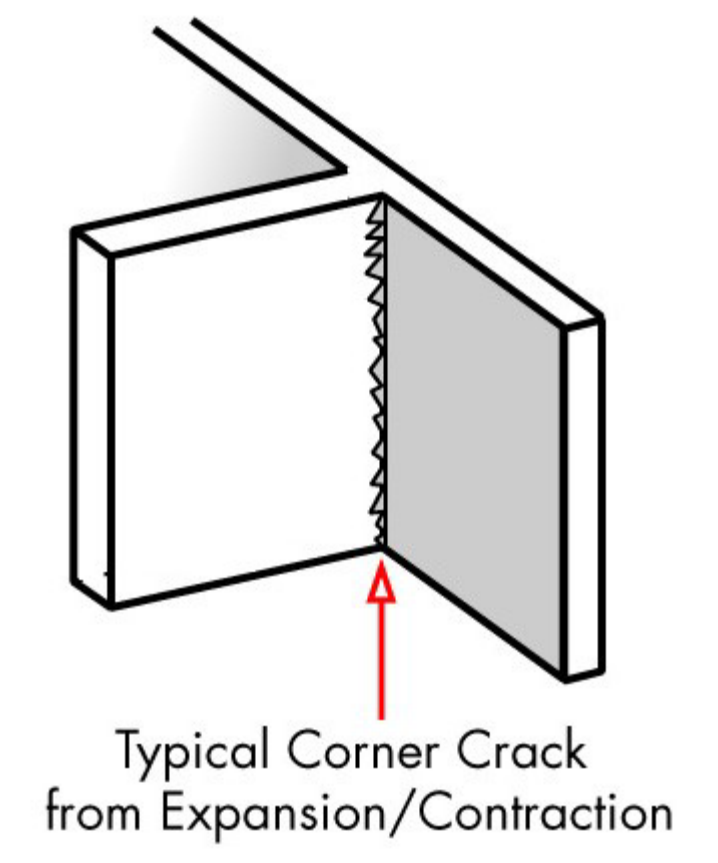
F.S. 552.30

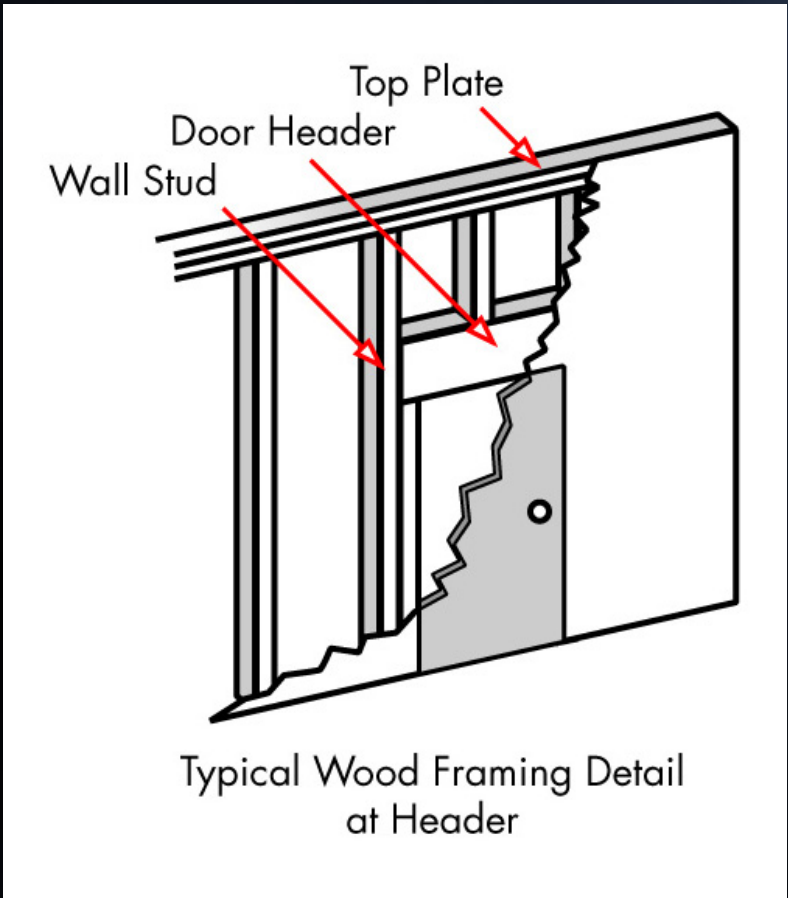
552.30 Construction materials mining activities.—(1) Notwithstanding the provisions of s. 552.25, **the State Fire Marshal shall have the sole and exclusive authority to adopt standards, limits, and regulations regarding the use of explosives used for construction materials mining activities.** Such authority to regulate use shall include, directly or indirectly, the operation, handling, licensure, or permitting of explosives and setting standards or limits, including, but not limited to, ground vibration, frequency, intensity, blast pattern, air blast and time, date, occurrence, and notice restrictions. As used in this section, the term "construction materials mining activities" means the extraction of limestone and sand suitable for production of construction aggregates, sand, cement, and road base materials for shipment offsite by any person or company primarily engaged in the commercial mining of any such natural resources.

(2) **The State Fire Marshal shall establish statewide ground vibration limits for construction materials mining activities** which conform to those limits established in the United States Bureau of Mines, Report of Investigations 8507, Appendix B - Alternative Blasting Level Criteria (Figure B-1). The State Fire Marshal may, at his or her sole discretion, by rule or formal agreement, delegate to the applicable municipality or county the monitoring and enforcement components of regulations governing the use of explosives, as recognized in this section, by construction materials mining activities. Such delegation may include the assessment and collection of reasonable fees by the municipality or county for the purpose of carrying out the delegated activities.

Presentation 6

Often at Joints and Weak Planes



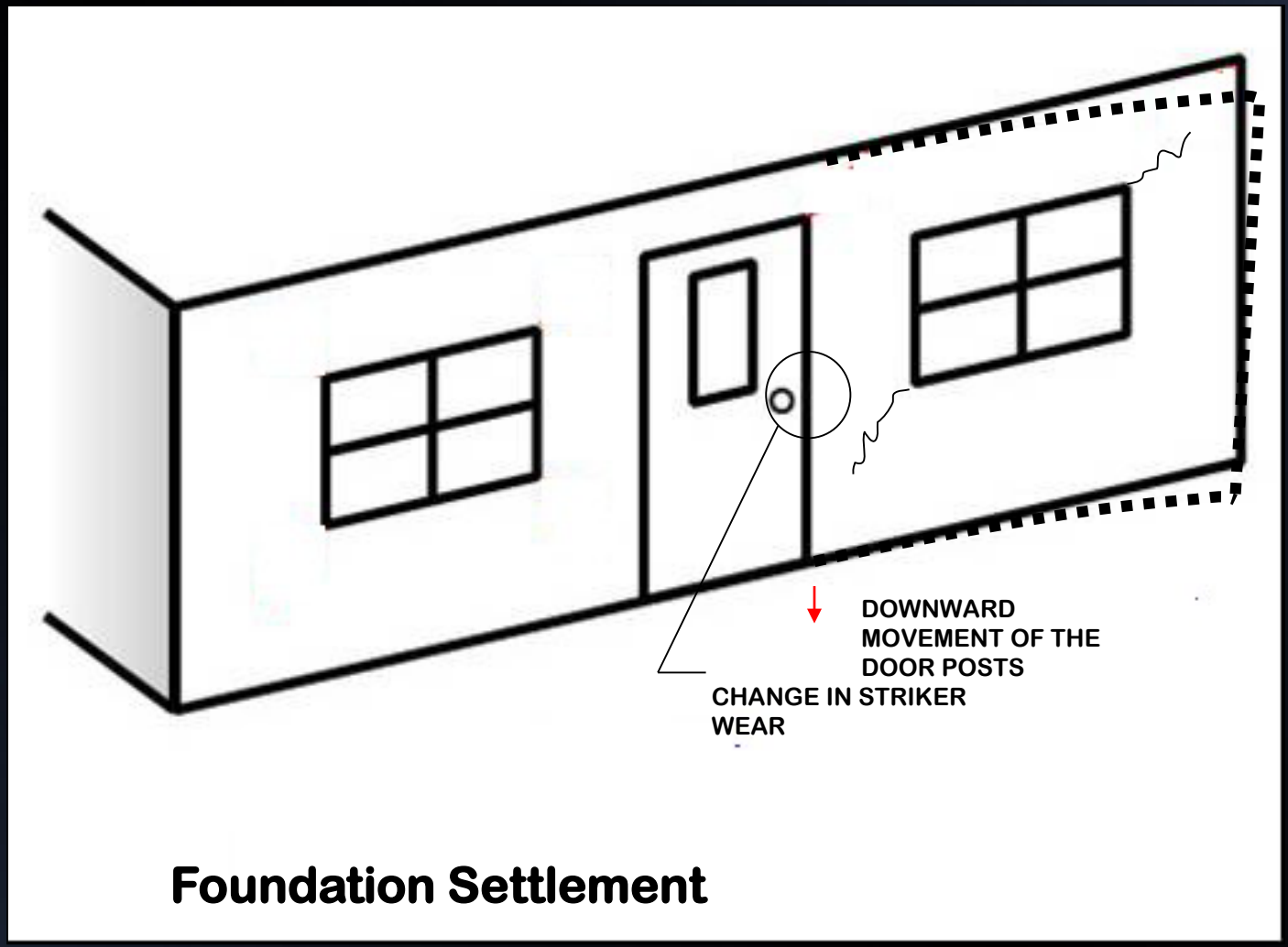


e.g., Hygrometric
Changes in Drywall

HAAG Education

Cracks From Foundation Movement

- Damage is localized to area of settlement
- Permanent distortion of the structure
- Physical change in elevations



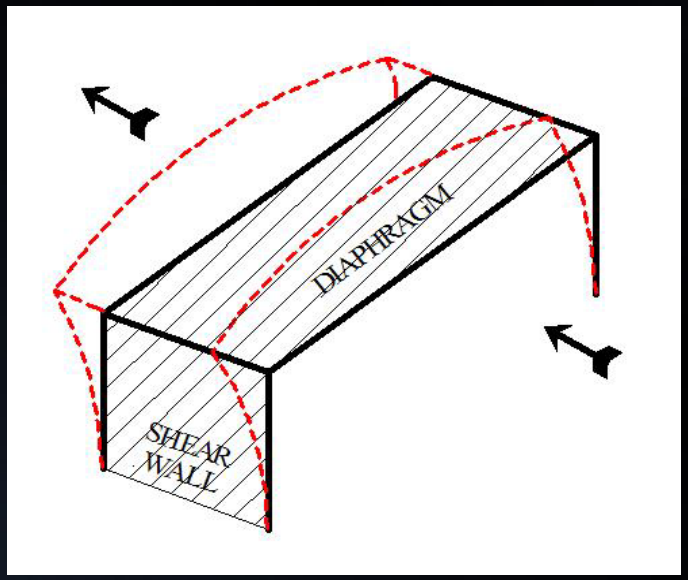
Foundation Settlement

Structural vs. Cosmetic Cracks

- Structural cracks compromise the load capacity
- Cosmetic cracks are simply unsightly

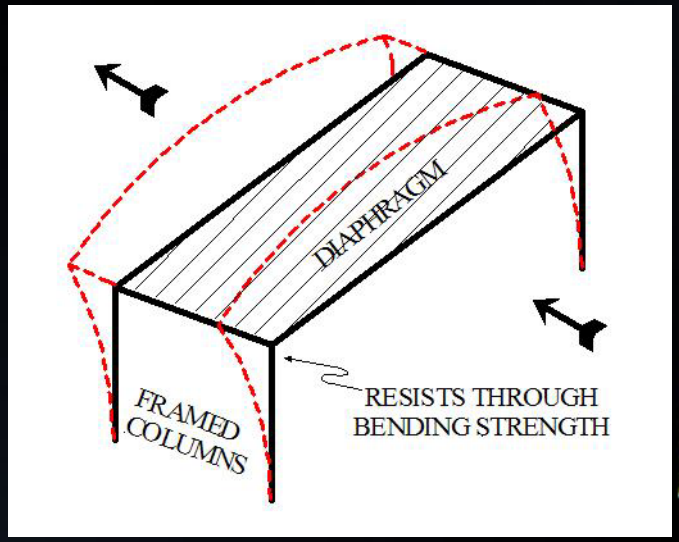


Consider Movement from Vibration



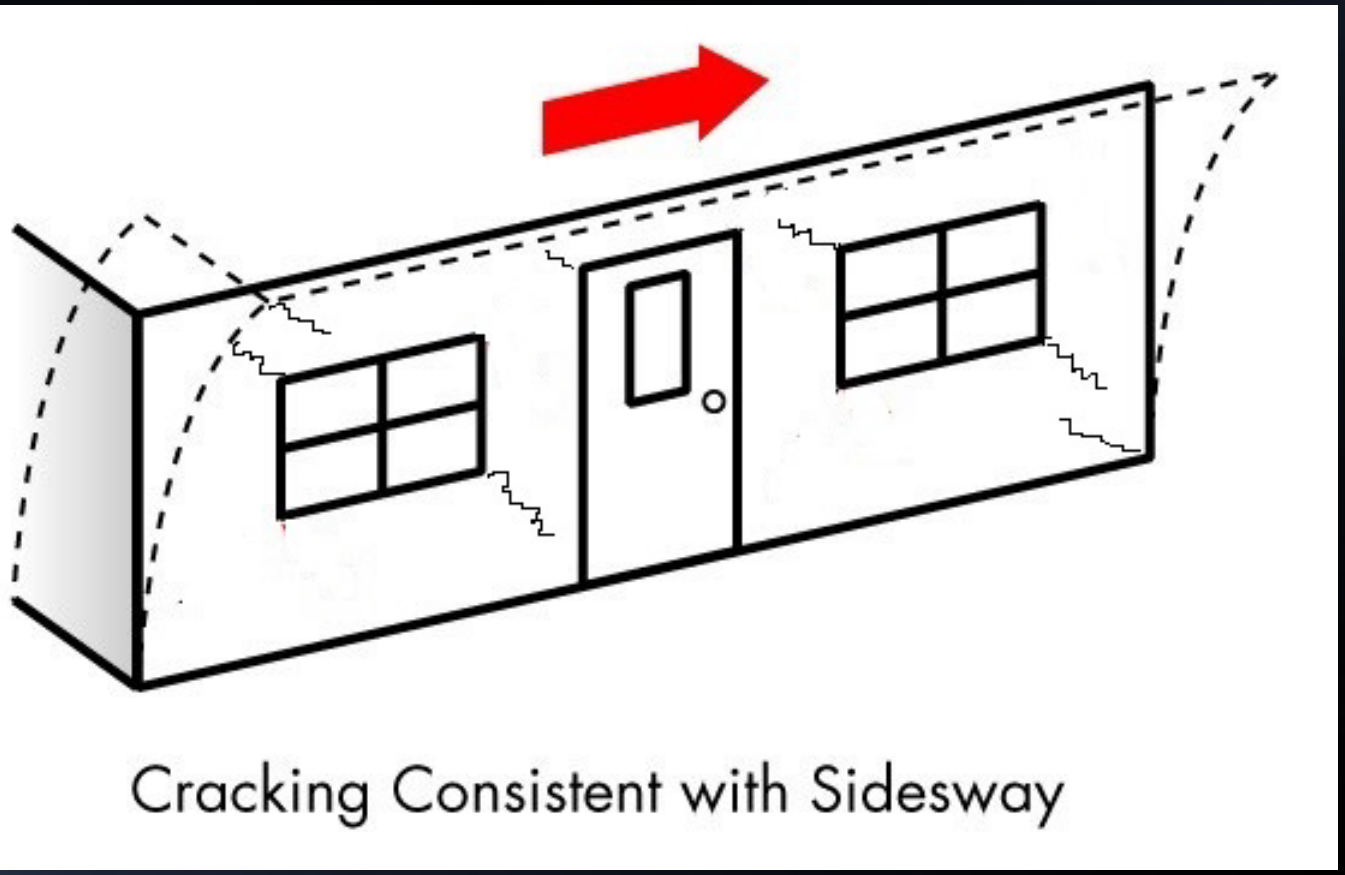
Shaking of the ground accelerates the foundation, and the structure lags in response

Therefore, the structure above the foundation experiences the greatest deformation



HAAG Education

Motion from Shaking



Cracking Consistent with Sidesway

- Inclined
- Consistent Across a Plane Area
- Continuous from the point of stress

HAAG Education



Protection Against Damage

Historical Research provides these limits

- 1942 - Bulletin 442 Seismic Effects of Quarry Blasting
- 1962 – RI 5968 Review of Criteria for Estimating Damage to Residences from Blasting Vibrations
- 1971 – Bulletin 656 Blasting Vibrations and Their Effects on Structures
- 1980 – RI 8507 Structure Response and Damage Produced by Ground Vibration From Surface Mine Blasting
- 1984 – RI 8896 Effects of Repeated Blasting on a Wood Framed House

HAAG Education

Engineers and Consultants have successfully applied these standards for at least 75 years

The Florida standard is the industry standard, field tested, and reliable

HAAG Education