

Commerce Committee

Thursday, February 22, 2024
8:00 AM - 1:00 PM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee

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Bob Rommel
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Meeting Agenda

Thursday, February 22, 2024
8:00 am – 1:00 pm
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

CS/HB 141 Economic Development by Ways & Means Committee, Abbott

CS/HB 161 Payments for Health Care Providers and Surgical Procedures under Workers' Compensation by Insurance & Banking Subcommittee, Daley, LaMarca

HB 207 Social Media Protection for Minors by Rayner, Sirois

CS/HB 433 Employment Regulations by Regulatory Reform & Economic Development Subcommittee, Esposito

CS/HB 497 Continuing Education Requirements by Regulatory Reform & Economic Development Subcommittee, Melo

CS/HB 611 Public Deposits by State Administration & Technology Appropriations Subcommittee, Botana

CS/CS/HB 613 Mobile Home Park Lot Tenancies by State Administration & Technology Appropriations Subcommittee, Regulatory Reform & Economic Development Subcommittee, Stark

CS/HB 637 Treatment by a Medical Specialist by Insurance & Banking Subcommittee, Yeager

HB 909 Pari-mutuel Permitholders by Esposito

HB 991 Pub. Rec./Cellular Telephone Numbers and Secure Login Credentials Held by the Department of Financial Services by LaMarca

CS/CS/HB 1021 Community Associations by State Administration & Technology Appropriations Subcommittee, Regulatory Reform & Economic Development Subcommittee, Lopez, V.

CS/CS/HB 1029 My Safe Florida Condominium Pilot Program by State Administration & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, Lopez, V., Hunschofsky

CS/HB 1099 Food Delivery Platforms by Regulatory Reform & Economic Development Subcommittee, Melo

CS/HB 1149 Policy Cancellations and Nonrenewals by Property Insurers by Insurance & Banking Subcommittee, Botana

CS/HB 1189 Corporate Actions by Regulatory Reform & Economic Development Subcommittee, Abbott

CS/CS/HB 1219 Dental Insurance Claims by Health & Human Services Committee, Insurance & Banking Subcommittee, Black

CS/CS/HB 1263 My Safe Florida Home Program by State Administration & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, LaMarca

CS/HB 1289 Verification of Reemployment Assistance Benefit Eligibility by Regulatory Reform & Economic Development Subcommittee, Abbott

CS/HB 1419 Department of Commerce by Infrastructure & Tourism Appropriations Subcommittee, Tuck

CS/HB 1537 Vacation Rentals by Regulatory Reform & Economic Development Subcommittee, Griffitts

CS/HB 1541 Transparency In Social Media by Regulatory Reform & Economic Development Subcommittee, Fine

CS/CS/HB 1555 Cybersecurity by State Administration & Technology Appropriations Subcommittee, Energy, Communications & Cybersecurity Subcommittee, Giallombardo

HB 1559 Professional Licensure by McClure

CS/HB 1611 Insurance by Insurance & Banking Subcommittee, Stevenson

CS/HB 1647 Local Regulation of Nonconforming and Unsafe Structures by Regulatory Reform & Economic Development Subcommittee, Roach

Consideration of the following proposed committee substitute(s):

PCS for HB 229 -- Public Service Commission Rules

PCS for CS/HB 939 -- Consumer Protection

PCS for CS/CS/HB 989 -- Financial Services

PCS for CS/HB 1007 -- Nicotine Products and Dispensing Devices

PCS for CS/HB 1503 -- Citizens Property Insurance Corporation

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 141 Economic Development
SPONSOR(S): Ways & Means Committee, Abbott and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N	Phelps	Anstead
2) Ways & Means Committee	20 Y, 0 N, As CS	Berg	Aldridge
3) Commerce Committee		Phelps	Hamon

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.

Triumph Gulf Coast, Inc., was created in 2013 by the Legislature to manage, distribute, and assess the use of certain funds related to the Deepwater Horizon oil spill. Triumph Gulf Coast, Inc., is organized as a nonprofit corporation, administratively housed within the Department of Commerce. The corporation is a separate entity from state government and not subject to control, supervision, or direction of the Department of Commerce.

The bill eliminates several requirements related to the Regional Rural Development Grants Program:

- 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 also allows Triumph Gulf Coast, Inc., to retain interest earned on the funds in its trust account rather than having those funds revert to the Triumph Gulf Coast Trust Fund. The funds held are required to be used to make awards or for administrative costs.

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] S. 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]

Triumph Gulf Coast, Inc.

Triumph Gulf Coast, Inc., was created in 2013 by the Legislature to manage, distribute, and assess the use of certain funds related to the Deepwater Horizon oil spill.[11] Triumph Gulf Coast, Inc., is organized as a nonprofit corporation, administratively housed within the Department of Commerce. The corporation is a separate entity from state government and not subject to control, supervision, or direction of the Department of Commerce.

Triumph Gulf Coast, Inc., is required to administer the Recovery Fund and all programs created under the Gulf Coast Economic Corridor Act in a transparent manner and in accordance with all applicable laws, bylaws, or contractual requirements.[12] The corporation is required to monitor, review, and evaluate awardees and related projects or programs. The evaluation process must be used to determine funding priorities and determine whether an award should be reauthorized or terminated. The corporation is also required to maintain a website that provides information related to meetings, issuance of awards, and the status of projects and programs.

Effect of the Bill

The bill eliminates several requirements related to the Regional Rural Development Grants Program:

- 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 also allows Triumph Gulf Coast, Inc., to retain interest earned on the funds in its trust account rather than having those funds revert to the Triumph Gulf Coast Trust Fund. The funds held are required to be used to make awards or for administrative costs.

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.

[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. 19, 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.
[11] S. 288.8013(1), F.S.
[12] Triumph Gulf Coast, Inc., *available at* https://www.myfloridatriumph.com/ (last visited Feb. 19, 2024).

Section 2: Amends s. 288.8013, F.S., to allow Triumph Gulf Coast, Inc. to retain interest earned on the funds in its trust account rather than having those funds revert to the Triumph Gulf Coast Trust Fund. The funds held are required to be used to make awards or for administrative costs.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 14, 2024, the Ways & Means Committee considered a Proposed Committee Substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Allowed Triumph Gulf Coast, Inc., to retain interest earned on the funds in its trust account rather than having those funds revert to the Triumph Gulf Coast Trust Fund.
- Required these funds to be used to make awards or for administrative costs.

This analysis is drafted to the committee substitute as approved by the Ways & Means Committee.

A bill to be entitled

An act relating to economic development; 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; amending s. 288.8013, F.S.; removing the requirement that certain interest be deposited in a specified manner; providing that specified earnings may be retained and used to make specified awards or for administrative costs; 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

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

capacity of a regional economic development organization includes hiring professional staff to develop, deliver, and provide needed economic development professional services, including technical assistance, education and leadership development, marketing, and project recruitment. ~~Matching~~ Grants may also be used by a regional economic development organization to provide technical assistance to local governments, local economic development organizations, and existing and prospective businesses.

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

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

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

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

~~(b) Demonstration that each unit of local government has made a financial or in-kind commitment to the regional organization.~~

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

(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. Upon the expiration and reversion of the amendments made to s. 288.8013, Florida Statutes, pursuant to section 64 of chapter 2023-240, Laws of Florida, subsection (3) of section 288.8013, Florida Statutes, is amended to read:

288.8013 Triumph Gulf Coast, Inc.; creation; funding; investment.—

(3) Triumph Gulf Coast, Inc., shall establish a trust account at a federally insured financial institution to hold funds received from the Triumph Gulf Coast Trust Fund and make deposits and payments. ~~Interest earned in the trust account shall be deposited monthly into the Triumph Gulf Coast Trust~~

~~Fund.~~ Triumph Gulf Coast, Inc., may invest surplus funds in the Local Government Surplus Funds Trust Fund, pursuant to s. 218.407. Earnings generated by investments and interest of the fund may be retained and used to make awards pursuant to this act or, notwithstanding paragraph (2)(d), for administrative costs, including costs in excess of the cap~~, and interest earned, net of fees, shall be transferred monthly into the Triumph Gulf Coast Trust Fund~~. Administrative costs may include payment of travel and per diem expenses of board members, audits, salary or other costs for employed or contracted staff, including required staff under s. 288.8014(9), and other allowable costs. The annual salary for any employee or contracted staff may not exceed $130,000, and associated benefits may not exceed 35 percent of salary.

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

CS/HB 161

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 161 Payments for Health Care Providers and Surgical Procedures under Workers' Compensation
SPONSOR(S): Insurance & Banking Subcommittee, Daley and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 362

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Herrera	Lloyd
2) State Administration & Technology Appropriations Subcommittee	11 Y, 2 N	Perez	Topp
3) Commerce Committee		Herrera	Hamon

SUMMARY ANALYSIS

Florida's Workers' Compensation Law (WC Law) requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require. The Department of Financial Services (DFS), Division of Workers' Compensation (DWC), provides regulatory oversight of Florida's workers' compensation system, including the workers' compensation health care delivery system. DWC is responsible for ensuring that employers provide medically necessary treatment, care, and attendance for injured workers.

A three-member panel (panel) consisting of the Chief Financial Officer (CFO) or his or her designee and two Governor's appointees sets the maximum reimbursement allowances (MRAs). DWC incorporates the statewide schedules of the MRAs by rule in reimbursement manuals. The panel develops three different reimbursement manuals to determine statewide schedules of maximum reimbursement allowances. The WC Law manual limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement, while reimbursement for surgical procedures is limited to 140 percent of Medicare.

The WC Law limits the amount a health care provider can be paid for expert testimony during depositions on a workers' compensation claim. As an expert medical witness, a workers' compensation health care provider is limited to a maximum $200, per hour, unless they only provided an expert medical opinion following a medical record review or provided direct personal services unrelated to the case in dispute, then they are limited to a maximum of $200, per day.

The bill increases the maximum hourly amount allowed expert witnesses from $200, per hour, to $300, per hour. For those expert witnesses' subject to the daily rate, the maximum amount allowed is increased from $200, per day, to $300, per day.

Also, the bill increases the maximum reimbursement for physician licensed under ch. 458 or ch. 459, from 110 percent, to 150 percent of the reimbursement allowed by Medicare. Additionally, the bill increases the maximum reimbursement for surgical procedures from 140 percent, to 150 percent of the reimbursement allowed by Medicare.

The bill has an indeterminate negative impact on state and local government expenditures, and positive and negative impacts on the private sector. *See* Fiscal Analysis & Economic Impact Statement.

The bill is effective July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Division of Workers' Compensation

Florida's Workers' Compensation Law[1] (WC Law) requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require.[2] The Department of Financial Services (DFS), Division of Workers' Compensation (DWC) provides regulatory oversight of Florida's workers' compensation system, including the workers' compensation health care delivery system. The law specifies certain reimbursement formulas and methodologies to compensate workers' compensation health care providers[3] that provide medical services to injured employees. Where a reimbursement amount or methodology is not specifically included in statute, the Three-Member Panel (panel) is authorized to annually adopt statewide schedules of maximum reimbursement allowances (MRAs) to provide uniform fee schedules for the reimbursement of various medical services.[4] DWC incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals[5] through the rulemaking process provided by the Administrative Procedures Act.[6] In 2023, CS/CS/HB 487 eliminated the authority of the Three-Member Panel to adopt MRA's for individually licensed health care providers, work-hardening programs, pain programs, and durable medical equipment providers.[7] Instead, it mandates DWC to annually publish the maximum reimbursement allowance for physician and non-hospital reimbursements on its website by July 1st, effective the following January 1st.[8]

Medical Services

DWC is responsible for ensuring that employers provide medically necessary treatment, care, and attendance for injured workers. Healthcare providers must receive authorization from the insurer before providing treatment and submit treatment reports to the insurer. Insurers must reimburse healthcare providers based on statewide schedules of maximum reimbursement allowances developed by the DWC or an agreed-upon contract price. DWC mediates utilization and reimbursement disputes.[9]

Reimbursement for Healthcare Providers

The panel consisting of the Chief Financial Officer (CFO) or their designee and two Governor appointees, set the MRAs.[10] Beginning with rates developed in 2024 and implemented with rates effective January 1, 2025, health care providers and non-hospital rates are annually published by DWC, instead of being included in the reimbursement manuals through rulemaking.[11] DWC incorporates the panel's statewide schedules of the MRAs through rulemaking. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;[12] the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care; and the financial impact of the MRAs on healthcare providers and facilities.[13] Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation

[1] Ch. 440, F.S.
[2] S. 440.13(2)(a), F.S.
[3] The term "health care provider" includes a physician or any recognized practitioner licensed to provide skilled services pursuant to a prescription or under the supervision or direction of a physician. It also includes any hospital licensed under chapter 395 and any health care institution licensed under chapter 400 or chapter 429. S. 440.13(1)(g), F.S.
[4] S. 440.13(12), F.S.
[5] Ss. 440.13(12) and (13), F.S., and Ch. 69L-7, F.A.C.
[6] Ch. 120, F.S.
[7] Ch. 2023-144, Laws of Fla.
[8] *Id*.
[9] S. 440.13, F.S.
[10] *Id*.
[11] Ch. 2023-144, Laws of Fla.
[12] S. 440.13(12)(i)(1), F.S.
[13] S. 440.13(12)(i)(2), F.S.

system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.[14]

There are three different reimbursement manuals that determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual, developed by the DWC, limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,[15] while reimbursement for surgical procedures is limited to 140 percent of Medicare.[16] The hospital manual, developed by the panel, sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,[17] while other outpatient services are limited to 75 percent of usual and customary charges.[18] Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.[19] The ambulatory surgical centers manual, developed by the panel, limits reimbursement to 60 percent of usual and customary as such services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a $4.18 dispensing fee.[20] Repackaged or relabeled prescription medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an $8.00 dispensing fee.[21] Fees may not exceed the schedules adopted under ch. 440, F.S., and department rule.[22]

Expert Witness Fees for Health Care Providers

The law limits the amount a health care provider can be paid for expert testimony during depositions on a workers' compensation claim. As an expert medical witness, a workers' compensation health care provider is limited to a maximum of $200, per hour, unless they only provided an expert medical opinion following a medical record review or provided direct personal services unrelated to the case in dispute, then they are limited to a maximum of $200, per day.[23]

Effect of the Bill

The bill increases the maximum hourly amount allowed expert witnesses from $200, per hour, to $300, per hour. For those expert witnesses' subject to the daily rate, the maximum amount allowed is increased from $200, per day, to $300, per day.

Also, the bill increases the maximum reimbursement for physician licensed under ch. 458 or ch. 459, from 110 percent to 150 percent of the reimbursement allowed by Medicare. Additionally, the bill increases the maximum reimbursement for surgical procedures from 140 percent to 150 percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is higher.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.13, F.S., relating to medical services and supplies; penalty for violations; limitations.

Section 2. Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[14] S. 440.13(12)(i)(3), F.S.
[15] S. 440.13(12)(f), F.S.
[16] S. 440.13(12)(g), F.S.
[17] S. 440.13(12)(d), F.S.
[18] S. 440.13(12)(a), F.S.
[19] *Id*.
[20] S. 440.13(12)(h), F.S.
[21] *Id*.
[22] S. 440.13(12)(f), F.S.
[23] S. 440.13(10), F.S.

1. Revenues:

   None.

2. Expenditures:

   The bill will likely have a negative fiscal impact on the State Risk Management Trust Fund (from which the state's worker compensation costs are paid). The National Council on Compensation Insurance (NCCI) analysis of the bill forecasts a 6.9% increase in workers compensation rates if the bill becomes law.[24]

   The bill may have a negative, likely insignificant, impact on expenditures for litigated state employee workers' compensation claims to the extent the state elects to increase expert witness fees, as allowed by the bill. NCCI expects this to be a minimal increase (minimal defined in this context as overall system costs of less than plus 0.2 percent increase).[25]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have a negative fiscal impact on local government expenditures, potentially resulting in a 6.9 percent increase in workers' compensation rates.[26]

   The bill may have a negative, likely insignificant, impact on self-insured local government expenditures for litigated public employee workers' compensation claims to the extent they elect to increase expert witness fees, as allowed by the bill. NCCI expects this to be a minimal increase (minimal defined in this context as overall system costs of less than plus 0.2 percent increase).[27]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase payments to medical providers who appear as expert witnesses in litigated workers' compensation claim and to physicians for medical services provided to injured workers.

The bill may increase worker's compensation claim costs in litigated cases. If this is significant enough to impact workers' compensation rates, it may increase workers' compensation premiums paid by employers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill necessitates local governments to allocate additional funds, particularly for those providing increased workers' compensation reimbursements to physicians, including self-insured employers; however, an exception may apply. The bill applies to all similarly situated entities that provide workers' compensation.

[24] NCCI, Analysis of Florida Medical Fee Schedule Changes (2024 Session, HB 161/SB 362) (Feb. 06, 2024).
[25] *Id.*
[26] *Id.*
[27] *Id.*

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Insurance & Banking Subcommittee considered the bill, adopted a line amendment, and reported the bill favorably as a committee substitute. The amendment reduced the proposed increase from 200% of the Medicare allowed amount to a uniform 150%, applicable to both surgical and non-surgical health care provider reimbursements.

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

A bill to be entitled

An act relating to payments for health care providers and surgical procedures under workers' compensation; amending s. 440.13, F.S.; increasing the maximum amounts of certain witness fees related to workers' compensation cases; increasing the maximum reimbursements for physicians and surgical procedures under workers' compensation; providing an effective date.

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

Section 1. Subsection (10) and paragraphs (f) and (g) of subsection (12) of section 440.13, Florida Statutes, are amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(10) WITNESS FEES.—Any health care provider who gives a deposition shall be allowed a witness fee. The amount charged by the witness may not exceed $300 ~~$200~~ per hour. An expert witness who has never provided direct professional services to a party but has merely reviewed medical records and provided an expert opinion or has provided only direct professional services that were unrelated to the workers' compensation case may not be allowed a witness fee in excess of $300 ~~$200~~ per day.

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

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(f) Maximum reimbursement for a physician licensed under chapter 458 or chapter 459 shall be 150 ~~110~~ percent of the reimbursement allowed by Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

(g) Maximum reimbursement for surgical procedures shall be 150 ~~140~~ percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

The department, as requested, shall provide data to the panel, including, but not limited to, utilization trends in the workers' compensation health care delivery system. The department shall provide the panel with an annual report regarding the resolution of medical reimbursement disputes and any actions pursuant to subsection (8). The department shall provide administrative support and service to the panel to the extent requested by the panel. For prescription medication purchased under the requirements of this subsection, a dispensing practitioner shall not possess such medication unless payment has been made by the practitioner, the practitioner's professional practice, or the practitioner's practice management company or employer to the supplying manufacturer, wholesaler,

distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of that medication.

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

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

COMMERCE COMMITTEE

CS/HB 161 by Rep. Daley
Payments for Health Care Providers and Surgical Procedures under Workers' Compensation

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Daley (Line 53): The amendment changes the effective date from July 1, 2024 to January 1, 2025 to align the change proposed by the bill with the effective date of the annual Workers' Compensation rates.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Daley offered the following:

Amendment

Remove line 53 and insert:

Section 2. This act shall take effect January 1, 2025.

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	13 Y, 0 N	Phelps	Anstead
2) Commerce Committee		Phelps	Hamon

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 Feb. 20, 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 Feb. 20, 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 Feb. 20, 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. 20, 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 Feb. 20, 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 Feb. 20, 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 Feb. 20, 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 Feb. 20, 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 Feb. 20, 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 Feb. 20, 2024).
[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 Feb. 20, 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 Feb. 20, 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 Feb. 20, 2024).
[16] Internetmatters.org, *Parental Controls*, https://www.internetmatters.org/parental-controls/ (last visited Feb. 20, 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 Feb. 20, 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 Feb. 20, 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 Feb. 20, 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 Feb. 20, 2024).
[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. 20, 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 Feb. 20, 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 Feb. 20, 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.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 433 Employment Regulations
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Esposito
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	9 Y, 4 N	Thompson	Anstead
2) State Affairs Committee	14 Y, 6 N	Mwakyanjala	Williamson
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The federal Fair Labor Standards Act (FLSA) provides workers with minimum wage, overtime pay, record keeping, and child labor protections for full and part-time workers in both the public and private sectors. The FLSA allows states to expand the rights of employers and employees. Florida generally follows federal law on overtime pay and occupational health and safety.

The Florida Minimum Wage Act, enacted in 2005, implements the minimum wage provisions in the State Constitution. Florida's wage and employment benefits law preempts the establishment of a minimum wage to the state. Thus, local governments cannot establish a minimum wage for private employers in their jurisdiction. Local governments are also prohibited from requiring private employers to provide employment benefits not required by state or federal law. However, local governments have limited authority to establish a minimum wage and to require specific employment benefits for their own employees and those of their vendors or contractors.

The Occupational Safety and Health Act of 1970 is the federal labor law governing occupational health and safety in the private sector and federal government. Currently, there are no specific federal or state laws that provide heat exposure protections for outdoor workers.

The bill:

- Prohibits local governments from preferring one contractor over another based on the wages or employment benefits provided by the contractor.
- Removes the ability of local governments to require a minimum wage for certain employees under the terms of a contract.
- Expressly preempts the regulation of the terms and conditions of employment to the state.
- Preempts the regulation of workplace heat exposure requirements to the state.
- Clarifies that the preemption of workplace heat requirements does not limit the authority of a local government to provide workplace heat exposure requirements for the employees of the local government, and does not apply if compliance will prevent the local government from receiving federal funds.

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

The effective date of the bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA), enacted in 1938, provides covered workers with minimum wage, overtime pay, and child labor protections.[1] In 1938, the FLSA established a minimum wage of $.25 an hour. The current federal minimum wage rate is $7.25 an hour, which went into effect July 24, 2009. The FLSA applies to employment within any state in the U.S., the District of Columbia, or any territory or possession of the U.S.[2]

The FLSA covers most private and public sector employees. However, certain employers and employees are exempt from coverage, including individuals with disabilities, youth workers, tipped workers, and executive, administrative, and professional workers. The FLSA covers businesses if the business has annual sales of at least $500,000.[3] It also covers certain individual employees if such employee is engaged in interstate commerce.

The FLSA applies to all:[4]

- **Governments**: Federal, state, or local government agencies.
- **Hospitals**: Hospitals, or institutions primarily engaged in the care of the sick, the aged, or the mentally ill or disabled who live on the premises. It does not matter if the hospital or institution is public or private or is operated for profit or not-for-profit.
- **Schools**: Pre-schools, elementary or secondary schools or institutions of higher learning (e.g., college), or a school for mentally or physically handicapped or gifted children. It does not matter if the school or institution is public or private or operated for profit or not-for-profit.

The FLSA includes several exemptions from the federal minimum wage provisions, including:[5]

- Executive, administrative, and professional employees.
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery.
- Farm workers employed by certain employers.
- Casual babysitters and persons employed as companions for the elderly or infirm.
- Border patrol agents.[6]
- Baseball players who are compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season at a rate that is not less than a weekly salary equal to the minimum wage.

The FLSA was amended in 2014, concerning border patrol agents, and again in 2018, to exempt minor league baseball players who are paid at least $290 per week during the 2018 championship season

[1] 29 U.S.C. § 201-219 and 29 C.F.R. ch. V.

[2] Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, https://crsreports.congress.gov/product/pdf/R/R42713, (last visited Dec. 5, 2023). (The main FLSA provisions and accompanying Department of Labor (DOL) regulations constitute what is commonly known as federal wage and hour laws and federal child labor law.).

[3] The size of an enterprise is measured by its "annual sales or business done." Annual sales or business done includes all business activities that can be measured in dollars. Thus, retailers are covered by the FLSA if their annual sales are at least $500,000. Owners of rental properties are covered if they collect at least $500,000 annually in rent. 29 C.F.R.§§779.258-779.259.

[4] U.S. Department of Labor, Fair Labor Standards Act Advisor, https://webapps.dol.gov/elaws/whd/flsa/scope/screen10.asp, (last visited Dec. 5, 2023).

[5] 29 U.S.C. § 213. (It also includes separate exemptions from overtime pay.)

[6] *See* Border Patrol Agent Pay Reform Act of 2014, S.1691, 113th Cong, (2014).

from the federal minimum wage rate and overtime pay.[7] These two amendments were the only amendments made to the minimum wage exemptions provisions of the FLSA since Florida passed its minimum wage law in 2005.[8]

The FLSA provides that if states enact worker protections, including minimum wage rates, that are more protective of employees than what is provided by the FLSA, the state law applies.[9] Consequently, no state law may weaken the worker protections in the FLSA. However, state laws that impose greater worker protections will supersede those in the FLSA.[10]

Thirty states plus Washington DC, Guam, Puerto Rico, and the Virgin Islands provide a minimum wage greater than the federal minimum wage. Thirteen states provide a minimum wage that is equal to the federal minimum wage. Five states have not adopted a minimum wage and two states have a minimum wage that is below the federal minimum wage.[11] For those seven states, the federal minimum wage applies, but only to those workers covered by the FLSA.

Article X, Section 24 of the Florida Constitution

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision (Section 24) that established the state minimum wage.[12] Prior to this date, Florida did not have a state minimum wage so the FLSA applied for covered workers. Section 24 provides the amount of the minimum wage and the procedure for calculating increases in the minimum wage.[13] The amendment also provides that "all working Floridians are entitled to be paid a minimum wage sufficient to provide a decent and healthy life, that protects their employers from unfair low wage competition, and that does not force them to rely on taxpayer-funded public services."[14]

On November 3, 2020, Florida voters again approved a constitutional amendment related to the state's minimum wage, Amendment 2, to gradually increase the state's minimum wage to $15 an hour by the year 2026.[15] Pursuant to the passage of Amendment 2, on September 30, 2021, Florida's minimum wage increased to $10 per hour. Each year, thereafter, Florida's minimum wage will increase by $1 until the minimum wage reaches $15 per hour on September 30, 2026.[16] Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it had been done from 2004 to 2021.

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[7] *See* Levi Weaver, On Minor-League Pay, *MLB's Stance Doesn't Line Up with the Facts*, The Athletic (Apr. 4, 2018), https://www.theathletic.com/293189/%202018/04/04/on-minor-league-pay-mlbs-stance-doesnt-line-up-with-the-facts// (last visited Dec. 5, 2023). (When recounting salary scale per level of minor league baseball, the article notes "federally-recognized poverty line is $12,140 per year for single-individual households." According to the article, a not-insignificant percentage of minor league players are able to subsidize their relatively meager monthly salaries by drawing upon the signing bonuses they received from their MLB clubs when first entering the professional ranks. These bonuses can range anywhere from $10,000 to several million dollars. "The top 64 picks [in the MLB draft] last year all received a bonus of over $1,000,000 before taxes, but roughly 40% of players signed for one-time bonuses of $10,000 or less."

[8] S. 448.110, F.S., expressly references ss. 213 and 214 of the FLSA, which address minimum wage exemptions and employment under special certificates, respectively. However, s. 214 has not been amended since 1989. (*See* Pub. L. 101–157, § 4(d), Nov. 17, 1989, 103 Stat. 941).

[9] 29 U.S.C. §218.

[10] Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview, Updated March 8, 2023*, https://crsreports.congress.gov/product/pdf/R/R42713, (last visited Dec. 5, 2023).

[11] U.S. Department of Labor, Consolidated Minimum Wage Table, https://www.dol.gov/agencies/whd/mw-consolidated (last visited Dec. 5, 2023).

[12] Art. X, s. 24, Fla. Const.

[13] Art. X, s. 24(c), Fla. Const.

[14] Art. X, s. 24(a), Fla. Const.

[15] U.S. Department of State, *Notice of Increase to State of Florida's Minimum Wage*, https://www.state.gov/wp-content/uploads/2021/01/2021-01-29-Notice-FL-Minimum-Wage-Increase.pdf (last visited Dec. 5, 2023).

[16] Department of Economic Opportunity, *Florida's Minimum Wage*, https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2022-minimum-wage/2022-florida-minimum-wage-announcement.pdf?sfvrsn=961754b0_2 (last visited Dec. 5, 2023).

The Florida Constitution references the FLSA and specifically ties the meaning[17] of "employer," "employee," and "wage," to the meanings established under the FLSA and its implementing regulations.[18] It also indicates that case law, administrative interpretations, and other guiding standards developed under the federal FLSA must guide the construction of Florida's Constitution related to Section 24 and any implementing statutes or regulations.[19]

Florida Minimum Wage Act

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the minimum wage provisions in the Florida Constitution.[20] The Act designates the Department of Commerce (DC) as the state agency that implements the minimum wage requirements, establishes procedures with respect to civil actions alleging violations, and provides that it is the exclusive remedy under state law for violations of Section 24.[21]

The Act provides that, effective May 2, 2005, employers are required to pay employees a minimum wage at an hourly rate of $6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the FLSA and its implementing regulations are eligible to receive the state minimum wage pursuant to the Florida Constitution and this statute. The provisions of ss. 213 and 214 of the federal FLSA, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated by reference.[22]

Local Wage Ordinances

The Florida Constitution authorizes counties to enact ordinances that are not inconsistent with state law,[23] while municipalities are authorized to enact ordinances on any subject that state law may address, except:[24]

- The subjects of annexation, merger, and exercise of extraterritorial power;
- Any subject expressly prohibited by the Florida Constitution;
- Any subject expressly preempted to state or county government by the Florida Constitution or by law; or
- Any subject preempted to a county under a county charter.

In 2003, the Legislature preempted the establishment of minimum wages to the state.[25] However, a political subdivision (local government)[26] retains the authority to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law for:[27]

- Its employees;
- The employees of an employer contracting to provide goods or services for the local government, or for the employees of a subcontractor of such an employer, under the terms of a contract with the local government; or

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[17] *In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So. 2d 636, 641–42 (Fla. 2004). ("The proposed amendment does not state that it is adopting the FLSA's *definition* of the term "employee," but provides that it is adopting the *meaning* of the term "employee," which is a much broader concept.")

[18] Art. X, s. 24(b), Fla. Const.

[19] Art. X, s. 24(f), Fla. Const.

[20] Ch. 2005-353, Laws of Fla., codified in s. 448.110, F.S.

[21] S. 448.110(10), F.S. HB 5 (2023) renames the Department of Economic Opportunity as the Department of Commerce; SB 82 (2024), section 220, makes this conforming change in the Florida Minimum Wage Act.

[22] S. 448.110(3), F.S.

[23] S. 1(f) and (g), Art. VIII, Fla. Const.; *see also* s. 125.01, F.S.

[24] S. 2(b), Art. VIII, Fla. Const.

[25] S. 218.077(2), F.S. *See* s. 18(a) of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. s. 218:
No provision of [the Fair Labor Standards Act] or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under [the federal act].

[26] "Political subdivision" is defined to mean a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. S. 218.077(1)(f), F.S.

[27] S. 218.077(3)(a), F.S.

- The employees of an employer receiving a direct tax abatement or subsidy from the local government, as a condition of the direct tax abatement or subsidy.

The preemption also does not apply to "a domestic violence or sexual abuse ordinance, order, rule, or policy adopted by a political subdivision."[28]

The law contains an exception for situations where compliance would prevent a local government from receiving federal funds. This allows compliance with the Davis-Bacon and related acts,[29] which direct the federal Department of Labor to determine fair wages for contractors and subcontractors working on public buildings and public works. Florida law only allows non-compliance with regard to local minimum wage alterations to the extent necessary to allow receipt of federal funds.[30]

Additionally, local governments are prohibited from requiring an employer to provide employment benefits[31] not required by state or federal law. "

Despite these provisions, in 2016, the City of Miami Beach enacted a local ordinance establishing a minimum hourly wage significantly exceeding the current Florida minimum wage. The ordinance applied to all employers operating within the city. The ordinance, which was scheduled to take effect on January 1, 2018, established both a local minimum wage of $10.31 an hour and annual increases to $13.31 an hour effective January 2021. Subsequently, the ordinance was challenged on the grounds that it was preempted by state law and Florida's Third District Court of Appeals struck down the ordinance.

The court held that the Florida Constitution authorizes the Legislature to preempt municipal powers by statute. The court also rejected the city's principal argument that Art. X, s. 24 of the Florida Constitution, raising the state minimum wage, made the statute unconstitutional. In 2018, the Florida Supreme Court agreed to take up the case.[32] However, in 2019, the Florida Supreme Court issued an order that discharged jurisdiction over the case. As a result, the Third District's decision invalidating Miami Beach's local wage ordinance appears to currently stand.[33]

Workplace Heat Exposure

The Occupational Safety and Health Act of 1970 (OSH Act) is the federal labor law governing occupational health and safety in the private sector and federal government.[34] Under the OSH Act, two federal agencies are responsible for promoting occupational safety and health in the United States. The National Institute for Occupational Safety and Health (NIOSH) conducts research and recommends occupational safety and health standards.[35] The Occupational Safety and Health Administration (OSHA)[36] is responsible for the promulgation and enforcement of standards.[37]

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[28] S. 218.077(3)(b), F.S.

[29] *See, e.g.,* 40 U.S.C. 3141 *et seq.* The Davis-Bacon Act is a federal law that regulates prevailing wage rates on public works projects. The Act provides that all laborers and mechanics working on construction projects which are funded by the federal government shall not be paid a wage less than prevailing wage, as specified by the U.S. Department of Labor, in the locality in which work is performed.

[30] S. 218.077(4), F.S.

[31] "Employment benefits" is defined to mean anything of value that an employee may receive from an employer in addition to wages and salary. The term includes, but is not limited to, health benefits; disability benefits; death benefits; group accidental death and dismemberment benefits; paid or unpaid days off for holidays, sick leave, vacation, and personal necessity; retirement benefits; and profit-sharing benefits. S. 218.077(1)(d), F.S.

[32] *City of Miami Beach v. Florida Retail Federation, Inc.,* 233 So.3d 1236 at 1238 (Fla. 3d DCA 2017) (declined for review February 5, 2019).

[33] JDSUPRA, *Can Cities Set a Local Minimum Wage? Florida Supreme Court Says No* (Feb. 14, 2019), https://www.jdsupra.com/legalnews/can-cities-set-a-local-minimum-wage-67192/ (last visited Dec. 5, 2023).

[34] Occupational Safety and Health Act of 1970, Pub. L. No. 91-596, 84 STAT. 1590, 91st Cong. (Jan. 1, 2004).

[35] 29 U.S.C. § 671.

[36] *See* Occupational Safety and Health Administration, *About Osha*, https://www.osha.gov/aboutosha (last visited Dec. 5, 2023).

[37] 29 U.S.C. § 655.

Currently, there are no specific laws in Florida that provide heat exposure protections for outdoor workers. NIOSH and OSHA provide certain recommendations that employers provide heat exposure protections.

In 2013, NIOSH published a document entitled "Preventing Heat-related Illness or Death of Outdoor Workers," which recommends that employers have a plan in place to prevent heat-related illness. The plan should include hydration (drinking plenty of water), acclimatization (getting used to weather conditions), and schedules that alternate work with rest. It recommends that employers should also train workers about the hazards of working in hot environments.[38]

OSHA does not currently have any specific heat exposure standards. In the absence of a specific standard, OSHA is authorized to enforce the "general duty clause" of the OSH Act, which requires each employer to provide a workplace that is free of "recognized hazards" causing or likely to cause "death or serious physical harm" to its employees.[39]

In 2011, OSHA launched a heat illness prevention campaign that includes guidance to employers and employees, a smartphone app that provides location-specific information on heat conditions and heat exposure prevention and first aid, and educational materials such as posters and pamphlets in English, Spanish, and other languages.[40]

On October 27, 2021, OSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) for a potential standard on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings.[41] OSHA solicited public comments on the ANPRM through January 26, 2022, and received over 1,000 comments on the ANPRM.

In March 2021, OSHA cited Valley Produce Harvesting and Hauling Company for a willful violation of the general duty clause by exposing sugar cane harvesting employees in Florida to "excessive heat, elevated temperature working conditions, direct sun radiation and thermal stress" while working outdoors in September 2020. OSHA assessed the maximum allowable civil monetary penalty of $136,532 for this violation, which was later reduced through an informal settlement with the employer to $81,919.20. The citation provides, "the employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to excessive heat, elevated temperature working conditions, direct sun radiation and thermal stress."[42]

In April 2022, OSHA began a National Emphasis Program (NEP) of enforcement of the general duty clause and compliance assistance to focus on indoor and outdoor heat exposure. The NEP expands on OSHA's ongoing heat-related illness prevention initiative and campaign by creating a targeted enforcement component and reiterating its compliance assistance and outreach efforts. This approach is intended to encourage early interventions by employers to prevent illnesses and deaths among workers during high heat conditions, such as working outdoors in a local area experiencing a heat wave as announced by the National Weather Service. Early interventions include, but are not limited to, implementing water, rest, shade, training, and acclimatization procedures for new or returning employees.[43]

Local Heat Regulation

On November 11, 2023, the Miami-Dade County Board of County Commissioners considered a proposal that would require construction and agriculture companies with five or more employees to

[38] NIOSH 1986, 2008, 2010; OSHA-NIOSH 2011.
[39] 29 U.S.C. § 654.
[40] Occupational Safety and Health Administration, Heat Illness Prevention, https://www.osha.gov/heat/ (last visited Dec. 5, 2023).
[41] 86 FR 59309.
[42] Occupational Safety and Health Administration, *Violation Detail*, https://www.osha.gov/ords/imis/establishment.violation_detail?id=1495595.015&citation_id=02001 (last visited Dec. 5, 2023).
[43] Occupational Safety and Health Administration, *OSHA Instruction*, https://www.osha.gov/sites/default/files/enforcement/directives/CPL_03-00-024.pdf (last visited Dec. 5, 2023).

guarantee workers access to water and give them 10-minute breaks in the shade every two hours on days when the heat index equals or exceeds 95 degrees Fahrenheit. The proposal would also require employers to train workers to recognize the signs of heat illness, administer first aid, and call for help in an emergency. Enforcement includes a warning, fines of up to $2,000 per day per violation, and debarment of contractors from county work for certain repeated violations and unpaid penalties.[44] Consideration of the proposal has been deferred until March.[45] Some South Florida employers have expressed that they already provide such protections and Miami-Dade County would be the first local government in the nation to adopt such requirements.

Preemption

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[46] To expressly preempt a subject area, the Legislature must use clear statutory language stating its intention to do so.[47] Implied preemption occurs when the Legislature has demonstrated an intent to preempt an area, though not expressly. Florida courts find implied preemption when "the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature."[48]

Where state preemption applies, a local government may not exercise authority in that area.[49] Whether a local government ordinance or other measure violates preemption is ultimately decided by a court. If a local government improperly enacts an ordinance or other measure on a matter preempted to the state, a person may challenge the ordinance by filing a lawsuit. A court ruling against the local government may declare the preempted ordinance void.[50]

Effect of Proposed Changes

Wage and Employment Benefits

The bill amends Florida's wage and employment benefits law by providing that a political subdivision may not:

- Maintain a minimum wage, other than a state or federal minimum wage.
- Seek to control or affect the wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision through its purchasing or contracting procedures.
- Use evaluation factors, qualification of bidders, or otherwise award preferences on the basis of wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision.

The bill removes the ability of local governments to require a minimum wage for certain employees under the terms of a contract.

Regulation of Labor

The bill expressly preempts the regulation of the terms and conditions of employment to the state. The bill provides that unless expressly authorized by special or general law, a county, municipality, special district, or political subdivision may not adopt or enforce an ordinance, order, rule, or policy providing

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[44] Miami-Dade Legislative Item, File Number: 231773.
[45] Miami Herald, *After industry pressure, Miami-Dade puts heat protections for outdoor workers on ice*, https://www.miamiherald.com/news/local/environment/article281487003.html (last visited Dec. 6, 2023).
[46] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005).
[47] *Mulligan*, 934 So. 2d at 1243.
[48] *Tallahassee Mem. Reg. Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).
[49] *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017); Judge James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).
[50] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So. 2d 504 (Fla. 3d DCA 2002).

any term or condition of employment that exceeds or conflicts with the requirements of federal or state law relating to any term or condition of employment. The bill provides that an ordinance, order, rule, or policy that violates this provision is void and unenforceable.

This appears to limit local government from regulating employment in any way, including having certain requirements for its own employees that are different from the state or federal law, unless those regulations are authorized by general or special law.

Workplace Heat Exposure Requirements

In addition to the preemption for all conditions of employment, the bill preempts the regulation of workplace heat exposure requirements to the state, and specifically indicates that the provision applies retroactively. Specifically, the bill provides that any local law, ordinance, resolution, regulation, rule, code, policy, or charter amendment adopted before, on, or after the effective date of this act which conflicts with this provision is void and prohibited.

The bill requires the DC to adopt rules relating to workplace heat exposure requirements if OSHA has not done so by July 1, 2028. The rules must be consistent with the standards of OSHA in effect at the time the DC adopts its rules, and modified as necessary to reflect workplace heat exposure considerations specific to the state. The Legislature must ratify such rules before they take effect.

The bill prohibits local governments from:

- Mandating or otherwise imposing heat exposure requirements on an employer, an employee, a contractor, or a subcontractor.
- Considering or seeking information relating to a contractor's or subcontractor's heat exposure requirements in any procurement for goods or services.

The bill provides that it does not:

- Limit the authority of a local government to mandate or impose workplace heat exposure requirements for the employees of the local government.
- Apply if it is determined that compliance would prevent the distribution of federal funds to a local government or would otherwise be inconsistent with federal requirements pertaining to receiving federal funds, but only to the extent necessary to allow a local government to receive federal funds or to eliminate the inconsistency with federal requirements.

The bill provides the following definitions:

- “Contractor” means an employer contracting with, or seeking to contract with, a local government to provide goods or services to, for the benefit of, or on behalf of the local government.
- “Employee” means a natural person, including a self-employed person, who receives any type of compensation or remuneration for providing services to an employer.
- “Employer” means a person who hires or contracts for the services of employees.
- “Heat exposure requirement” means a standard mandated or otherwise imposed on employers, employees, contractors, or subcontractors to control an employee's exposure to heat or sun, or to otherwise address or moderate the effects of such exposure. The term includes, but is not limited to, standards relating to all of the following:
    - Employee monitoring and protection.
    - Water consumption.
    - Cooling measures.
    - Acclimatization and recovery periods or practices.
    - Posting or distributing notices or materials relating to heat exposure which inform employees how to protect themselves from such exposure.
    - Implementation and maintenance of heat exposure programs or training.
    - Appropriate first-aid measures or emergency responses related to heat exposure.
    - Protections for employees who report that they have experienced excessive heat exposure.
    - Reporting and recordkeeping requirements.

- "Local government" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.
- "Subcontractor" has the same meaning as in s. 448.095(1), F.S., which includes a person or an entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

B. SECTION DIRECTORY:

Section 1: Amends s. 218.077, F.S., relating to wage and employment benefits requirements by political subdivisions; restrictions.

Section 2: Creates s. 448.077, F.S., relating to regulation of labor preempted to state.

Section 3: Amends s. 448.106, F.S., relating to workplace heat exposure requirements; preemption; rulemaking.

Section 4: 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 an indeterminate fiscal impact on the private sector to the extent that the preemptions supersede local ordinances. The bill may:

- Prevent businesses from losing local government contracts based on wages or employment benefits that they do not currently offer.
- Allow businesses that contract with local governments to pay their employees as they see fit.
- Prevent businesses from being required to provide costly terms and conditions of employment.
- Prevent businesses from being required to provide costly workplace heat exposure protections.
- Prevent workers from earning a wage that allows them to live in the area that they work.
- Create a negative fiscal impact for employers who provide workers' compensation insurance for their employees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the DC to adopt rules relating to workplace heat exposure requirements if OSHA has not done so by July 1, 2028.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 11, 2024, the Regulatory Reform & Economic Development Subcommittee adopted a Proposed Committee Substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Prohibited local governments from preferring one contractor over another based on wages or employment benefits.
- Removed the ability of local governments to require a minimum wage for certain contracted employees under the terms of a contract.
- Preempted all regulation of the terms and conditions of employment to the state.
- Preempted the regulation of workplace heat exposure requirements to the state.
- Provided clarifying language regarding the:
    - Authority of a local government to mandate or impose workplace heat exposure requirements for its employees; and
    - Exception for the distribution of federal funds to a local government.

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

A bill to be entitled

An act relating to employment regulations; amending s. 218.077, F.S.; prohibiting political subdivisions from maintaining a minimum wage other than a state or federal minimum wage; prohibiting political subdivisions from controlling, affecting, or awarding preferences based on the wages or employment benefits of entities doing business with the political subdivision; revising applicability; creating s. 448.077, F.S.; preempting the regulation of the terms and conditions of employment to the state; providing that, unless expressly authorized, an ordinance, an order, a rule, or a policy that exceeds or conflicts with state or federal law relating to a term or condition of employment is void and unenforceable; creating s. 448.106, F.S.; providing definitions; preempting the regulation of heat exposure requirements in the workplace to the state; providing that certain local laws, ordinances, resolutions, regulations, rules, codes, policies, and amendments are void and prohibited; requiring the Department of Commerce to adopt rules relating to workplace heat exposure requirements if the Occupational Safety and Health Administration has not done so by a date certain; providing requirements for such rules;

prohibiting local governments from mandating or imposing certain requirements or seeking information from certain persons relating to certain requirements; providing construction and applicability; providing an effective date.

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

Section 1. Subsection (2) and paragraph (a) of subsection (3) of section 218.077, Florida Statutes, are amended to read:

218.077 Wage and employment benefits requirements by political subdivisions; restrictions.—

(2)(a) Except as otherwise provided in subsection (3), a political subdivision may not establish, mandate, maintain, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage, to apply a state or federal minimum wage to wages exempt from a state or federal minimum wage, or to provide employment benefits not otherwise required by state or federal law.

(b) A political subdivision may not through its purchasing or contracting procedures seek to control or affect the wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision.

(c) A political subdivision may not through the use of

evaluation factors, qualification of bidders, or otherwise award preferences on the basis of wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision.

(3) This section does not:

(a) Limit the authority of a political subdivision to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law:

1. For the employees of the political subdivision; or

~~2. For the employees of an employer contracting to provide goods or services for the political subdivision, or for the employees of a subcontractor of such an employer, under the terms of a contract with the political subdivision; or~~

2.~~3.~~ For the employees of an employer receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the direct tax abatement or subsidy.

Section 2. Section 448.077, Florida Statutes, is created to read:

448.077 Regulation of labor preempted to the state.—The regulation of the terms and conditions of employment is expressly preempted to the state. Unless expressly authorized by special or general law, a county, municipality, special district, or political subdivision of the state may not adopt or enforce an ordinance, an order, a rule, or a policy providing a

term or condition of employment that exceeds or conflicts with the requirements of state or federal law relating to a term or condition of employment. An ordinance, an order, a rule, or a policy that violates this section is void and unenforceable.

Section 3. Section 448.106, Florida Statutes, is created to read:

448.106 Workplace heat exposure requirements; preemption; rulemaking.—

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

(a) "Contractor" means an employer contracting with, or seeking to contract with, a local government to provide goods or services to, for the benefit of, or on behalf of the local government.

(b) "Employee" means a natural person, including a self-employed person, who receives any type of compensation or remuneration for providing services to an employer.

(c) "Employer" means a person who hires or contracts for the services of employees.

(d) "Heat exposure requirement" means a standard mandated or otherwise imposed on employers, employees, contractors, or subcontractors to control an employee's exposure to heat or sun, or to otherwise address or moderate the effects of such exposure. The term includes, but is not limited to, standards relating to all of the following:

1. Employee monitoring and protection.

2. Water consumption.

3. Cooling measures.

4. Acclimatization and recovery periods or practices.

5. Posting or distributing notices or materials relating to heat exposure which inform employees how to protect themselves from such exposure.

6. Implementation and maintenance of heat exposure programs or training.

7. Appropriate first-aid measures or emergency responses related to heat exposure.

8. Protections for employees who report that they have experienced excessive heat exposure.

9. Reporting and recordkeeping requirements.

(e) "Local government" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law.

(f) "Subcontractor" has the same meaning as in s. 448.095(1).

(2)(a) The regulation of workplace heat exposure requirements is preempted to the state. Any local law, ordinance, resolution, regulation, rule, code, policy, or charter amendment adopted before, on, or after the effective date of this act which conflicts with this section is void and prohibited.

(b) If the Occupational Safety and Health Administration

has not adopted by rule requirements regulating workplace heat exposure by July 1, 2028, the Department of Commerce must adopt by rule statewide workplace heat exposure requirements. Such rules must be consistent with the standards of the Occupational Safety and Health Administration in effect at the time the Department of Commerce adopts its rules, and modified as necessary to reflect workplace heat exposure considerations specific to this state. The Legislature must ratify such rules before they take effect.

(3) Except as otherwise provided in this section, a local government may not:

(a) Mandate or otherwise impose heat exposure requirements on an employer, an employee, a contractor, or a subcontractor.

(b) Consider or seek information relating to a contractor's or subcontractor's heat exposure requirements in any procurement for goods or services.

(4) This section does not limit the authority of a local government to mandate or impose workplace heat exposure requirements for the employees of the local government.

(5) This section does not apply if it is determined that compliance with this section will prevent the distribution of federal funds to a local government or would otherwise be inconsistent with federal requirements pertaining to receiving federal funds, but only to the extent necessary to allow a local government to receive federal funds or to eliminate the

inconsistency with federal requirements.

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

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

COMMERCE COMMITTEE

HB 433 by Rep. Esposito
Employment Regulations

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Esposito (lines 70-79):

- Clarifies that a county, municipality, special district, or political subdivision of the state may adopt and enforce an ordinance, an order, a rule, or a policy providing employment benefits, as defined in s. 218.077, for the employees of the county, municipality, special district, or political subdivision that exceeds state or federal law.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove line 79 and insert:

policy that violates this section is void and unenforceable. However, a county, municipality, special district, or political subdivision of the state may adopt and enforce an ordinance, an order, a rule, or a policy providing employment benefits, as defined in s. 218.077, for the employees of the county, municipality, special district, or political subdivision that exceeds state or federal law.

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

Remove line 15 and insert:

condition of employment is void and unenforceable;
providing an exception;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 497 Continuing Education Requirements
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Melo and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Herrera	Anstead
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N	Helpling	Topp
3) Commerce Committee		Herrera	Hamon

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 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 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 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, must allow distance learning as an alternative to classroom courses for satisfying continuing education requirements.

Additionally, the bill requires professional boards, or 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 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 DBPR and relevant boards to adopt rules to implement these provisions. The bill grants DBPR authority to enact emergency rules to streamline procedures for exempting eligible individuals from continuing education, with these rules effective for 6 months and renewable during the process of adopting permanent rules. This provision expires on January 1, 2026.

The bill may have an indeterminate, insignificant negative fiscal impact on state government. *See* Fiscal analysis and Economic Impact Statement.

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 DBPR

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by [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 DBPR.[7]
The term "profession" means any activity, occupation, profession, or vocation regulated by 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. DBPR must also provide legal counsel for boards within DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of DBPR. *See* s. 455.221(1), F.S.
[8] S. 455.01(6), F.S.

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, 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 DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under 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, 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 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 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 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 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 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. DBPR must also provide legal counsel for boards within 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 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 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, must allow distance learning as an alternative to classroom courses for satisfying continuing education requirements.

Additionally, the bill requires professional boards, or 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 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 exemption from continuing education requirements in the bill does not apply to engineers regulated under ch. 471, certified public accountants regulated under ch. 473, brokers, broker associates, and sales associates regulated under part I of ch. 475, appraisers regulated under part II of ch. 475, architects or interior designers regulated under part I of ch. 481, and contractors regulated under ch. 489, F.S.

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 grants DBPR rulemaking authority to adopt emergency rules for the purpose of implementing the amendment made by the bill, including streamlining procedures for exempting eligible individuals

[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.").

from completing continuing education. These emergency rules will be effective for 6 months, renewable during the adoption of permanent rules. This provision expires on January 1, 2026.

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

B. SECTION DIRECTORY:

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: Creates rulemaking authority under s. 120.54(4), F.S., for the Department of Business and Professional Regulation.

Section 4: 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.

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

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 rulemaking by 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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 6, 2024, the Regulatory Reform and Economic Development Subcommittee considered the bill, adopted an amendment, an amendment to the amendment, and reported the bill favorably as a committee substitute. The amendment makes the following changes:

- Removed provisions related to medical boards or departments regulated by the Department of Health.
- Exempted 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.
- Granted DBPR rulemaking authority to adopt emergency rules for the purpose of implementing the amendment made by the bill.
- Made technical changes.

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

[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.

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 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; specifying time in which such emergency rules are effective; authorizing renewal of such emergency rules in certain circumstances; providing for the expiration of such rulemaking authority; 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

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

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 the department to practice the profession.

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

3. Disciplinary action has not been imposed on the individual's license.

(b) This subsection does not apply to:

1. Engineers regulated by chapter 471;

2. Certified public accountants regulated by chapter 473;

3. Brokers, broker associates, and sales associates regulated by part I of chapter 475;

4. Appraisers regulated by part II of chapter 475;

5. Architects or interior designers regulated by part I of chapter 481; or

6. Contractors regulated by 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 on January 1, 2026.

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

CS/HB 611

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 611 Public Deposits
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Botana
TIED BILLS: **IDEN./SIM. BILLS:** SB 1018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 2 N	Fletcher	Lloyd
2) State Administration & Technology Appropriations Subcommittee	8 Y, 5 N, As CS	Perez	Topp
3) Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

Unless exempted by law, state and local governments are required to deposit public funds in a qualified public depository (QPD) pursuant to the Florida Security for Public Deposits Act, ch. 280, F.S. (Act). The Act is administered by the Chief Financial Officer (CFO) and the Department of Financial Services (DFS).

Before a QPD accepts or retains a public deposit, it must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD. Currently, banks, savings banks, and savings associations are the only types of financial institutions eligible to be a QPD or a custodian for another QPD's pledged collateral.

The bill:

- Allows state-chartered and federally-chartered credit unions to become QPDs and custodians for another QPD's pledged collateral;
- Provides criteria a credit union must meet before the CFO can designate the credit union as a QPD;
- Requires credit union QPDs to make the same attestations required of other QPDs;
- Creates separate mutual responsibility and contingent liability provisions for credit union QPDs to prevent banks from sharing liability with credit unions in the event of a credit union QPD's default or insolvency, and vice versa; and
- Requires the CFO to segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from those attributable to any banks, savings bank, or savings association.

The bill may have a significant fiscal impact on DFS. See *Fiscal Impact on State Government* section. The bill has an indeterminate fiscal impact on local governments and the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Depositories

Pursuant to the Florida Security for Public Deposits Act, ch. 280, F.S. (Act), and unless exempted therein, state and local governments are required to deposit public funds in a qualified public depository (QPD).[1] A QPD is any bank, savings bank, or savings association that:

- is organized and exists under the laws of the United States, the laws of this state, or any other state or territory of the United States (i.e., state or federally chartered);
- has its principal place of business in this state or has a branch office in this state which is authorized under Florida or federal laws to receive deposits in this state;
- has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended;[2]
- has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- meets all the requirements of the Act; and
- has been designated by the Chief Financial Officer (CFO) as a QPD.[3]

Upon approval from the CFO, these banks, savings banks, and savings associations may accept "public deposits" from state and local governments. The Act does not permit credit unions to become QPDs, due to their absence from the definition of "qualified public depository." As of December 1, 2023, there are approximately 117 active QPDs in this state.[4]

Before a QPD can accept or retain a public deposit, the QPD must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD.[5] The Act's collateral requirements protect public deposits against loss in the event of certain triggering events, most notably, a QPD's insolvency or default.[6] Losses are satisfied first through the standard maximum federal deposit insurance of $250,000,[7] and then through the CFO's demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. Any shortfall would then be covered by the CFO's authority to impose assessments against the other solvent QPDs, who must agree to share mutual responsibility and contingent liability as a condition of acting as a QPD.[8]

A "custodian" can be the CFO or any state or federally chartered bank, savings association, or trust company approved by the CFO to hold collateral pledged by QPDs to secure public deposits.[9] Collateral may be pledged, deposited or issued using the following collateral agreements as approved the CFO to meet the requisite collateral:

- regular custody arrangement for collateral pledged to the CFO, subject to certain requirements;[10]
- Federal Reserve Bank custody arrangement for collateral pledged to the CFO, subject to certain requirements;[11]

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[1] S. 280.03(1)(b), F.S.
[2] 12 U.S.C. ss. 1811 *et seq.*
[3] S. 280.02(26), F.S.
[4] Email from Parker Powell, Deputy Director of Legislative Affairs, Department of Financial Services, RE: HB 3 Attestations (Dec. 1, 2023).
[5] S. 280.04, F.S. *See also* ch. 69C-2, F.A.C.
[6] S. 280.041(6), F.S.
[7] 12 U.S.C. § 1821(a)(1)(E).
[8] S. 280.07, F.S.
[9] Ss. 280.02(10) and 280.041(1)(a), F.S.
[10] S. 280.041(1)(a), F.S.
[11] S. 280.041(1)(b), F.S.

- CFO's custody arrangement for collateral deposited in the CFO's name, subject to certain requirements;[12]
- Federal Home Loan Bank letter of credit arrangement for collateral issued with the CFO as beneficiary, subject to certain requirements.[13]

DFS oversees the Act's reporting and collateral pledging requirements through its public deposits program and Bureau of Collateral Management.[14] The CFO has authority to act against noncompliant QPDs, as well as financial institutions that accept public deposits without a certificate of qualification from the CFO.[15] In the event of loss to public depositors, the CFO has the authority to oversee the payment of losses.[16]

Required Attestation

Under the Act, QPDs are required to attest, under penalty of perjury and on a form prescribed by the CFO, whether the entity is in compliance with s. 280.02(26)(e) and (f).[17] Specifically, QPDs must attest that:

- The QPD makes determinations about the provision of services or the denial of services based on an analysis of risk factors unique to each customer or member;[18] and
- The QPD does not engage in the unsafe and unsound practice of denying or canceling its services to a person, or otherwise discriminating against a person in making available such services or in the terms or conditions of such services, on the basis of:
    - The person's political opinions, speech, or affiliations;
    - Except as otherwise provided in law, the person's religious beliefs, religious exercise, or religious affiliations;
    - Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or
    - The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on certain enumerated factors.[19]

Regulation of Credit Unions

Like banks, savings banks, and savings associations, credit union accept deposits and make loans, and can be state-chartered or federally-chartered:

- State-chartered credit unions may be formed under the Florida Credit Union Act (FCUA), which became law in 1980.[20] The FCUA provides that "[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition."[21] State-chartered credit unions have both a state regulator, the Office of Financial Regulation, and a federal regulator, the National Credit Union Association (NCUA).
- Federally-chartered credit unions are chartered under the Federal Credit Union Act of 1934[22] and are regulated by the NCUA.

In addition to regulating both state-chartered and federally-chartered credit unions, the NCUA also operates and manages the National Credit Union Share Insurance Fund (NCUSIF), which insures share (deposit) accounts for members of all federally-chartered credit unions and most state-chartered credit

[12] S. 280.041(1)(c), F.S.
[13] S. 280.041(1)(d), F.S.
[14] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.
[15] S. 280.05, F.S.
[16] *Id.* at (10).
[17] S. 280.025, F.S.
[18] S. 280.02(26)(e), F.S.
[19] S. 280.02(26)(f), F.S.
[20] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.
[21] S. 657.003, F.S.
[22] Public Law 73-467, codified at 12 U.S.C. § 1751 *et seq*.

unions.[23] All state-chartered credit unions operating in Florida must carry NCUSIF insurance.[24] The standard maximum share insurance amount is $250,000.[25]

Effect of the Bill

The bill makes state-chartered and federally-chartered credit unions eligible to become QPDs and custodian for another QPD's pledged collateral. Specifically, the bill creates s. 280.042, F.S., which provides criteria that a credit union must meet before the CFO can designate a credit union as a QPD. Credit unions are limited to a maximum of 15 percent of all QPDs. Credit unions may hold public deposits, but are limited to holding no more than 10 percent of their total assets. These criteria are designed to protect public deposits.

Attestation Required

Beginning July 1, 2024, the bill requires credit union QPDs to make the same attestations required of other QPDs relating to the provision of services based on risk factors unique to each customer and the unsafe and unsound practice of denying or canceling services on the basis of environmental, social, or governance factors.

Collateral Agreements

The bill requires a credit union QPD to submit its agreement of contingent liability and its collateral agreement to the CFO and meet the following requirements:

- The credit union must submit a signed statement from a public depositor (i.e., a state or local government) indicating that, if the credit union is designated as a QPD, the public depositor intends to deposit public funds with the credit union; and
- There are at least four other credit unions that are designated as QPDs or have applied to be designated as QPDs and have submitted an agreement of contingent liability, a collateral agreement, and a signed statement from a public depositor of intent to deposit public funds with the credit union.

The CFO must withdraw from a collateral agreement previously entered into with a credit union if, during any 90 calendar days, the combined total of the number of credit unions designated as QPDs and the number of eligible credit unions applying to be designated as QPDs is less than five. As a result of the CFO's withdrawal, the credit union loses its designation as a QPD, and must within 10 days after the CFO's notification of such withdrawal, return all public deposits that the credit union holds to the public depositor who deposited the funds. Additionally, the CFO may limit the amount of public deposits any one credit union may hold in order to make sure that no single credit union holds an amount of public deposits that might adversely affect the integrity of the public deposits program.

Shared Contingent Liability

In order to prevent credit unions from sharing contingent liability with banks, and vice versa, the bill creates separate mutual responsibility and contingent liability provisions for credit unions. Any credit union that is designated as a QPD and that is not insolvent must guarantee public depositors against loss caused by the default or insolvency of *other credit unions* that are designated as QPDs.

In the event of a default or insolvency of a credit union QPD, any loss to public depositors would be satisfied through any applicable share insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. The CFO may assess

[23] Federally-chartered credit unions must be insured through NCUSIF, and state-chartered credit unions may be insured through NCUSIF, though some state-chartered credit unions may be insured by private insurance or guaranty corporations. See NCUA, *How Your Accounts Are Federally Insured*, https://www.ncua.gov/files/publications/guides-manuals/NCUAHowYourAcctInsured.pdf (last visited Jan. 5, 2024).
[24] Ss. 657.005(7), 657.008(5)(a)2., and 657.033(9), F.S.
[25] NCUA, *supra* note 20.

QPDs, subject to the segregation of contingent liability provided in s. 280.07, F.S., for the total loss if the demand for payment or sale of collateral cannot be accomplished within 7 business days.

Segregation of Penalties; Public Deposit Program

The bill requires the CFO to segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from those attributable to any bank, savings bank, or savings association. Subject to this segregation of funds requirement, the CFO is authorized to pay any losses to public depositors from the Public Deposits Trust Fund.

Lastly, the bill makes conforming changes to allow credit unions to participate in the public deposit program and to subject credit union QPDs to the regulatory oversight of the CFO.

B. SECTION DIRECTORY:

Section 1. Amends s. 17.68, F.S., relating to Financial Literacy Program for Individuals with Developmental Disabilities.

Section 2. Amends s. 280.02, F.S., relating to definitions.

Section 3. Amends s. 280.025, F.S., relating to attestation required.

Section 4. Amends s. 280.03, F.S., relating to public deposits to be secured; prohibitions; exemptions.

Section 5. Creates s. 280.042, F.S., relating to credit union designations as qualified public depositories; withdrawal by the Chief Financial Officer from collateral agreements; limits on public deposits.

Section 6. Amends s. 280.05, F.S., relating to powers and duties of the Chief Financial Officer.

Section 7. Amends s. 280.052, F.S., relating to order of suspension or disqualification; procedure.

Section 8. Amends s. 280.053, F.S., relating to period of suspension or disqualification; obligations during period; reinstatement.

Section 9. Amends s. 280.055, F.S., relating to cease and desist order; corrective order; administrative penalty.

Section 10. Amends s. 280.07, F.S., relating to mutual responsibility and contingent liability.

Section 11. Amends s. 280.08, F.S., relating to procedure for payment of losses.

Section 12. Amends s. 280.085, F.S., relating to notice to claimants.

Section 13. Amends s. 280.09, F.S., relating to Public Deposits Trust Fund.

Section 14. Amends s. 280.10, F.S., relating to effect of merger, acquisition, or consolidation; change of name or address.

Section 15. Amends s. 280.13, F.S., relating to eligible collateral.

Section 16. Amends s. 280.17, F.S., relating to requirements for public depositors; notice to public depositors and governmental units; loss of protection.

Sections 17-36. Reenacts various sections of statutes to incorporate amendments to ch. 280, F.S.

Section 37. 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:

According to DFS, allowing credit unions to be QPDs will require $167,858 for workload and programming costs:[26]

- $86,680 in non-recurring expenditures for DFS's Office of Information Technology (OIT) to make:
  - Significant programming changes to the Collateral Administration Program (CAP), a computer application used to administer Florida's public deposits program.
  - Modifications to the Florida Planning Accounting, and Ledger Management (PALM) system to accommodate the required segregated accounting of collateral proceeds, assessments, or administrative penalties attributable to credit unions.
- $5,728 in recurring expenditures for independent ranking service data on credit unions.
- $75,450 in recurring expenditures for one additional Financial Examiner/Analyst II FTE, class code 1564, pay grade 023.

However, as of February 6, 2024, the Department of Financial Services had 291.50 vacant FTE. Of these FTE, 66.00 have been vacant for 365 days or more.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill's impact on local government revenues is indeterminate. However, a 2014 study by the Office of Program Policy Analysis and Government Accountability explained the potential positive impact to local government public depositors:

> Federal and state tax differences between credit unions and banks may allow credit unions a competitive advantage when bidding for local government public deposits. Credit unions may also benefit from lower overhead costs since these institutions may use office space belonging to a sponsoring organization. The combined effect of lower taxes and overhead may allow credit unions to pay higher interest rates for public deposits and to provide other business services to local governments at a lower cost than banks.[27]

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Allowing credit unions to accept public deposits may generate additional income for the credit unions and provide more options for the public depositors. It is unclear what impact the bill will have on existing

[26] Email from Chase Mitchell, Director of Legislative Affairs and Policy, Florida Department of Financial Services, RE: HB 611 – Public Deposits (Jan. 17, 2024). A bill analysis for the 2024 version of the bill has been requested from DFS.
[27] Office of Program Policy Analysis and Government Accountability, *Issues Related to Credit Unions Operating as Qualified Public Depositories*, Nov. 13, 2014, at 5.

QPDs (banks, savings banks, or savings associations). The bill's impact on the private sector is indeterminate due to the number of variables involved in determining such impact.

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 CFO has rulemaking authority to administer ch. 280, F.S. To add credit unions as QPDs, rulemaking is necessary to amend ch. 69C-2, F.A.C., and several forms incorporated by reference in the rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 13, 2024, the State Administration & Technology Appropriations Subcommittee considered the bill, adopted an amendment, and reported the bill as favorably as a committee substitute. The amendment limits credit unions to a total combined amount of 15 percent of all QPDs, and limits the amount a credit union can hold to 10 percent of their institution's total assets.

The analysis is drafted to the committee substitute as passed by the State Administration & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to public deposits; amending s. 17.68, F.S.; conforming provisions to changes made by the act; amending s. 280.02, F.S.; revising definitions; adding credit unions to a list of financial institutions that are eligible to be qualified public depositories; amending s. 280.025, F.S.; providing applicability of qualified public depository provisions to credit unions; amending s. 280.03, F.S.; conforming a provision to changes made by the act; creating s. 280.042, F.S.; prohibiting the Chief Financial Officer from designating credit unions as qualified public depositories unless certain conditions are met; requiring the Chief Financial Officer to withdraw from a collateral agreement with a credit union under certain circumstances; specifying a requirement for and a restriction on a credit union that is a party to a withdrawn collateral agreement; providing limits on public deposits held by credit unions; amending ss. 280.05, 280.052, 280.053, and 280.055, F.S.; providing applicability of qualified public depository provisions to credit unions; amending s. 280.07, F.S.; specifying the losses against which certain solvent banks, savings banks, savings associations, and credit unions must guarantee

public depositors; amending ss. 280.08 and 280.085, F.S.; conforming provisions to changes made by the act; amending s. 280.09, F.S.; requiring the Chief Financial Officer to segregate and separately account for proceeds, assessments, and administrative penalties attributable to a credit union from those attributable to other specified financial institutions; revising a condition for the payment of losses to public depositors; amending s. 280.10, F.S.; conforming provisions to changes made by the act; amending s. 280.13, F.S.; providing that a specified limit on securities eligible to be pledged as collateral apply to qualified public depositories, rather than to banks and savings associations; amending s. 280.17, F.S.; conforming a provision to changes made by the act; reenacting ss. 280.17(1)(a), 17.57(7)(a), 24.114(1), 125.901(3)(e), 136.01, 159.608(11), 175.301, 175.401(8), 185.30, 185.50(8), 190.007(3), 191.006(16), 215.34(2), 218.415(16)(c), (17)(c), and (23)(a), 255.502(4)(h), 280.051(15), 280.18(1), 331.309(1) and (2), 373.553(2), 631.221, and 723.06115(3)(c), F.S., relating to requirements for public depositors; deposits and investments of state money; bank deposits and control of lottery transactions; children's services and independent

special districts; county depositories; powers of housing finance authorities; depositories for pension funds; retiree health insurance subsidies; depositories for retirement funds; retiree health insurance subsidies; boards of supervisors; general powers; state funds and noncollectible items; local government investment policies; definitions; grounds for suspension or disqualification of a qualified public depository; protection of public depositors and liability of the state; treasurer, depositories, and fiscal agent for Space Florida; treasurer of the board, payment of funds, and depositories; deposit of moneys collected; and the Florida Mobile Home Relocation Trust Fund, respectively, to incorporate the amendments made by this act to s. 280.02, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (4) of section 17.68, Florida Statutes, is amended to read:

17.68 Financial Literacy Program for Individuals with Developmental Disabilities.—

(4) Within 90 days after the department establishes the website clearinghouse and publishes the brochure, each bank,

credit union, savings association, and savings bank that is a qualified public depository as defined in s. 280.02 shall:

(a) Make copies of the department's brochures available, upon the request of the consumer, at its principal place of business and each branch office located in this state which has in-person teller services by having copies of the brochure available or having the capability to print a copy of the brochure from the department's website. Upon request, the department shall provide copies of the brochure to a bank, credit union, savings association, or savings bank.

(b) Provide on its website a hyperlink to the department's website clearinghouse. If the department changes the website address for the clearinghouse, the bank, credit union, savings association, or savings bank must update the hyperlink within 90 days after notification by the department of such change.

Section 2. Subsections (6), (10), (21), (23), and (26) of section 280.02, Florida Statutes, are amended to read:

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

(6) "Capital account" or "tangible equity capital" means total equity capital, as defined on the balance-sheet portion of the Consolidated Reports of Condition and Income (call report), or net worth, as described in the National Credit Union Administration 5300 Call Report, less intangible assets, as submitted to the regulatory financial ~~banking~~ authority.

(10) "Custodian" means the Chief Financial Officer or a

bank, credit union, savings association, or trust company that:

(a) Is organized and existing under the laws of this state, any other state, or the United States;

(b) Has executed all forms required under this chapter or any rule adopted hereunder;

(c) Agrees to be subject to the jurisdiction of the courts of this state, or of the courts of the United States which are located within this state, for the purpose of any litigation arising out of this chapter; and

(d) Has been approved by the Chief Financial Officer to act as a custodian.

(21) "Pool figure" means the total average monthly balances of public deposits held by all banks, savings banks, or savings associations or held separately by all credit unions ~~qualified public depositories~~ during the immediately preceding 12-month period.

(23) "Public deposit" means the moneys of the state or of any state university, county, school district, community college district, special district, metropolitan government, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court, and includes the moneys of all county officers, including constitutional officers, which are placed on deposit in a bank, credit union, savings bank, or savings association. This includes, but is not limited to, time deposit accounts, demand

deposit accounts, and nonnegotiable certificates of deposit. Moneys in deposit notes and in other nondeposit accounts such as repurchase or reverse repurchase operations are not public deposits. Securities, mutual funds, and similar types of investments are not public deposits and are not subject to this chapter.

(26) "Qualified public depository" means a bank, credit union, savings bank, or savings association that:

(a) Is organized and exists under the laws of the United States, ~~or~~ the laws of this state, or the laws of any other state or territory of the United States.

(b) Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.

(c) Is insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund ~~Has deposit insurance pursuant to the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss. 1811 et seq~~.

(d) Has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits.

(e) Makes determinations about the provision of services or the denial of services based on an analysis of risk factors unique to each customer or member. This paragraph does not

restrict a qualified public depository that claims a religious purpose from making such determinations based on the religious beliefs, religious exercise, or religious affiliations of a customer or member.

(f) Does not engage in the unsafe and unsound practice of denying or canceling its services to a person, or otherwise discriminating against a person in making available such services or in the terms or conditions of such services, on the basis of:

1. The person's political opinions, speech, or affiliations;

2. Except as provided in paragraph (e), the person's religious beliefs, religious exercise, or religious affiliations;

3. Any factor if it is not a quantitative, impartial, and risk-based standard, including any such factor related to the person's business sector; or

4. The use of any rating, scoring, analysis, tabulation, or action that considers a social credit score based on factors including, but not limited to:

a. The person's political opinions, speech, or affiliations.

b. The person's religious beliefs, religious exercise, or religious affiliations.

c. The person's lawful ownership of a firearm.

d. The person's engagement in the lawful manufacture, distribution, sale, purchase, or use of firearms or ammunition.

e. The person's engagement in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture.

f. The person's support of the state or Federal Government in combating illegal immigration, drug trafficking, or human trafficking.

g. The person's engagement with, facilitation of, employment by, support of, business relationship with, representation of, or advocacy for any person described in this subparagraph.

h. The person's failure to meet or commit to meet, or expected failure to meet, any of the following as long as such person is in compliance with applicable state or federal law:

(I) Environmental standards, including emissions standards, benchmarks, requirements, or disclosures;

(II) Social governance standards, benchmarks, or requirements, including, but not limited to, environmental or social justice;

(III) Corporate board or company employment composition standards, benchmarks, requirements, or disclosures based on characteristics protected under the Florida Civil Rights Act of 1992; or

(IV) Policies or procedures requiring or encouraging

employee participation in social justice programming, including, but not limited to, diversity, equity, or inclusion training.

(g) Meets all the requirements of this chapter.

(h) Has been designated by the Chief Financial Officer as a qualified public depository.

Section 3. Subsection (1) of section 280.025, Florida Statutes, is amended to read:

280.025 Attestation required.—

(1) Beginning July 1, 2024 ~~2023~~, the following entities must attest, under penalty of perjury, on a form prescribed by the Chief Financial Officer, whether the entity is in compliance with s. 280.02(26)(e) and (f):

(a) A bank, savings bank, credit union, or savings association, upon application or reapplication for designation as a qualified public depository.

(b) A qualified public depository, upon filing the report required by s. 280.16(1)(d).

Section 4. Paragraph (a) of subsection (3) of section 280.03, Florida Statutes, is amended to read:

280.03 Public deposits to be secured; prohibitions; exemptions.—

(3) The following are exempt from the requirements of, and protection under, this chapter:

(a) Public deposits deposited in a bank, credit union, or savings association by a trust department or trust company which

are fully secured under trust business laws.

Section 5. Section 280.042, Florida Statutes, is created to read:

280.042 Credit union designations as qualified public depositories; withdrawal by the Chief Financial Officer from collateral agreements; limits on public deposits.—

(1) The Chief Financial Officer may not designate a credit union as a qualified public depository unless, at the time the credit union submits its agreement of contingent liability and its collateral agreement:

(a) The credit union submits a signed statement from a public depositor indicating that if the credit union is designated as a qualified public depository, the public depositor intends to deposit public funds with the credit union.

(b) The combined total of the numbers in subparagraphs 1. and 2. is at least four:

1. The number of credit unions designated as qualified public depositories.

2. The number of credit unions that meet all of the following requirements:

a. Apply to be designated as qualified public depositories.

b. Meet the requirements in paragraph (a).

(2) The Chief Financial Officer must withdraw from a collateral agreement previously entered into with a credit union

if, during any 90 calendar days, the combined total of the number of credit unions designated as qualified public depositories and the number of eligible credit unions applying to be designated as qualified public depositories is less than five.

(3) A credit union that is a party to a collateral agreement from which the Chief Financial Officer withdraws in accordance with subsection (2) may no longer be designated as a qualified public depository. Within 10 business days after the Chief Financial Officer notifies the credit union that the Chief Financial Officer has withdrawn from the collateral agreement, the credit union must return all public deposits that the credit union holds to the public depositor who deposited the funds. The notice provided for in this subsection may be sent to a credit union by regular mail or by e-mail.

(4)(a) All credit unions may hold public deposits in a total combined amount not to exceed 15 percent of the total qualified public deposits held in this state per the public deposits program data as managed by the Chief Financial Officer.

(b) A credit union may not hold public deposits of more than 10 percent of its total institution's assets.

Section 6. Subsection (11) of section 280.05, Florida Statutes, is amended to read:

280.05 Powers and duties of the Chief Financial Officer.—In fulfilling the requirements of this act, the Chief Financial

Officer has the power to take the following actions he or she deems necessary to protect the integrity of the public deposits program:

(11) Sell securities for the purpose of paying losses to public depositors not covered by deposit or share insurance.

Section 7. Subsection (1) of section 280.052, Florida Statutes, is amended to read:

280.052 Order of suspension or disqualification; procedure.—

(1) The suspension or disqualification of a bank, credit union, or savings association as a qualified public depository must be by order of the Chief Financial Officer and must be mailed to the qualified public depository by registered or certified mail.

Section 8. Paragraph (c) of subsection (1) and paragraph (c) of subsection (2) of section 280.053, Florida Statutes, are amended to read:

280.053 Period of suspension or disqualification; obligations during period; reinstatement.—

(1)

(c) Upon expiration of the suspension period, the bank, credit union, or savings association may, by order of the Chief Financial Officer, be reinstated as a qualified public depository, unless the cause of the suspension has not been corrected or the bank, credit union, or savings association is

otherwise not in compliance with this chapter or any rule adopted pursuant to this chapter.

(2)

(c) Upon expiration of the disqualification period, the bank, credit union, or savings association may reapply for qualification as a qualified public depository. If a disqualified bank, credit union, or savings association is purchased or otherwise acquired by new owners, it may reapply to the Chief Financial Officer to be a qualified public depository before ~~prior to~~ the expiration date of the disqualification period. Redesignation as a qualified public depository may occur only after the Chief Financial Officer has determined that all requirements for holding public deposits under the law have been met.

Section 9. Section 280.055, Florida Statutes, is amended to read:

280.055 Cease and desist order; corrective order; administrative penalty.—

(1) The Chief Financial Officer may issue a cease and desist order and a corrective order upon determining that:

(a) A qualified public depository has requested and obtained a release of pledged collateral without approval of the Chief Financial Officer;

(b) A bank, credit union, savings association, or other financial institution is holding public deposits without a

certificate of qualification issued by the Chief Financial Officer;

(c) A qualified public depository pledges, deposits, or arranges for the issuance of unacceptable collateral;

(d) A custodian has released pledged collateral without approval of the Chief Financial Officer;

(e) A qualified public depository or a custodian has not furnished to the Chief Financial Officer, when the Chief Financial Officer requested, a power of attorney or bond power or bond assignment form required by the bond agent or bond trustee for each issue of registered certificated securities pledged and registered in the name, or nominee name, of the qualified public depository or custodian;

(f) A qualified public depository; a bank, credit union, savings association, or other financial institution; or a custodian has committed any other violation of this chapter or any rule adopted pursuant to this chapter that the Chief Financial Officer determines may be remedied by a cease and desist order or corrective order; or

(g) A qualified public depository no longer meets the definition of a qualified public depository under s. 280.02.

(2) Any qualified public depository or other bank, credit union, savings association, or financial institution or custodian that violates a cease and desist order or corrective order of the Chief Financial Officer is subject to an

administrative penalty not exceeding $1,000 for each violation of the order. Each day the violation of the order continues constitutes a separate violation.

Section 10. Section 280.07, Florida Statutes, is amended to read:

280.07 Mutual responsibility and contingent liability.—

(1) A ~~Any~~ bank, savings bank, or savings association that is designated as a qualified public depository and that is not insolvent shall guarantee public depositors against loss caused by the default or insolvency of other banks, savings banks, or savings associations that are designated as qualified public depositories.

(2) A credit union that is designated as a qualified public depository and that is not insolvent shall guarantee public depositors against loss caused by the default or insolvency of other credit unions that are designated as qualified public depositories.

Each qualified public depository shall execute a form prescribed by the Chief Financial Officer for such guarantee which must ~~shall~~ be approved by the board of directors and must ~~shall~~ become an official record of the institution.

Section 11. Subsections (1) and (3) of section 280.08, Florida Statutes, are amended to read:

280.08 Procedure for payment of losses.—When the Chief

Financial Officer determines that a default or insolvency has occurred, he or she shall provide notice as required in s. 280.085 and implement the following procedures:

(1) The Division of Treasury, in cooperation with the Office of Financial Regulation of the Financial Services Commission or the receiver of the qualified public depository in default, shall ascertain the amount of funds of each public depositor on deposit at such depository and the amount of deposit or share insurance applicable to such deposits.

(3)(a) The loss to public depositors shall be satisfied, insofar as possible, first through any applicable deposit or share insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. The Chief Financial Officer may assess qualified public depositories as provided in paragraph (b), subject to the segregation of contingent liability in s. 280.07, for the total loss if the demand for payment or sale of collateral cannot be accomplished within 7 business days.

(b) The Chief Financial Officer shall provide coverage of any remaining loss by assessment against the other qualified public depositories. The Chief Financial Officer shall determine such assessment for each qualified public depository by multiplying the total amount of any remaining loss to all public depositors by a percentage which represents the average monthly balance of public deposits held by each qualified public

depository during the previous 12 months divided by the total average monthly balances of public deposits held by all qualified public depositories, excluding the defaulting depository, during the same period. The assessment calculation must ~~shall~~ be computed to six decimal places.

Section 12. Subsection (4) of section 280.085, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

280.085 Notice to claimants.—

(1) Upon determining the default or insolvency of a qualified public depository, the Chief Financial Officer shall notify, by first-class mail, all public depositors that have complied with s. 280.17 of such default or insolvency. The notice must direct all public depositors having claims or demands against the Public Deposits Trust Fund occasioned by the default or insolvency to file their claims with the Chief Financial Officer within 30 days after the date of the notice.

(4) The notice required in subsection (1) is not required if the default or insolvency of a qualified public depository is resolved in a manner in which all Florida public deposits are acquired by another insured bank, credit union, savings bank, or savings association.

Section 13. Section 280.09, Florida Statutes, is amended to read:

280.09 Public Deposits Trust Fund.—

(1) In order to facilitate the administration of this chapter, there is created the Public Deposits Trust Fund, hereafter in this section designated "the fund." The proceeds from the sale of securities or draw on letters of credit held as collateral or from any assessment pursuant to s. 280.08 must ~~shall~~ be deposited into the fund. The Chief Financial Officer must segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from any collateral proceeds, assessments, or administrative penalties attributable to any bank, savings bank, or savings association. Any administrative penalty collected pursuant to this chapter shall be deposited into the Treasury Administrative and Investment Trust Fund.

(2) The Chief Financial Officer is authorized to pay any losses to public depositors from the fund, subject to the limitations provided in subsection (1), and there are hereby appropriated from the fund such sums as may be necessary from time to time to pay the losses. The term "losses," for purposes of this chapter, must ~~shall~~ also include losses of interest or other accumulations to the public depositor as a result of penalties for early withdrawal required by Depository Institution Deregulatory Commission Regulations or applicable successor federal laws or regulations because of suspension or disqualification of a qualified public depository by the Chief Financial Officer pursuant to s. 280.05 or because of withdrawal

from the public deposits program pursuant to s. 280.11. In that event, the Chief Financial Officer is authorized to assess against the suspended, disqualified, or withdrawing public depository, in addition to any amount authorized by any other provision of this chapter, an administrative penalty equal to the amount of the early withdrawal penalty and to pay that amount over to the public depositor as reimbursement for such loss. Any money in the fund estimated not to be needed for immediate cash requirements shall be invested pursuant to s. 17.61.

Section 14. Subsections (1) and (3) of section 280.10, Florida Statutes, are amended to read:

280.10 Effect of merger, acquisition, or consolidation; change of name or address.—

(1) When a qualified public depository is merged into, acquired by, or consolidated with a bank, credit union, savings bank, or savings association that is not a qualified public depository:

(a) The resulting institution shall automatically become a qualified public depository subject to the requirements of the public deposits program.

(b) The contingent liability of the former institution shall be a liability of the resulting institution.

(c) The public deposits and associated collateral of the former institution shall be public deposits and collateral of

the resulting institution.

(d) The resulting institution shall, within 90 calendar days after the effective date of the merger, acquisition, or consolidation, deliver to the Chief Financial Officer:

1. Documentation in its name as required for participation in the public deposits program; or

2. Written notice of intent to withdraw from the program as provided in s. 280.11 and a proposed effective date of withdrawal which shall be within 180 days after the effective date of the acquisition, merger, or consolidation of the former institution.

(e) If the resulting institution does not meet qualifications to become a qualified public depository or does not submit required documentation within 90 calendar days after the effective date of the merger, acquisition, or consolidation, the Chief Financial Officer shall initiate mandatory withdrawal actions as provided in s. 280.11 and shall set an effective date of withdrawal that is within 180 days after the effective date of the acquisition, merger, or consolidation of the former institution.

(3) If the default or insolvency of a qualified public depository results in acquisition of all or part of its Florida public deposits by a bank, credit union, savings bank, or savings association that is not a qualified public depository, the bank, credit union, savings bank, or savings association

acquiring the Florida public deposits is subject to subsection (1).

Section 15. Subsection (1) of section 280.13, Florida Statutes, is amended to read:

280.13 Eligible collateral.—

(1) Securities eligible to be pledged as collateral by qualified public depositories ~~banks and savings associations~~ shall be limited to:

(a) Direct obligations of the United States Government.

(b) Obligations of any federal agency that are fully guaranteed as to payment of principal and interest by the United States Government.

(c) Obligations of the following federal agencies:

1. Farm credit banks.

2. Federal land banks.

3. The Federal Home Loan Bank and its district banks.

4. Federal intermediate credit banks.

5. The Federal Home Loan Mortgage Corporation.

6. The Federal National Mortgage Association.

7. Obligations guaranteed by the Government National Mortgage Association.

(d) General obligations of a state of the United States, or of Puerto Rico, or of a political subdivision or municipality thereof.

(e) Obligations issued by the Florida State Board of

Education under authority of the State Constitution or applicable statutes.

(f) Tax anticipation certificates or warrants of counties or municipalities having maturities not exceeding 1 year.

(g) Public housing authority obligations.

(h) Revenue bonds or certificates of a state of the United States or of a political subdivision or municipality thereof.

(i) Corporate bonds of any corporation that is not an affiliate or subsidiary of the qualified public depository.

Section 16. Paragraph (b) of subsection (4) of section 280.17, Florida Statutes, is amended, and, for the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 280.17, Florida Statutes, is reenacted, to read:

280.17 Requirements for public depositors; notice to public depositors and governmental units; loss of protection.—In addition to any other requirement specified in this chapter, public depositors shall comply with the following:

(1)(a) Each official custodian of moneys that meet the definition of a public deposit under s. 280.02 shall ensure such moneys are placed in a qualified public depository unless the moneys are exempt under the laws of this state.

(4) If public deposits are in a qualified public depository that has been declared to be in default or insolvent,

each public depositor shall:

(b) Submit to the Chief Financial Officer for each public deposit, within 30 days after the date of official notification from the Chief Financial Officer, the following:

1. A claim form and agreement, as prescribed by the Chief Financial Officer, executed under oath, accompanied by proof of authority to execute the form on behalf of the public depositor.

2. A completed public deposit identification and acknowledgment form, as described in subsection (2).

3. Evidence of the insurance afforded the deposit pursuant to the Federal Deposit Insurance Act or the Federal Credit Union Act, as appropriate.

Section 17. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (a) of subsection (7) of section 17.57, Florida Statutes, is reenacted to read:

17.57 Deposits and investments of state money.—

(7) In addition to the deposits authorized under this section and notwithstanding any other provisions of law, funds that are not needed to meet the disbursement needs of the state may be deposited by the Chief Financial Officer in accordance with the following conditions:

(a) The funds are initially deposited in a qualified public depository, as defined in s. 280.02, selected by the Chief Financial Officer.

Section 18. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (1) of section 24.114, Florida Statutes, is reenacted to read:

24.114 Bank deposits and control of lottery transactions.—

(1) All moneys received by each retailer from the operation of the state lottery, including, but not limited to, all ticket sales, interest, gifts, and donations, less the amount retained as compensation for the sale of the tickets and the amount paid out as prizes, shall be remitted to the department or deposited in a qualified public depository, as defined in s. 280.02, as directed by the department. The department shall have the responsibility for all administrative functions related to the receipt of funds. The department may also require each retailer to file with the department reports of the retailer's receipts and transactions in the sale of lottery tickets in such form and containing such information as the department may require. The department may require any person, including a qualified public depository, to perform any function, activity, or service in connection with the operation of the lottery as it may deem advisable pursuant to this act and rules of the department, and such functions, activities, or services shall constitute lawful functions, activities, and services of such person.

Section 19. For the purpose of incorporating the amendment

made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (e) of subsection (3) of section 125.901, Florida Statutes, is reenacted to read:

125.901 Children's services; independent special district; council; powers, duties, and functions; public records exemption.—

(3)

(e)1. All moneys received by the council on children's services shall be deposited in qualified public depositories, as defined in s. 280.02, with separate and distinguishable accounts established specifically for the council and shall be withdrawn only by checks signed by the chair of the council and countersigned by either one other member of the council on children's services or by a chief executive officer who shall be so authorized by the council.

2. Upon entering the duties of office, the chair and the other member of the council or chief executive officer who signs its checks shall each give a surety bond in the sum of at least $1,000 for each $1 million or portion thereof of the council's annual budget, which bond shall be conditioned that each shall faithfully discharge the duties of his or her office. The premium on such bond may be paid by the district as part of the expense of the council. No other member of the council shall be required to give bond or other security.

3. No funds of the district shall be expended except by

check as aforesaid, except expenditures from a petty cash account which shall not at any time exceed $100. All expenditures from petty cash shall be recorded on the books and records of the council on children's services. No funds of the council on children's services, excepting expenditures from petty cash, shall be expended without prior approval of the council, in addition to the budgeting thereof.

Section 20. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, section 136.01, Florida Statutes, is reenacted to read:

136.01 County depositories.—Each county depository shall be a qualified public depository as defined in s. 280.02 for the following funds: county funds; funds of all county officers, including constitutional officers; funds of the school board; and funds of the community college district board of trustees. This enumeration of funds is made not by way of limitation, but of illustration; and it is the intent hereof that all funds of the county, the board of county commissioners or the several county officers, the school board, or the community college district board of trustees be included.

Section 21. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (11) of section 159.608, Florida Statutes, is reenacted to read:

159.608 Powers of housing finance authorities.—A housing finance authority shall constitute a public body corporate and politic, exercising the public and essential governmental functions set forth in this act, and shall exercise its power to borrow only for the purpose as provided herein:

(11) To invest and reinvest surplus funds of the housing finance authority in accordance with s. 218.415. However, in addition to the investments expressly authorized in s. 218.415(16)(a)-(g) and (17)(a)-(d), a housing finance authority may invest surplus funds in interest-bearing time deposits or savings accounts that are fully insured by the Federal Deposit Insurance Corporation regardless of whether the bank or financial institution in which the deposit or investment is made is a qualified public depository as defined in s. 280.02. This subsection is supplementary to and may not be construed as limiting any powers of a housing finance authority or providing or implying a limiting construction of any other statutory provision.

Section 22. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, section 175.301, Florida Statutes, is reenacted to read:

175.301 Depository for pension funds.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or

local law plan under this chapter, all funds of the firefighters' pension trust fund of any chapter plan or local law plan under this chapter may be deposited by the board of trustees with the treasurer of the municipality or special fire control district, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality or special fire control district. However, any funds so deposited with the treasurer of the municipality or special fire control district shall be kept in a separate fund by the treasurer or clearly identified as such funds of the firefighters' pension trust fund. In lieu thereof, the board of trustees shall deposit the funds of the firefighters' pension trust fund in a qualified public depository as defined in s. 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of chapter 280.

Section 23. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in references thereto, subsection (8) of section 175.401, Florida Statutes, is reenacted to read:

175.401 Retiree health insurance subsidy.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, under the broad grant of home rule powers under the State Constitution and chapter 166,

municipalities have the authority to establish and administer locally funded health insurance subsidy programs. In addition, special fire control districts may, by resolution, establish and administer locally funded health insurance subsidy programs. Pursuant thereto:

(8) DEPOSIT OF HEALTH INSURANCE SUBSIDY FUNDS.—All funds of the health insurance subsidy fund may be deposited by the board of trustees with the treasurer of the municipality or special fire control district, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality or special fire control district. Any funds so deposited shall be segregated by the treasurer in a separate fund, clearly identified as funds of the health insurance subsidy fund. In lieu thereof, the board of trustees shall deposit the funds of the health insurance subsidy fund in a qualified public depository as defined in s. 280.02, which shall conform to and be bound by the provisions of chapter 280 with regard to such funds. In no case shall the funds of the health insurance subsidy fund be deposited in any financial institution, brokerage house trust company, or other entity that is not a public depository as provided by s. 280.02.

Section 24. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, section 185.30, Florida Statutes, is

reenacted to read:

185.30 Depository for retirement fund.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, all funds of the municipal police officers' retirement trust fund of any municipality, chapter plan, local law municipality, or local law plan under this chapter may be deposited by the board of trustees with the treasurer of the municipality acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality. However, any funds so deposited with the treasurer of the municipality shall be kept in a separate fund by the municipal treasurer or clearly identified as such funds of the municipal police officers' retirement trust fund. In lieu thereof, the board of trustees shall deposit the funds of the municipal police officers' retirement trust fund in a qualified public depository as defined in s. 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of chapter 280.

Section 25. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in references thereto, subsection (8) of section 185.50, Florida Statutes, is reenacted to read:

185.50 Retiree health insurance subsidy.—For any municipality, chapter plan, local law municipality, or local law

plan under this chapter, under the broad grant of home rule powers under the State Constitution and chapter 166, municipalities have the authority to establish and administer locally funded health insurance subsidy programs. Pursuant thereto:

(8) DEPOSIT OF PENSION FUNDS.—All funds of the health insurance subsidy fund may be deposited by the board of trustees with the treasurer of the municipality, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality. Any funds so deposited shall be segregated by said treasurer in a separate fund, clearly identified as funds of the health insurance subsidy fund. In lieu thereof, the board of trustees shall deposit the funds of the health insurance subsidy fund in a qualified public depository as defined in s. 280.02, which shall conform to and be bound by the provisions of chapter 280 with regard to such funds. In no case shall the funds of the health insurance subsidy fund be deposited in any financial institution, brokerage house trust company, or other entity that is not a public depository as provided by s. 280.02.

Section 26. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (3) of section 190.007, Florida Statutes, is reenacted to read:

190.007 Board of supervisors; general duties.—

(3) The board is authorized to select as a depository for its funds any qualified public depository as defined in s. 280.02 which meets all the requirements of chapter 280 and has been designated by the Chief Financial Officer as a qualified public depository, upon such terms and conditions as to the payment of interest by such depository upon the funds so deposited as the board may deem just and reasonable.

Section 27. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (16) of section 191.006, Florida Statutes, is reenacted to read:

191.006 General powers.—The district shall have, and the board may exercise by majority vote, the following powers:

(16) To select as a depository for its funds any qualified public depository as defined in s. 280.02 which meets all the requirements of chapter 280 and has been designated by the Chief Financial Officer as a qualified public depository, upon such terms and conditions as to the payment of interest upon the funds deposited as the board deems just and reasonable.

Section 28. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (2) of section 215.34, Florida Statutes, is reenacted to read:

215.34 State funds; noncollectible items; procedure.—

(2) Whenever a check, draft, or other order for the payment of money is returned by the Chief Financial Officer, or by a qualified public depository as defined in s. 280.02, to a state officer, a state agency, or the judicial branch for collection, the officer, agency, or judicial branch shall add to the amount due a service fee of $15 or 5 percent of the face amount of the check, draft, or order, whichever is greater. An agency or the judicial branch may adopt a rule which prescribes a lesser maximum service fee, which shall be added to the amount due for the dishonored check, draft, or other order tendered for a particular service, license, tax, fee, or other charge, but in no event shall the fee be less than $15. The service fee shall be in addition to all other penalties imposed by law, except that when other charges or penalties are imposed by an agency related to a noncollectible item, the amount of the service fee shall not exceed $150. Proceeds from this fee shall be deposited in the same fund as the collected item. Nothing in this section shall be construed as authorization to deposit moneys outside the State Treasury unless specifically authorized by law.

Section 29. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in references thereto, paragraph (c) of subsection (16), paragraph (c) of subsection (17), and paragraph (a) of subsection (23) of section 218.415, Florida Statutes, are reenacted to read:

218.415 Local government investment policies.—Investment

activity by a unit of local government must be consistent with a written investment plan adopted by the governing body, or in the absence of the existence of a governing body, the respective principal officer of the unit of local government and maintained by the unit of local government or, in the alternative, such activity must be conducted in accordance with subsection (17). Any such unit of local government shall have an investment policy for any public funds in excess of the amounts needed to meet current expenses as provided in subsections (1)-(16), or shall meet the alternative investment guidelines contained in subsection (17). Such policies shall be structured to place the highest priority on the safety of principal and liquidity of funds. The optimization of investment returns shall be secondary to the requirements for safety and liquidity. Each unit of local government shall adopt policies that are commensurate with the nature and size of the public funds within its custody.

(16) AUTHORIZED INVESTMENTS; WRITTEN INVESTMENT POLICIES.—Those units of local government electing to adopt a written investment policy as provided in subsections (1)-(15) may by resolution invest and reinvest any surplus public funds in their control or possession in:

(c) Interest-bearing time deposits or savings accounts in qualified public depositories as defined in s. 280.02.

(17) AUTHORIZED INVESTMENTS; NO WRITTEN INVESTMENT POLICY.—Those units of local government electing not to adopt a

written investment policy in accordance with investment policies developed as provided in subsections (1)-(15) may invest or reinvest any surplus public funds in their control or possession in:

(c) Interest-bearing time deposits or savings accounts in qualified public depositories, as defined in s. 280.02.

The securities listed in paragraphs (c) and (d) shall be invested to provide sufficient liquidity to pay obligations as they come due.

(23) AUTHORIZED DEPOSITS.—In addition to the investments authorized for local governments in subsections (16) and (17) and notwithstanding any other provisions of law, a unit of local government may deposit any portion of surplus public funds in its control or possession in accordance with the following conditions:

(a) The funds are initially deposited in a qualified public depository, as defined in s. 280.02, selected by the unit of local government.

Section 30. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (h) of subsection (4) of section 255.502, Florida Statutes, is reenacted to read:

255.502 Definitions; ss. 255.501-255.525.—As used in this act, the following words and terms shall have the following

meanings unless the context otherwise requires:

(4) "Authorized investments" means and includes without limitation any investment in:

(h) Savings accounts in, or certificates of deposit of, qualified public depositories as defined in s. 280.02, in an amount that does not exceed 15 percent of the net worth of the institution, or a lesser amount as determined by rule by the State Board of Administration, provided such savings accounts and certificates of deposit are secured in the manner prescribed in chapter 280.

Investments in any security authorized in this subsection may be under repurchase agreements or reverse repurchase agreements.

Section 31. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (15) of section 280.051, Florida Statutes, is reenacted to read:

280.051 Grounds for suspension or disqualification of a qualified public depository.—A qualified public depository may be suspended or disqualified or both if the Chief Financial Officer determines that the qualified public depository has:

(15) No longer meets the definition of a qualified public depository under s. 280.02.

Section 32. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a

reference thereto, subsection (1) of section 280.18, Florida Statutes, is reenacted to read:

280.18 Protection of public depositors; liability of the state.—

(1) When public deposits are made in accordance with this chapter, there shall be protection from loss to public depositors, as defined in s. 280.02, in the absence of negligence, malfeasance, misfeasance, or nonfeasance on the part of the public depositor or on the part of his or her agents or employees.

Section 33. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in references thereto, subsections (1) and (2) of section 331.309, Florida Statutes, are reenacted to read:

331.309 Treasurer; depositories; fiscal agent.—

(1) The board shall designate an individual who is a resident of the state, or a qualified public depository as defined in s. 280.02, as treasurer of Space Florida, who shall have charge of the funds of Space Florida. Such funds shall be disbursed only upon the order of or pursuant to the resolution of the board by warrant, check, authorization, or direct deposit pursuant to s. 215.85, signed or authorized by the treasurer or his or her representative or by such other persons as may be authorized by the board. The board may give the treasurer such other or additional powers and duties as the board may deem

appropriate and shall establish the treasurer's compensation. The board may require the treasurer to give a bond in such amount, on such terms, and with such sureties as may be deemed satisfactory to the board to secure the performance by the treasurer of his or her powers and duties. The board shall audit or have audited the books of the treasurer at least once a year.

(2) The board is authorized to select as depositories in which the funds of the board and of Space Florida shall be deposited any qualified public depository as defined in s. 280.02, upon such terms and conditions as to the payment of interest by such depository upon the funds so deposited as the board may deem just and reasonable. The funds of Space Florida may be kept in or removed from the State Treasury upon written notification from the chair of the board to the Chief Financial Officer.

Section 34. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (2) of section 373.553, Florida Statutes, is reenacted to read:

373.553 Treasurer of the board; payment of funds; depositories.—

(2) The board is authorized to select as depositories in which the funds of the board and of the district shall be deposited in any qualified public depository as defined in s. 280.02, and such deposits shall be secured in the manner

provided in chapter 280.

Section 35. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, section 631.221, Florida Statutes, is reenacted to read:

631.221 Deposit of moneys collected.—The moneys collected by the department in a proceeding under this chapter shall be deposited in a qualified public depository as defined in s. 280.02, which depository with regards to such funds shall conform to and be bound by all the provisions of chapter 280, or invested with the Chief Financial Officer pursuant to chapter 18. For the purpose of accounting for the assets and transactions of the estate, the receiver shall use such accounting books, records, and systems as the court directs after it hears and considers the recommendations of the receiver.

Section 36. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (c) of subsection (3) of section 723.06115, Florida Statutes, is reenacted to read:

723.06115 Florida Mobile Home Relocation Trust Fund.—

(3) The department shall distribute moneys in the Florida Mobile Home Relocation Trust Fund to the Florida Mobile Home Relocation Corporation in accordance with the following:

(c) Funds transferred from the trust fund to the

corporation shall be transferred electronically and shall be transferred to and maintained in a qualified public depository as defined in s. 280.02 which is specified by the corporation.

Section 37. This act shall take effect July 1, 2024.

CS/CS/HB 613

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 613 Mobile Home Park Lot Tenancies
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Regulatory Reform & Economic Development Subcommittee, Stark and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	12 Y, 1 N, As CS	Helpling	Topp
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

Chapter 723, F.S., the "Florida Mobile Home Act," addresses the unique relationship between a mobile home owner and a mobile home park owner, and applies to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease. The Division of Condominiums, Timeshares, and Mobile Homes (CTMH) under the Department of Business and Professional Regulation (DBPR) has the power and duty to enforce and ensure certain compliance with the Florida Mobile Home Act, which includes running a mediation program.

The bill:

- Provides that, after the last meeting to resolve a dispute regarding a rent increase, the mobile home park owner and home owners may immediately enter into an agreement to initiate mediation and select their own mediator.
- Requires home owners to provide the following documents to the park owner upon filing a petition with CTMH:
  - The homeowners' petition for mediation on a form adopted by CTMH rule;
  - The written designation with lot identification for each signature;
  - The notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations that is being challenged as unreasonable; and
  - The records that verify the selection of the homeowners' committee.
- Requires CTMH to appoint a qualified mediator to conduct mediation proceedings, if the parties have not selected their own mediator, and notify the parties within 20 days after receipt of a mediation petition.
- Provides that a civil action may not be filed until the dispute has been submitted to mediation.
- Provides that a live-in health care aide must have ingress and egress to and from the mobile home owner's site without additional rent, fee, or any charge whatsoever, except the cost of a background check if one is required.
- Provides that the live-in health care aide or the aide's assistant does not have any rights of tenancy in the mobile home park.

The bill does not likely have an impact on state government revenues or expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation regulates and licenses various businesses and professionals in Florida through the following divisions:

- 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 (CTMH),
- The Division of Hotels and Restaurants,
- The Division of Pari-mutuel Wagering,
- The Division of Professions,
- The Division of Real Estate,
- The Division of Regulation,
- The Division of Technology, and
- The Division of Service Operations.[1]

CTMH provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.[2] CTMH has limited regulatory authority over the following business entities and individuals:[3]

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (jurisdiction is limited to arbitration of election and recall disputes).

Mobile Home Parks

Chapter 723, F.S., the "Florida Mobile Home Act," addresses the unique relationship between a mobile home owner and a mobile home park owner.[4] The provisions in Ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.[5]

CTMH has the power and duty to enforce and ensure compliance with the Florida Mobile Home Act relating to the rental, development, and sale of mobile home parks. However, CTMH does not have the power or duty to enforce mobile home park rules and regulations or to enforce certain provisions related to park maintenance and infrastructure, homeowner code compliance and maintenance, and certain unreasonable lot rental agreements.[6]

CTMH may adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., relating to the requirements in the Administrative Procedures Act for the adoption of rules by agencies, to implement and enforce the provisions of ch. 723, F.S, including rules to authorize amendments to an approved prospectus or

[1] S. 20.165, F.S.
[2] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/, (last visited Mar. 19, 2021).
[3] *Id*.
[4] S. 723.004, F.S.
[5] S. 723.002(1), F.S.
[6] As outlined in ss. 723.022, 723.023, and 723.033, F.S.

offering circular and to establish a category of minor violations of ch. 723, F.S., or rules promulgated pursuant thereto.[7] CTMH may also adopt rules for mediation procedures.[8]

Chapter 723.003, F.S., provides the following relevant definitions:

- "Mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.[9]
- "Mobile home owner," "mobile homeowner," "home owner," or "homeowner" means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.[10]

Mobile Home Park Rent Increases

The mobile home park owner may increase the rental amount upon the expiration of the assumed rental agreement "in an amount deemed appropriate by the mobile home park owner."[11] The park owner must give affected mobile home owners and the board of directors of the homeowners' association, if one has been formed, at least a 90-day notice of a lot rental increase.[12]

Upon the sale of a mobile home on a rented lot, the amount of a lot rental increase is to be disclosed and agreed to by the purchaser by executing a rental agreement that sets forth the new lot rental amount.[13] A lot rental amount may not be increased during the term of a rental agreement. However, if the rental agreement is for a term of more than 12 months, the lot rental amount may be increased during the rental term but not more frequently than annually. Pass-through charges[14] may also be increased during the term of the rental agreement.[15]

Lot rental increases may not be arbitrary or discriminatory between similarly situated tenants in the park, and the lot rental may not increase during the term of the rental agreement.[16] However, the mobile home park owner may pass on, at any time during the term of the rental agreement, ad valorem property taxes and utility charges, or increases of either, if the passing on of these costs was disclosed prior to the tenancy.[17]

A park owner must give written notice to each affected mobile home owner and the board of directors of the homeowners' association, if one has been formed, at least 90 days before any increase in the lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. [18] The notice must identify all other affected homeowners, which may be by lot number, name, group, or phase. If the affected homeowners are not identified by name, the park owner must make the names and addresses available upon request.[19]

A committee of homeowners and the park owner must meet no later than 60 days before the effective date of a rent increase to discuss the reasons for the increase. The homeowners' committee may consist of no more than five people, who are mobile homeowners in the park and who are designated by a majority of the owners or by the board of directors of the homeowners' association if formed as provided under s. 723.075, F.S.[20] At the meeting, the park owner or subdivision developer must in good

[7] *See* ss. 723.006(7), (8), (9), and (10), F.S.
[8] S. 723.038, F.S.
[9] S. 723.003(12), F.S.
[10] S. 723.003(11), F.S.
[11] S. 723.059(4), F.S.
[12] S. 723.037(1), F.S.
[13] S. 723.031(5), F.S.
[14] S. 723.003(17), F.S, defines the term "pass-through charge" to mean "the mobile home owner's proportionate share of the necessary and actual direct costs and impact or hookup fees for a governmentally mandated capital improvement, which may include the necessary and actual direct costs and impact or hookup fees incurred for capital improvements required for public or private regulated utilities."
[15] S. 723.031(5)(b), F.S.
[16] S. 723.031(5), F.S.
[17] S. 723.031(5)(c), F.S.
[18] S. 723.037(1), F.S.
[19] *Id.*
[20] S. 723.037(4)(a), F.S.

faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.[21]

Dispute Resolution

If the meeting regarding a rent increase does not resolve the issue, then additional meetings may be requested. Section 723.037(4), F.S., provides that, if subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the mobile home owners may petition CTMH to initiate mediation if a majority of the affected have designated, in writing, that:[22]

- The rental increase is unreasonable;
- The rental increase has made the lot rental amount unreasonable;
- The decrease in services or utilities is not accompanied by a corresponding decrease in rent or is otherwise unreasonable; or
- The change in the rules and regulations is unreasonable.

Within 30 days of the last scheduled meeting, a park owner may also petition CTMH for mediation of the dispute.[23]

If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase.[24] The court may refer the action to nonbinding arbitration pursuant to s. 44.103, F.S.

Section 723.038, F.S., provides that, upon receipt of the petition from either party, CTMH must appoint a qualified mediator to conduct mediation proceedings unless the parties timely notify CTMH in writing that they have selected a mediator.

The person appointed by CTMH to serve as mediator must be a qualified mediator from a list of circuit court mediators in each judicial circuit and who has met training and educational requirements established by the Supreme Court. If such mediators are not available, CTMH may select a mediator from the list maintained by the Florida Growth Management Conflict Resolution Consortium.[25]

Within 20 days of receiving a petition to mediate a dispute, CTMH must notify the parties that a mediator has been appointed by FTMH. The parties may accept the mediator appointed by CTMH or, within 30 days, select a mediator to mediate the dispute.[26]

The parties may agree to select their own mediator to be governed by the rules of procedure established by CTMH. The parties may agree to waive mediation, or the petitioning party may withdraw the petition prior to mediation. Upon the conclusion of the mediation, the mediator must notify CTMH that the mediation has been concluded.[27]

The resolution of a dispute arising from a mediation may not be deemed to be final agency action. However, either party may initiate an action in the circuit court to enforce a resolution or agreement arising from a mediation proceeding which has been reduced to writing. The circuit court must consider such resolution or agreement made during the mediation to be a contract for the purpose of providing a remedy to the complaining party.[28]

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[21] S. 723.037(4)(b), F.S.
[22] S. 723.037(5)(a), F.S.
[23] S. 723.037(5)(b), F.S.
[24] Ss. 723.038 and 723.0381, F.S.
[25] S. 1004.59, F.S., establishes the Florida Conflict Resolution Consortium at Florida State University "to reduce the public and private costs of litigation; resolve public disputes, including those related to growth management issues, more quickly and effectively; and improve intergovernmental communications, cooperation, and consensus building." *See* Florida Conflict Resolution Consortium at https://consensus.fsu.edu/index.html (last visited Jan. 23, 2024).
[26] S. 723.038(4), F.S.
[27] S. 723.038(5), F.S.
[28] S. 723.038(6), F.S.

If mediation does not resolve the dispute, either party may file an action in the circuit court.[29]

Invitees

An invitee[30] of a mobile home owner may enter or leave the home owner's site without the home owner or invitee being required to pay additional rent, a fee, or any charge whatsoever. Any mobile home park rule or regulation is null and void if it provides fees or charges to the contrary to this right of access.[31]

All guests, family members, or invitees of a mobile home owner are required to abide by properly promulgated rules and regulations.

Section 723.051(3), F.S., provides that an "invitee" is a person whose stay at the request of a mobile home owner does not exceed 15 consecutive days or 30 total days per year, unless such person has the permission of the park owner or unless permitted by a properly promulgated rule or regulation. The spouse of a mobile home owner shall not be considered an invitee.

Live-in Aides

The Fair Housing Act requires owners and landlords to make reasonable accommodations if the accommodation may be necessary to ensure that a person with a disability has equal opportunity to use and enjoy the dwelling. An example of a reasonable accommodation is not counting a live-in aide as an additional tenant or guest.[32]

A reasonable accommodation is a change, exception, adaptation or modification to a policy, program or service that allows a person with a disability to use and enjoy a dwelling. The term also applies to public and common use spaces.

In general, a live-in aide is a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:[33]

- Is determined to be essential to the care and well-being of the persons;
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

[29] S. 723.0381(1), F.S.
[30] Black's Law Dictionary (11th ed. 2019) defines the term "invitee" to mean "someone who has an express or implied invitation to enter or use another's premises, such as a business visitor or a member of the public to whom the premises are held open. The occupier has a duty to inspect the premises and to warn the invitee of dangerous conditions."
[31] S. 723.051(1), F.S.
[32] Disability Rights Florida, *Fair Housing Act*, https://disabilityrightsflorida.org/disability-topics/disability_topic_info/fair_housing_act (last visited Jan. 30, 2024).
[33] For example, *see* 24 C.F.R § 5.403

Effect of the Bill

The bill provides that, if the home owners file a petition for mediation with CTMH within 30 days of the last meeting to resolve a dispute regarding a rent increase, the mobile home owners must provide to the park owner, by certified mail, return receipt requested, a copy of the following:

- The homeowners' petition for mediation on a form adopted by CTMH rule;
- The written designation with lot identification for each signature;
- The notice or notices of lot rental increase, reduction in services or utilities, or change in rules and regulations that is being challenged as unreasonable; and
- The records that verify the selection of the homeowners' committee.

The bill clarifies that a park owner, within 30 days after the last meeting to resolve a dispute regarding a rent increase, may also petition CTMH to initiate mediation of the dispute.

The bill requires that a petition for mediation must be filed with CTMH in all cases for a determination of adequacy and conformance of the petition requirements.

The bill requires CTMH to dismiss a petition for mediation in the event that the park owner and mobile home owners fail to comply with required petition procedures.

The bill allows the park owner, within 10 days after receipt of the petition from the homeowners, to file objections to the petition with CTMH. If a mediator has not been selected, CTMH must assign a mediator within 10 days after receipt of the petition by the park owner.

The bill provides that the mobile home park owner and home owners may immediately enter into an agreement to initiate mediation and select their own mediator.

The bill provides that a mediator selected by the parties:

- Must be a qualified mediator selected from the list of circuit court mediators in each judicial circuit or the list maintained by the Florida Growth Management Conflict Resolution Consortium.
- Has judicial immunity in the same manner and to the same extent as a judge.

The bill clarifies that CTMH is required to appoint a qualified mediator to conduct mediation proceedings and notify the parties within 20 days after receipt of a petition, if the parties have not selected their own mediator.

The bill provides that a civil action may not be initiated unless the dispute has been submitted to mediation.

Related to live-in aides and their assistants, the bill provides that:

- A live-in health care aide or the aide's assistant, as provided for in the federal Fair Housing Act, must have ingress and egress to and from the mobile home owner's site without the mobile home owner, live-in health care aide, aide's assistant, or invitee being required to pay additional rent, a fee, or any charge whatsoever, except that the mobile home owner must pay the cost of a background check for the live-in health care aide or the aide's assistant if one is required.
- The live-in health care aide or the aide's assistant does not have any rights of tenancy in the mobile home park.
- The mobile home owner must provide the name of the live-in health care aide or the aide's assistant to the park owner or park manager and the information required to conduct the background check if one is required.
- The mobile home owner is responsible for removing the live-in health care aide or the aide's assistant and covering the costs associated with such removal.

The bill requires CTMH to adopt rules to enforce the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 723.037, F.S.; relating to options for mediation.

Section 2: Amends s. 723.038, F.S.; providing requirements and procedures for mediation.

Section 3: Amends s. 723.0381, F.S.; limiting when certain actions may be filed in circuit court.

Section 4: Amends s. 723.051, F.S.; relating to live-in health aides.

Section 5: Requires CTMH to adopt rules.

Section 6: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more mobile home owners to have a live-in aide without an additional charge.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires CTMH to adopt rules to enforce the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is unclear if a requirement that DBPR appoint a mediator is within 10 days after the park owner files objections to the home owner's petition, within 10 days after the home owners have filed their petition, or within 10 days after the park owner files a petition.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removes provisions giving DBPR jurisdiction over certain park and owner maintenance and certain unreasonable lot rental agreements.
- Provides that a civil action may not be filed until the dispute has been through mediation.
- Clarifies when the parties may immediately file a petition and select a mediator.
- Requires DBPR to assign a mediator upon receipt of a petition, if one has not already been selected by the parties and notify the parties of a filed petition within 20 days of receiving the petition.
- Provides requirements for what information and documents must be in a petition submitted to DBPR.
- Requires DBPR to dismiss a deficient petition.

On February 13, 2024, the State Administration & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the language clarifying the purpose of the Florida Mobile Home Relocation (Corporation).
- Removed the increase in relocation payments to mobile home owners from the Corporation.
- Removed authorization for a moving contractor to redeem vouchers from the Corporation up to 2 years after the date of issuance.

This analysis is drafted to the committee substitute as passed by the State Administration & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to mobile home park lot tenancies; amending s. 723.037, F.S.; requiring that a petition for mediation be filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to determine its adequacy and conformance to certain requirements; requiring mobile home owners to provide, in a specified manner, certain documents to a mobile home park owner; authorizing a mobile home park owner and the mobile home owners, by mutual agreement, to select a mediator; requiring the division to dismiss a petition for mediation under certain circumstances; authorizing a mobile home park owner to file objections to the petition for mediation within a specified timeframe; requiring the division to assign a mediator within a specified timeframe under certain circumstances; amending s. 723.038, F.S.; authorizing the parties to a dispute to agree to immediately select a mediator and initiate mediation proceedings; requiring the division to appoint a qualified mediator and notify the parties within a specified timeframe; conforming a provision to changes made by the act; amending s. 723.0381, F.S.; prohibiting the initiation of a civil action unless the dispute is first

submitted to mediation; amending s. 723.051, F.S.; providing that a live-in health care aide must have ingress and egress to and from a mobile home owner's site without such owner or aide being required to pay additional rent, a fee, or any charge; requiring a mobile home owner to pay the cost of any necessary background check for the live-in health care aide; specifying that a live-in health care aide does not have any rights of tenancy in the mobile home park; requiring a mobile home owner to notify the park owner or park manager of certain information relating to the live-in aide; requiring the mobile home owner to remove the live-in health care aide and cover certain costs associated with such removal if necessary; requiring the division to adopt rules; providing an effective date.

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

Section 1. Paragraphs (b), (c), and (d) of subsection (5) of section 723.037, Florida Statutes, are redesignated as paragraphs (c), (d), and (e), respectively, present paragraph (b) of that subsection is amended, and new paragraphs (b), (f), (g), and (h) are added to that subsection, to read:

723.037 Lot rental increases; reduction in services or

utilities; change in rules and regulations; mediation.—

(5)

(b) A petition for mediation must be filed with the division in all cases for a determination of adequacy and conformance of the petition with the requirements in paragraph (a). Upon filing the petition with the division, the mobile home owners must provide to the park owner, by certified mail, return receipt requested, a copy of all of the following:

1. The home owners' petition for mediation on a form adopted by the division by rule.

2. The written designation required by this subsection, which must include the lot identification for each signature.

3. The notice or notices of a lot rental increase, reduction in services or utilities, or change in rules and regulations which is being challenged as unreasonable.

4. The records that verify the selection of the homeowners' committee in accordance with subsection (4).

(c) ~~(b)~~ A park owner, within the same time period, may also petition the division to initiate mediation of the dispute pursuant to s. 723.038.

(f) As an alternative to the appointment of a mediator by the division, the park owner and the mobile home owners may, by mutual agreement, select a mediator pursuant to s. 723.038(2) and (4).

(g) The division must dismiss a petition for mediation if

the park owner and mobile home owners fail to comply with this subsection.

(h) Within 10 days after receipt of a petition from the mobile home owners, the park owner may file objections to the petition with the division. The division must dismiss any petition that is not timely filed, does not meet the requirements of this subsection, or is otherwise found deficient by the division. If a mediator has not been selected pursuant to paragraph (f), the division must assign a mediator within 10 days after receipt of the petition by the park owner.

The purpose of this subsection is to encourage discussion and evaluation by the parties of the comparable mobile home parks in the competitive market area. The requirements of this subsection are not intended to be enforced by civil or administrative action. Rather, the meetings and discussions are intended to be in the nature of settlement discussions before ~~prior to~~ the parties proceed ~~proceeding~~ to litigation of any dispute.

Section 2. Subsections (1), (2), (4), and (9) of section 723.038, Florida Statutes, are amended to read:

723.038 Dispute settlement; mediation.—

(1) Either party may petition the division to appoint a mediator and initiate mediation proceedings or the parties may agree to immediately select a mediator and initiate mediation proceedings pursuant to the criteria outlined in subsections (2)

and (4).

(2) The division, upon receipt of a petition, shall appoint a qualified mediator to conduct mediation proceedings and notify the parties within 20 days after such appointment, unless the parties timely notify the division in writing that they have selected a mediator. A person appointed by the division or selected by the parties must ~~shall~~ be a qualified mediator from a list of circuit court mediators in each judicial circuit who has met training and educational requirements established by the Supreme Court. If such mediators are not available, the division or the parties may select a mediator from the list maintained by the Florida Growth Management Conflict Resolution Consortium. The division shall adopt ~~promulgate~~ rules of procedure to govern such proceedings in accordance with the rules of practice and procedure adopted by the Supreme Court. The division shall also establish, by rule, the fee to be charged by a mediator which shall not exceed the fee authorized by the circuit court.

(4) After the date of the last scheduled meeting held pursuant to s. 723.037(4), the parties to a dispute may agree to immediately select a mediator and initiate mediation proceedings pursuant to this section ~~Upon receiving a petition to mediate a dispute, the division shall, within 20 days, notify the parties that a mediator has been appointed by the division~~. The parties may accept the mediator appointed by the division or, within 30

days, select a mediator to mediate the dispute pursuant to subsection (2). The parties shall each pay a $250 filing fee to the mediator appointed by the division or selected by the parties~~,~~ within 30 days after the division notifies the parties of the appointment of the mediator. The $250 filing fee shall be used by the mediator to defray the hourly rate charged for mediation of the dispute. Any portion of the filing fee not used shall be refunded to the parties.

(9) A mediator appointed by the division or selected by the parties pursuant to this section has ~~shall have~~ judicial immunity in the same manner and to the same extent as a judge.

Section 3. Subsection (1) of section 723.0381, Florida Statutes, is amended to read:

723.0381 Civil actions; arbitration.—

(1) A civil action may not be initiated unless the dispute has been submitted to mediation pursuant to s. 723.037(5). After mediation of a dispute pursuant to s. 723.038 has failed to provide a resolution of the dispute, either party may file an action in the circuit court.

Section 4. Subsection (1) of section 723.051, Florida Statutes, is amended to read:

723.051 Invitees and live-in health care aides; rights and obligations.—

(1) An invitee of a mobile home owner, or a live-in health care aide as provided for in the federal Fair Housing Act, must

~~shall~~ have ingress and egress to and from the mobile home owner's site without the mobile home owner, live-in health care aide, or invitee being required to pay additional rent, a fee, or any charge whatsoever, except that the mobile home owner must pay the cost of a background check for the live-in health care aide if one is required. Any mobile home park rule or regulation providing for fees or charges contrary to the terms of this section is ~~null and~~ void. The live-in health care aide does not have any rights of tenancy in the mobile home park and the mobile home owner must notify the park owner or park manager of the name of the live-in health care aide and provide the information required to have the background check, if one is necessary. The mobile home owner has the responsibility to remove the live-in health care aide should it become necessary and to cover the costs associated with such removal.

Section 5. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall adopt rules to implement and administer this act.

Section 6. This act shall take effect July 1, 2024.

COMMERCE COMMITTEE

CS/CS/HB 613 by Rep. Stark
Mobile Home Park Lot Tenancies

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Stark (lines 83-85):

- Clarifies when DBPR must assign a mediator after receipt of the park owner's objection.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Stark offered the following:

Amendment

Remove lines 83-85 and insert:

by the division. If a mediator has not been selected pursuant to paragraph (f), the division must assign a mediator within 10 days after receipt of the park owner's objection to the petition.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 637 Treatment by a Medical Specialist
SPONSOR(S): Insurance & Banking Subcommittee, Yeager and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 808

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N, As CS	Herrera	Lloyd
2) Appropriations Committee	27 Y, 0 N	Perez	Pridgeon
3) Commerce Committee		Herrera	Hamon

SUMMARY ANALYSIS

Florida's Workers' Compensation Law requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require. The Department of Financial Services (DFS), Division of Workers' Compensation (DWC), provides regulatory oversight of Florida's workers' compensation system, including the Workers' Compensation health care delivery system. The law specifies certain reimbursement formulas and methodologies to compensate Workers' Compensation health care providers that provide medical services to injured employees.

If a firefighter, law enforcement officer, correctional officer, or correctional probation officer becomes disabled by tuberculosis, heart disease, or hypertension, Florida law presumes that the disease has been contracted in the line of duty, subject to certain limitations, and is therefore compensable under workers compensation law, unless the contrary can be shown by competent evidence.

To be eligible for this legal presumption, the officer or firefighter must have taken a pre-employment physical exam that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.

The bill permits firefighters, law enforcement officers, correctional officers, or correctional probation officers in need of medical treatment for a compensable, presumptive condition to file a written notice with their employer/carrier to obtain authorization of treatment from the selected medical specialist. The employer/carrier may approve the selected medical specialist or authorize an alternative specialist with equal or greater qualifications. The authorization must be resolved within 5 business days and the appointment date must be within 30 business days of the written notice. If the authorization is not timely, the firefighter's or officer's selected medical specialist is automatically authorized.

Also, the bill allows a maximum reimbursement to such medical specialists to 200 percent of the reimbursement allowed by Medicare, rather than 110 percent (non-surgeons) and 140 percent (surgeons).

The bill will likely have an indeterminate, but significant fiscal impact on the State Risk Management Trust Fund. Local governments may experience increased costs. *See Fiscal Analysis.*

The bill has an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Qualifications for Employment as a Firefighter, Law Enforcement, Correctional, or Probation Officer

Florida law sets forth the minimum requirements for any person to be employed or appointed in a full- or part-time capacity, or in an auxiliary capacity, as a law enforcement officer, correctional officer, or correctional probation officer; or to be appointed as an auxiliary correctional officer by a private entity contracting with the Department of Corrections.

To become a law enforcement, correctional, or correctional probation officer, an applicant must satisfy age, education, and citizenship requirements; complete a training course; pass a certification exam; pass a criminal background check; and pass a physical examination.[1]

The physical examination requires screening for evidence of tuberculosis, heart disease, or hypertension.[2]

In addition to law enforcement, correctional, and correctional probation officers, the presumption applies to firefighters working for any unit of Florida government.[3]

Workers' Compensation Presumption

A legal presumption makes it easier for an employee to obtain Workers' Compensation benefits by shifting the burden of proof in a disability determination from the employee to the employer.[4]

In general, occupational diseases are compensable if:

- A condition peculiar to the occupation causes the disease;
- The employee contracts the disease on the job;
- The job is associated with a particular hazard of the disease;
- The incidence of the disease is substantially higher in the occupation than in the public;
- The nature of the employment was a major contributing cause of the disease; and
- Epidemiological studies show that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.[5]

Florida law includes a presumption that treats tuberculosis, heart disease, or hypertension as an occupational disease associated with firefighters, law enforcement officers, correctional officers, and correctional probation officers. If these employees become temporarily or partially disabled by tuberculosis, heart disease, or hypertension, the law presumes that the employee contracted the disease in the line of duty unless the contrary can be shown by competent evidence.[6]

However, firefighters, law enforcement officers, correctional officers, and correctional probation officers are entitled to the presumption only if the officer passed a pre-employment physical exam that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.[7]

[1] S. 943.13, F.S.
[2] S. 943.13(6), F.S.
[3] Ss. 112.18(1)(a) and 175.231, F.S.
[4] *Caldwell v. Division of Retirement, Florida Dept. of Administration*, 372 So. 2d 438, (Fla. 1979).
[5] S. 440.151(2), F.S.
[6] Ss. 112.18(1)(a) and 175.231, F.S.
[7] S. 112.18(1)(a), F.S.

If the employee's pre-employment physical failed to reveal any evidence of disease, the employee must demonstrate the he or she suffers from tuberculosis, heart disease, or hypertension, but does not have to present evidence of causation that is typically required to demonstrate that an occupational disease is compensable.[8]

To overcome the statutory presumption, the employer must present clear and convincing evidence that the disease was caused by a non-work-related event or exposure.[9]

Pre-Employment Physicals

To be employed as a law enforcement, correctional, or correctional probation officer, an applicant must pass a physical exam.[10] The law that establishes minimum employment standards states that such officers are eligible for the presumption of s. 112.18, F.S., only if the physical exam fails to reveal any evidence of tuberculosis, heart disease, or hypertension.[11]

To enroll in firefighting training courses and be certified as a firefighter, an applicant must be in good physical condition, as determined by a doctor or nurse practitioner.[12] The law does not mention specific screening for tuberculosis, heart disease, or hypertension. The medical professional must certify that the applicant is medically fit to engage in firefighting training and does not have any pre-existing or current condition, illness, injury, or deficiency.[13]

Division of Workers' Compensation

Florida's Workers' Compensation Law[14] requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require.[15] The Department of Financial Services (DFS) provides regulatory oversight of Florida's Workers' Compensation system, including the Workers' Compensation health care delivery system. The law specifies certain reimbursement formulas and methodologies to compensate workers' compensation health care providers[16] that provide medical services to injured employees. Where a reimbursement amount or methodology is not specifically included in statute, the Three-Member Panel is authorized to annually adopt statewide schedules of maximum reimbursement allowances (MRAs) to provide uniform fee schedules for the reimbursement of various medical services.[17] DFS incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals[18] through the rulemaking process provided by the Administrative Procedures Act.[19] In 2023, CS/CS/HB 487 eliminated the authority of the Three-Member Panel to adopt MRA's for individually licensed health care providers, work-hardening programs, pain programs, and durable medical equipment providers.[20] Instead, it mandates DFS to annually publish the maximum reimbursement allowance for physician and non-hospital reimbursements on its website by July 1st, effective the following January 1st.[21]

[8] *McDonald v. City of Jacksonville*, 286 So. 3d 792 (Fla. 1st DCA 2019), citing *Walters v. State*, *DOC/Div. of Risk Management*, 100 So. 3d 1173 (Fla. 1st DCA 2019), rehearing denied, review denied 108 So. 3d 654 (The presumption is an adequate substitute for evidence of occupational causation, and compels the legal result that a claimant has proven occupational causation).
[9] *Butler v. City of Jacksonville*, 980 So. 2d 1250 (Fla. 1st DCA 2008).
[10] S. 943.13(6), F.S.
[11] *Id.*
[12] S. 633.412(5), F.S.
[13] Rule 69A-37.037 and Form DFS-K3-1022.
[14] Ch. 440, F.S.
[15] S. 440.13(2)(a), F.S.
[16] The term "health care provider" includes a physician or any recognized practitioner licensed to provide skilled services pursuant to a prescription or under the supervision or direction of a physician. It also includes any hospital licensed under chapter 395 and any health care institution licensed under chapter 400 or chapter 429. S. 440.13(1)(g), F.S.
[17] S. 440.13(12), F.S.
[18] Ss. 440.13(12) and (13), F.S., and Ch. 69L-7, F.A.C.
[19] Ch. 120, F.S.
[20] Ch. 2023-144, Laws of Fla.
[21] *Id.*

Medical Services

The Division of Workers' Compensation (DWC) is responsible for ensuring that employers provide medically necessary treatment, care, and attendance for injured workers. Healthcare providers must receive authorization from the insurer before providing treatment and submit treatment reports to the insurer. Insurers must reimburse healthcare providers based on statewide schedules of maximum reimbursement allowances developed by the DWC or an agreed-upon contract price. DWC mediates utilization and reimbursement disputes.[22]

Eligibility for the Workers' Compensation Presumption

In a disputed Workers' Compensation determination, the legal presumption does not apply if a law enforcement, correctional, or correctional probation officer:

- Departed from the course of treatment prescribed by his or her physician, resulting in a significant aggravation of the disease or disability or need for medical treatment; or
- Was previously compensated for the disabling disease and departed from the treatment prescribed by his or her physician, resulting in disability or increasing the disability or need for medical treatment.[23]

To be eligible for workers' compensation benefits, a law enforcement officer, correctional officer, or correctional probation officer must make a claim for benefits prior to or within 180 days of leaving the employment or the employing agency.[24]

Firefighters are not subject to the exclusion for prior treatment or compensation and they are not covered by the claim-fling deadline that lets a law enforcement officer, correctional officer or correctional probation officer file a claim up to 180 days after leaving the employment.

Thus, a firefighter suffering from tuberculosis, heart disease, or hypertension must advise his or her employer of the injury within 90 days of the initial manifestation of the disease or 90 days after the firefighter obtains a medical opinion that the injury (occupational disease) is due to the nature of the firefighter's employment.[25]

Reimbursement for Healthcare Providers

A three-member panel (panel), consisting of the Chief Financial Officer (CFO) or their designee and two Governor appointees, sets the MRAs.[26] Beginning with rates developed in 2024 and implemented with rates effective January 1, 2025, health care providers and non-hospital rates are annually published by DFS, instead of being included in the reimbursement manuals.[27] DFS incorporates the statewide schedules of the MRAs through rulemaking. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;[28] the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care; and the financial impact of the MRAs on healthcare providers and facilities.[29] Florida law requires the panel to develop MRA manuals that are reasonable, promote the Workers' Compensation system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.[30]

There are three different reimbursement manuals that determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual, developed by the DWC, limits the

[22] S. 440.13, F.S.
[23] S. 112.18(1)(b)(1), F.S.
[24] S. 112.18(1)(b)(4), F.S.
[25] S. 440.151(6) and 440.185(1), F.S.
[26] *Id*.
[27] Ch. 2023-144, Laws of Fla.
[28] S. 440.13(12)(i)(1), F.S.
[29] S. 440.13(12)(i)(2), F.S.
[30] S. 440.13(12)(i)(3), F.S.

maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,[31] while reimbursement for surgical procedures is limited to 140 percent of Medicare.[32] The hospital manual, developed by the panel, sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,[33] while other outpatient services are limited to 75 percent of usual and customary charges.[34] Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.[35] The ambulatory surgical centers manual, developed by the panel, limits reimbursement to 60 percent of usual and customary as such services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a $4.18 dispensing fee.[36] Repackaged or relabeled prescription medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an $8.00 dispensing fee.[37] Fees may not exceed the schedules adopted under ch. 440, F.S., and department rule.[38]

Effect of the Bill

The bill permits firefighters, law enforcement officers, correctional officers, or correctional probation officers in need of medical treatment for a compensable, presumptive condition to file a written notice with their employer/carrier to obtain authorization of treatment from the selected medical specialist. The employer/carrier may approve the selected medical specialist or authorize an alternative specialist with equal or greater qualifications. The employer/carrier must authorize the selected medical specialist within 5 business days of receiving the written notice. The appointment date with the authorized medical specialist must be within 30 days of the written notice.

In the event that the employer/carrier fails to provide timely authorization, the firefighter's or officer's selected medical specialist is automatically authorized. This notice and authorization process is an express exception to the standard employer-directed provider selection process under the Workers' Compensation law, wherein the employer/carrier selects the specialist.

The bill also increases the maximum reimbursement for medical specialists licensed under ch. 458 or ch. 459, F.S. The maximum reimbursement is raised from 110 percent (non-surgeons) and 140 percent (surgeons) to 200 percent of the Medicare allowance for both non-surgeons and surgeons.

This bill provides an effective date as of October 1, 2024.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.18, F.S., relating to firefighters and law enforcement or correctional officers; special provisions relative to disability.

Section 2. Providing an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

[31] S. 440.13(12)(f), F.S.
[32] S. 440.13(12)(g), F.S.
[33] S. 440.13(12)(d), F.S.
[34] S. 440.13(12)(a), F.S.
[35] *Id*.
[36] S. 440.13(12)(h), F.S.
[37] *Id*.
[38] S. 440.13(12)(f), F.S.

The bill will likely have an indeterminate, but significant impact on the State Risk Management Trust Fund. The state may experience an increase in claims costs related to the increase in the maximum reimbursement, and to claimants selecting providers of their choice.[39] The estimated total impact to the State Risk Management Trust Fund is approximately $2 million per year, provided by DFS.[40]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Local government may experience increased expenses associated with specialist treatment of presumed conditions under the bill due to the increased fee allowed.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Specialist workers' compensation medical providers may receive increased fees for treatment of presumed conditions as provided for by the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires county/municipality governments that employ firefighters, law enforcement officers, correctional officers, or correctional probation officers to fund additional expenses related to those employees accessing specialist care for presumed conditions at a rate higher than currently applicable Workers' Compensation rates; however, an exception may apply. The bill applies to all similarly situated persons, i.e., every county/municipality government that employs such individuals, in addition to the state, which also employs such individuals.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 18, 2024, the Insurance & Banking Subcommittee considered the bill, adopted an amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes:

- Required written notice of the medical specialist permitted by the bill.

[39] Email from Chase Mitchell, Director of Legislative Affairs and Policy, Department of Financial Services, RE: HB 637 – Treatment by a Medical Specialist (Jan. 24, 2024).
[40] Email from Molly Merry, Director of the Division of Risk Management, Department of Financial Services, HB 637 Fiscal Impact to the Risk Management Trust Fund (Jan. 29, 2024).

- Allowed the employer/carrier to authorize an alternative specialist with equal or greater qualifications.
- Required authorization of treatment within 5 business days of receiving the notice and scheduling of an appointment within 30 days.
- Clarified that the bill creates an exception applicable to the usual provider selection process provided under the Workers' Compensation law.

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

A bill to be entitled

An act relating to treatment by a medical specialist; amending s. 112.18, F.S.; authorizing a firefighter, law enforcement officer, correctional officer, and correctional probation officer to receive medical treatment by a medical specialist for certain conditions under certain circumstances; providing requirements for the firefighter's or officer's workers compensation carrier, self-insured employer, or third-party administrator; requiring the continuing care and treatment by a medical specialist to be reasonable, necessary, and related to the firefighter's or officer's condition and authorized by the workers compensation carrier, self-insured employer, or third-party administrator; specifying a reimbursement percentage for such treatment; defining the term "medical specialist"; providing an effective date.

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

Section 1. Subsection (3) is added to section 112.18, Florida Statutes, to read:

112.18 Firefighters and law enforcement or correctional officers; special provisions relative to disability.—

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

(3)(a) Notwithstanding s. 440.13(2)(c), a firefighter, law enforcement officer, correctional officer, or correctional probation officer requiring medical treatment for a compensable presumptive condition listed in subsection (1) may be treated by a medical specialist. Except in emergency situations, a firefighter, law enforcement officer, correctional officer, or correctional probation officer entitled to access a medical specialist under this subsection must provide written notice of his or her selection of a medical specialist to the firefighter's or officer's workers compensation carrier, self-insured employer, or third-party administrator, and the carrier, self-insured employer, or third-party administrator must authorize the selected medical specialist or authorize an alternative medical specialist with the same or greater qualifications. Within 5 business days after receipt of the written notice, the workers compensation carrier, self-insured employer, or third-party administrator must authorize treatment and schedule an appointment, which must be held within 30 days after receipt of the written notice, with the selected medical specialist or the alternative medical specialist. If the workers compensation carrier, self-insured employer, or third-party administrator fails to authorize an alternative medical specialist within 5 business days after receipt of the written notice, the medical specialist selected by the firefighter or officer is authorized. The continuing care and treatment by a

medical specialist must be reasonable, necessary, and related to tuberculosis, heart disease, or hypertension; be reimbursed at no more than 200 percent of the Medicare rate; and be authorized by the firefighter's or officer's workers compensation carrier, self-insured employer, or third-party administrator.

(b) For purposes of this subsection, the term "medical specialist" means a physician licensed under chapter 458 or chapter 459 who has board certification in a medical specialty inclusive of care and treatment of tuberculosis, heart disease, or hypertension.

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

COMMERCE COMMITTEE

CS/HB 637 by Rep. Yaeger
Treatment by a Medical Specialist

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Yaeger (Line 53): The amendment clarifies that the proposed reimbursement rate applies to the selected medical specialist.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Yeager offered the following:

Amendment

Remove line 53 and insert:

no more than 200 percent of the Medicare rate for a selected medical specialist; and be authorized

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 909 Pari-mutuel Permitholders
SPONSOR(S): Esposito
TIED BILLS: **IDEN./SIM. BILLS:** SB 778

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 1 N	Thompson	Anstead
2) State Administration & Technology Appropriations Subcommittee	12 Y, 1 N	Helpling	Topp
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The Florida Gaming Control Commission (Commission) is responsible for exercising all regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, and slot machine facilities. The Florida Pari-mutuel Wagering Act (Act) provides specific permitting and licensure requirements for the pari-mutuel industry. Pari-mutuel wagering activities are limited to operators who have received a permit from the Commission, which is then subject to ratification by county referendum. Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities. Certain permitholders are authorized to operate cardrooms and slot machines at their facility.

Each permitholder is required to operate all performances at the date and time specified on its license. However, the Commission is authorized to approve minor changes in racing dates after a license has been issued if there is no objection from any operating permitholder that is:

- Conducting live racing or games; and
- Located within 50 miles of the permitholder requesting the changes in operating dates.

Holders of valid pari-mutuel permits for the conduct of any pari-mutuel wagering in this state are entitled to lease any and all of their facilities, as follows:

- The lease may only be to another holder of a same class valid pari-mutuel permit;
- The permitholders must be located within a 35-mile radius of each other; and
- The lessee is entitled to a permit and license to conduct intertrack wagering and operate its race meet or jai alai games at the leased premises.

The bill:

- Revises certain references to pari-mutuel “racing” dates to instead reference “performance” dates, in the provision that authorizes the Commission to approve changes in such dates.
- Removes the restriction that pari-mutuel lease agreements be between holders of the same class permit.

The bill does not appear to have a fiscal impact on state or local government. The bill may have a positive fiscal impact on the private sector.

The effective date of the bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

General Overview of Gaming in Florida

Gambling is generally prohibited in Florida, unless specifically authorized. Section 7, Art. X, of the Florida Constitution prohibits lotteries, other than pari-mutuel pools, from being conducted in Florida. Chapter 849, F.S., includes prohibitions against slot machines, keeping a gambling house and running a lottery. However, a constitutional amendment approved by voters in 1986 authorized state-operated lotteries, and a constitutional amendment in 2004, authorized slot machines in Miami-Dade and Broward Counties.

The following gaming activities are also authorized by law and regulated by the state:

- Pari-mutuel[1] wagering;[2]
- Gaming on tribal reservations in accordance with the Indian Gaming and Regulatory Act and the 2010 Gaming Compact with the Seminole Tribe of Florida;
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[3] and
- Cardrooms[4] at certain pari-mutuel facilities.

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[5] bingo,[6] charitable drawings,[7] game promotions (sweepstakes),[8] bowling tournaments,[9] and skill-based amusement games and machines at specified locations.[10]

In 2013, the Legislature clarified that Internet café style gambling machines were illegal in the state. The legislation clarified existing sections of law regarding slot machines, charitable drawings, game promotions, and amusement machines and created a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prizes are prohibited slot machines.[11]

In 2015, the Legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida's limitations on gambling and prevent the expansion of casino-style gambling. The Legislature clarified regulations related to the operation and use of amusement games or machines to ensure that regulations would not be interpreted as creating an exception to the state's general prohibitions against gambling.[12]

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[1] "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.

[2] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.

[3] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.

[4] S. 849.086(2)(c), F.S., defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."

[5] S. 849.085, F.S.

[6] S. 849.0931, F.S.

[7] S. 849.0935, F.S.

[8] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

[9] S. 849.141, F.S.

[10] S. 546.10, F.S.

[11] Florida House of Representatives Select Committee on Gaming, Final Bill Analysis of 2013 CS/HB 155, p. 1 (Apr. 19, 2013).

[12] S. 546.10, F.S.

Amendment to Florida Constitution Prohibiting Racing of and Wagering on Greyhounds or Other Dogs

During the 2018 General Election, voters approved an initiative constitutional amendment, Amendment 13, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs, which has been codified in the State Constitution as Article X, Section 32.[13]

Article X, Section 32 states:

> Prohibition on racing of and wagering on greyhounds or other dogs.—The humane treatment of animals is a fundamental value of the people of the State of Florida. After December 31, 2020, a person authorized to conduct gaming or pari-mutuel operations may not race greyhounds or any member of the *Canis Familiaris* subspecies in connection with any wager for money or any other thing of value in this state, and persons in this state may not wager money or any other thing of value on the outcome of a live dog race occurring in this state. The failure to conduct greyhound racing or wagering on greyhound racing after December 31, 2018, does not constitute grounds to revoke or deny renewal of other related gaming licenses held by a person who is a licensed greyhound permitholder on January 1, 2018, and does not affect the eligibility of such permitholder, or such permitholder's facility, to conduct other pari-mutuel activities authorized by general law. By general law, the legislature shall specify civil or criminal penalties for violations of this section and for activities that aid or abet violations of this section.

As of January 1, 2021, wagering on live greyhound racing in Florida is completely prohibited. However, cardroom and slot machine facilities by such permitholders may continue to operate after the closure of racing activities.

Pari-mutuel Wagering

Since approximately 1931, pari-mutuel wagering has been authorized in Florida for jai alai, greyhound racing, and horseracing. These activities are overseen and regulated[14] by the Division of Pari-Mutuel Wagering (Division) at the Florida Gaming Control Commission (Commission), which is housed within the Department of Legal Affairs, Office of the Attorney General.[15] The Commission is tasked with exercising all regulatory and executive powers of the state on all forms of gambling authorized by the State Constitution or law including pari-mutuel wagering, card rooms, slot machine facilities, and the oversight of gaming compacts under the federal Indian Gaming Regulatory Act but excluding state lottery games authorized by the State Constitution.[16]

Pari-mutuel Wagering State Revenue

License fees and taxes collected by pari-mutuel wagering permitholders, including slot machine and cardroom permitholders, are deposited with the Chief Financial Officer, to the credit of the Pari-mutuel Wagering Trust Fund. Slot machine tax revenue is transferred from the Pari-mutuel Wagering Trust Fund to the Educational Enhancement Trust Fund to supplement public education funding statewide. Taxes collected by cardrooms are split between the Pari-mutuel Wagering Trust Fund and the General Revenue Fund. During the 2022-2023 fiscal year, the pari-mutuel industry operated 447 racing and gaming days, which resulted in state revenue of $6,291,327, total paid attendance of 61,775, and total pari-mutuel handle of $469,498,714.[17]

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[13] See the text of Amendment 13, now codified as art. X, s. 32, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S32 (last visited Jan. 27, 2024).
[14] From 1932 to 1969, Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within the Department of Business Regulation, which, in 1993, became DBPR.
[15] *See* ss. 16.71-16.716, F.S.
[16] S. 16.712, F.S.
[17] Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023*, https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf (last visited Jan. 12, 2024).

Pari-mutuel Wagering Live Performance Requirements

Currently, only thoroughbred permitholders are required to conduct live racing.[18] Greyhound permitholders may not conduct live racing, and jai alai permitholders, harness horse racing permitholders, or quarter horse racing permitholders may elect not to conduct live racing or games.

A greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games:[19]

- Retains its permit;
- Is a pari-mutuel facility as defined in s. 550.002(23), F.S.;
- Is eligible, but not required, to be a guest track, and if the permitholder is a harness horse racing permitholder, is eligible to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305, F.S.; and
- Remains eligible for a cardroom license.

A permitholder or licensee may not conduct live greyhound racing or dogracing in connection with any wager for money or any other thing of value in the state. The Division is authorized to deny, suspend, or revoke any permit or license in ch. 550, F.S., for conducting live greyhound racing or dogracing in violation of this provision. In addition to, or in lieu of, denial, suspension, or revocation of such permit or license, the Division is authorized to impose a civil penalty of up to $5,000. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.[20]

Pari-mutuel Wagering Permitting and Licensure

The Florida Pari-mutuel Wagering Act (Act)[21] provides specific permitting and licensing requirements for the conduct of the pari-mutuel industry.[22] Pari-mutuel wagering activities are limited to operators who have received a permit from the Division, which is then subject to ratification by county referendum.[23] Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities.[24] Certain permitholders are also authorized to operate cardrooms[25] and slot machines at their facility.[26]

During Fiscal Year 2021-2022, the following 39 pari-mutuel permitholders were licensed to operate:[27]

- Nineteen Greyhound Racing permits.
- Three Thoroughbred Horse Racing permits.
- One Harness Horse Racing permit.
- Six Quarter Horse Racing permits.
- Ten Jai-Alai permits.

The Division is authorized to revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of the Act, or any administrative rule adopted by the Division, and may impose a civil penalty against the permitholder or license up to $1,000 for each offense.[28]

During Fiscal Year 2022-2023, the Division issued 22 rulings and five consent orders with assessed fines and/or imposed license suspensions for violations.[29]

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[18] S. 550.01215(1)(b)1., F.S.
[19] *Id*.
[20] S. 550.01215(1)(b)2., F.S.
[21] Ch. 550, F.S.
[22] S. 550.054(1), F.S.
[23] S. 550.054(2), F.S.
[24] S. 550.0115, F.S.
[25] S. 849.086, F.S.
[26] S. 551.104, F.S.
[27] Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023*, https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf (last visited Jan. 12, 2024).
[28] S. 550.054(9)(b), F.S.

Pari-mutuel Wagering License Restrictions

The Act generally requires that any transfer or assignment of a permit receive prior approval[30] by the Commission, which must determine the eligibility[31] of persons and entities to hold a permit. Similarly, if a permit is held by a corporation or business entity other than an individual, the transfer of ten percent or more of the stock or other evidence of ownership or equity in the permitholder may not be made without the prior approval of the transferee by the Commission.[32]

The Act provides restrictions on which persons and entities (including but not limited to employees, officers and directors, partners, and owners of the permitholder) may hold permits, based on whether they are of "good moral character," or have been convicted of a disqualifying felony[33] or for bookmaking.[34]

The Act restricts pari-mutuel permitholders **from being issued an operating license** to conduct pari-mutuel wagering, slot machine gaming, or the operation of a cardroom if the permitholder did not hold an operating license for the conduct of pari-mutuel wagering for Fiscal Year 2020-2021.[35]

The Act restricts pari-mutuel permitholders **from holding a permit** to conduct pari-mutuel wagering and associated cardroom or slot machine licenses[36] unless the permitholder, other than a limited thoroughbred permitholder, held an operating license for the conduct of pari-mutuel wagering for Fiscal year 2020-2021.[37]

The Act specifies that permits held on January 1, 2021 are deemed valid,[38] but new permits for pari-mutuel wagering may not be approved or issued.[39]

The Commission is required to revoke the permit of any permitholder, other than a limited thoroughbred permitholder, who did not hold an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021. A permit revoked under this provision is void and may not be reissued.[40]

Relocation

Certain permitholders may relocate the location listed in their permit to **a new location within 30 miles**. Greyhound and jai alai permitholders operating in counties where they are the only permitholder of that class may relocate.[41] Greyhound permitholders that converted their permit from a jai alai permit

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[29] Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023*, https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf (last visited Jan. 12, 2024).
[30] There is one exception to the prior-approval requirement in s. 550.054(11)(a), F.S., which is that the holder of a permit converted to a jai alai permit "may lease or build anywhere within the county in which its permit is located." As of 2021, such conversions are prohibited. *See* s. 550.054(15)(d), F.S.
[31] *See* s. 550.1815, F.S
[32] S. 550.054(11)(b), F.S.
[33] Pursuant to s. 550.1815(1)(b), F.S., the following are disqualifying felonies: (1) a felony in Florida; (2) any felony in any other state which would be a felony if committed in Florida under the laws of this state; (3) any felony under the laws of the United States; or (4) a felony under the laws of another state if related to gambling which would be a felony under Florida law if the offense was committed in Florida.
[34] The term "bookmaking" is defined in s. 849.25, F.S., to mean "the act of taking or receiving, while engaged in the business or profession of gambling, any bet or wager upon the result of any trial or contest of skill, speed, power, or endurance of human, beast, fowl, motor vehicle, or mechanical apparatus or upon the result of any chance, casualty, unknown, or contingent event whatsoever."
[35] S. 550.01215(1)(d), F.S.
[36] Under s. 551.114(4), F.S., designated slot machine gaming areas must be located at the address specified in the licensed permitholder's slot machine license issued for Fiscal Year 2020-2021.
[37] S. 550.054(15)(a), F.S.
[38] S. 550.054(15)(b), F.S.
[39] S. 550.054(15)(c), F.S.
[40] S. 550.054(9)(c), F.S.
[41] S. 550.0555, F.S.

may relocate, and a greyhound permitholder in a county where it is the only permitholder who operates at a leased facility may also relocate.[42]

In each of these cases, **the relocation must not cross county boundaries and must be approved under the local zoning regulations.** Approval by the Division is required for these relocations.

Conversion

A permit to conduct pari-mutuel wagering may not be converted to another class of permit.[43]

Changes in Racing Dates

The Commission is required to issue each license no later than March 15, and each permitholder is required to operate all performances at the date and time specified on its license. However, the Commission is authorized to approve minor changes in racing dates after a license has been issued if there is no objection from any operating permitholder that is:[44]

- Conducting live racing or games; and
- Located within 50 miles of the permitholder requesting the changes in operating dates.

If a permitholder objects, the Commission is required to approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates.[45]

In making the determination to change racing dates, the Commission is required to take into consideration the impact of such changes on state revenues.[46]

Lease of Pari-mutuel Facilities

Holders of valid pari-mutuel permits for the conduct of any pari-mutuel wagering in this state are entitled to lease any and all of their facilities, as follows:[47]

- The lease may only be to another holder of a same class valid pari-mutuel permit;
- The permitholders must be located within a 35-mile radius of each other; and
- The lessee is entitled to a permit and license to conduct intertrack wagering and operate its race meet or jai alai games at the leased premises.

Effect of Proposed Changes

Changes in Racing Dates

The bill changes references to “racing” dates to instead reference “performance” dates.

Lease of Pari-mutuel Facilities

The bill removes the requirement that such agreements be between holders of the same class of permit.

B. SECTION DIRECTORY:

Section 1: Amends s. 550.01215, F.S., relating to license application; periods of operation; license fees; bond.

[42] S. 550.054, F.S.
[43] S. 550.054(15)(d), F.S.
[44] S. 550.01215(3), F.S.
[45] *Id*.
[46] *Id*.
[47] S. 550.475, F.S.

Section 2: Amends s. 550.475, F.S., relating to lease of pari-mutuel facilities by pari-mutuel permitholders.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes the limitation that the lease of pari-mutuel facilities only be allowed for holders of the same class pari-mutuel permit. This may create a positive fiscal impact to the businesses that are currently restricted from participating in such lease agreements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to pari-mutuel permitholders; amending s. 550.01215, F.S.; revising provisions to allow changes to performance dates; amending s. 550.475, F.S.; revising provisions limiting leasing of pari-mutuel facilities to permitholders of the same class; providing an effective date.

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

Section 1. Subsection (3) of section 550.01215, Florida Statutes, is amended to read:

550.01215 License application; periods of operation; license fees; bond.—

(3) The commission shall issue each license no later than March 15. Each permitholder shall operate all performances at the date and time specified on its license. The commission shall have the authority to approve minor changes in performance ~~racing~~ dates after a license has been issued. The commission may approve changes in performance ~~racing~~ dates after a license has been issued when there is no objection from any operating permitholder that is conducting live racing or games and that is located within 50 miles of the permitholder requesting the changes in operating dates. In the event of an objection, the commission shall approve or disapprove the change in operating

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

dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates. In making the determination to change racing dates, the commission shall take into consideration the impact of such changes on state revenues.

Section 2. Section 550.475, Florida Statutes, is amended to read:

550.475 Lease of pari-mutuel facilities by pari-mutuel permitholders.—Holders of valid pari-mutuel permits for the conduct of any pari-mutuel wagering in this state are entitled to lease any and all of their facilities to any other holder of a ~~same class~~ valid pari-mutuel permit, when located within a 35-mile radius of each other; and such lessee is entitled to a permit and license to conduct intertrack wagering and operate its race meet or jai alai games at the leased premises.

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

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

COMMERCE COMMITTEE

HB 909 by Rep. Esposito
Pari-mutuel Permitholders

AMENDMENT SUMMARY
February 22, 2024

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

- Adds the substance of CS/SB 804 to the bill, which, in part:
  - Authorizes the Gaming Control Commission (Commission) to penalize a licensee when a person falsely swears on an application.
  - Establishes email as the primary service of legal filings for the Commission, including final agency action.
  - Extends the submission period for pari-mutuel operating license application dates from December 15 - January 4, to January 15 - February 4, and extends the issuance date from March 15 to April 15.
  - Authorizes the Commission to approve minor changes in performance dates for pari-mutuel wagering permitholders, removes the ability for permitholders to object to such changes, and makes it permissive, instead of mandatory, for the Commission to consider the impact of such changes to state revenues.
  - Authorizes the Commission to take action against a racetrack occupational licensee who has been subject to certain federal horseracing penalties, including for a finding of a prohibited substance in an animal.
  - Establishes a single audit and reporting requirement for pari-mutuel and slot machine permitholders, clarifies what is required in the report, and requires the deadline for the report to be 120 days after the end of the fiscal year.
  - Revises the application and issuance fiscal year, submission, and issuance dates of nonwagering licenses to line up with the pari-mutuel operating license timeframes.
  - Removes the authority of the Commission to conduct an eligibility investigation relating to new ownership or management interest in a nonwagering permit.
  - Authorizes the Commission to waive the disqualifying offenses for slot machine occupational license applicants.
  - Removes the provision that allows certain facilities to amend their 2006-2007 operating license.
  - Removes an outdated provision relating to thoroughbred permitholder performances.
- Revises the restriction that pari-mutuel lease agreements be between holders of the same class permit to also include jai alai permitholders.
- Effective upon becoming law, authorizes licensed horse tracks that conduct a full schedule of live racing during the preceding state fiscal year, or are not required to conduct a full schedule of live racing under current law, to continue to receive broadcasts of horseraces conducted at horse racetracks outside of Florida.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 16.717, Florida Statutes, is created to read:

16.717 Florida Gaming Control Commission; penalties for false oath or affirmation of applicants for licensure; licensees.—The commission may deny the application of, or suspend or revoke the license of, any person who submits an application for licensure upon which application the person has falsely sworn, in a signed oath or affirmation, to a material statement, including, but not limited to, the criminal history of the applicant or licensee. Additionally, the person is subject to any other penalties provided by law.

Section 2. Section 16.718, Florida Statutes, is created to read:

16.718 Florida Gaming Control Commission; notification of applicants' or licensees' addresses and place of employment; service.—

(1) Each applicant for a license with the commission and each licensee of the commission is responsible for notifying the commission in writing of the applicant's or licensee's current mailing address, e-mail address, and place of employment. An applicant's failure to notify the commission constitutes a violation of this section, and the applicant's application may be denied. A licensee's failure to notify the commission of any change to the e-mail or mailing address of record constitutes a violation of this section, and the licensee may be disciplined by the commission as described in s. 550.0251(10).

(2) Notwithstanding any provision of law to the contrary, service by e-mail to an applicant's or licensee's e-mail address of record with the commission constitutes sufficient notice to the applicant or licensee for any official communication. The commission may, in its discretion, provide service for any official communication by regular mail to an applicant's or licensee's last known mailing address. The commission is not required to provide service by both e-mail and regular mail.

(3) Notwithstanding any provision of law to the contrary, when an administrative complaint or other document setting forth

intended or final agency action is to be served on an applicant or a licensee, the commission is only required to provide service by e-mail to the applicant's or licensee's e-mail address on record with the commission. E-mail service constitutes sufficient notice to the person or persons upon whom an administrative complaint or any other document setting forth intended or final agency action is served. The commission may, in its discretion, provide service of an administrative complaint or any other documents setting forth intended or final agency action by regular mail to an applicant's or licensee's last known mailing address. The commission is not required to provide service by both e-mail and regular mail.

Section 3. Subsections (1), (3), (4), and (5) of section 550.01215, Florida Statutes, are amended to read:

550.01215 License application; periods of operation; license fees; bond.—

(1) Each permitholder shall annually, during the period between January ~~December~~ 15 and February ~~January~~ 4, file in writing with the commission its application for an operating license for a pari-mutuel facility for the conduct of pari-mutuel wagering during the next state fiscal year, including intertrack and simulcast race wagering. Each application for live performances must specify the number, dates, and starting times of all live performances that the permitholder intends to conduct. It must also specify which performances will be

conducted as charity or scholarship performances.

(a) Each application for an operating license also must include:

1. For each permitholder, whether the permitholder intends to accept wagers on intertrack or simulcast events.

2. For each permitholder that elects to operate a cardroom, the dates and periods of operation the permitholder intends to operate the cardroom.

3. For each thoroughbred racing permitholder that elects to receive or rebroadcast out-of-state races, the dates for all performances that the permitholder intends to conduct.

(b)1. A greyhound permitholder may not conduct live racing. A jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder may elect not to conduct live racing or games. A thoroughbred permitholder must conduct live racing. A greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games retains its permit; is a pari-mutuel facility as defined in s. 550.002(23); if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), continues to be eligible for a slot machine license pursuant to s. 551.104(3), and is exempt from ss. 551.104(4)(c) and (10) and 551.114(2); is eligible, but not required, to be a guest track

and, if the permitholder is a harness horse racing permitholder, to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305; and remains eligible for a cardroom license.

2. A permitholder or licensee may not conduct live greyhound racing or dogracing in connection with any wager for money or any other thing of value in the state. The commission may deny, suspend, or revoke any permit or license under this chapter if a permitholder or licensee conducts live greyhound racing or dogracing in violation of this subparagraph. In addition to, or in lieu of, denial, suspension, or revocation of such permit or license, the commission may impose a civil penalty of up to $5,000 against the permitholder or licensee for a violation of this subparagraph. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

(c) Permitholders may amend their applications through March ~~February~~ 28.

(d) Notwithstanding any other provision of law, other than a permitholder issued a permit pursuant to s. 550.3345, a pari-mutuel permitholder may not be issued an operating license for the conduct of pari-mutuel wagering, slot machine gaming, or the operation of a cardroom if the permitholder did not hold an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021. This paragraph does not apply to a

purchaser, transferee, or assignee holding a valid permit for the conduct of pari-mutuel wagering approved pursuant to s. 550.054(15)(a).

(3) The commission shall issue each license no later than April ~~March~~ 15. Each permitholder shall operate all performances at the date and time specified on its license. ~~The commission shall have the authority to approve minor changes in racing dates after a license has been issued.~~ The commission may approve changes in performance ~~racing~~ dates after a license has been issued ~~when there is no objection from any operating permitholder that is conducting live racing or games and that is located within 50 miles of the permitholder requesting the changes in operating dates~~. ~~In the event of an objection, the commission shall approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates.~~ In making the determination to change performance ~~racing~~ dates, the commission may ~~shall~~ take into consideration the impact of such changes on state revenues.

(4) In the event that a permitholder fails to operate all performances specified on its license at the date and time specified, the commission may ~~shall hold a hearing to determine whether to~~ fine or suspend the permitholder's license, unless such failure was the direct result of fire, strike, war, hurricane, pandemic, or other disaster or event beyond the

ability of the permitholder to control. Financial hardship to the permitholder shall not, in and of itself, constitute just cause for failure to operate all performances on the dates and at the times specified.

~~(5) In the event that performances licensed to be operated by a permitholder are vacated, abandoned, or will not be used for any reason, any permitholder shall be entitled, pursuant to rules adopted by the commission, to apply to conduct performances on the dates for which the performances have been abandoned. The commission shall issue an amended license for all such replacement performances which have been requested in compliance with this chapter and commission rules.~~

Section 4. Section 550.0351, Florida Statutes, is amended to read:

550.0351 Charity ~~racing~~ days.—

(1) The commission shall, upon the request of a permitholder, authorize each horseracing permitholder and jai alai permitholder up to five charity or scholarship days in addition to the regular ~~racing~~ days authorized by law.

(2) The proceeds of charity performances shall be paid to qualified beneficiaries selected by the permitholders from an authorized list of charities on file with the commission. Eligible charities include any charity that provides evidence of compliance with the provisions of chapter 496 and evidence of possession of a valid exemption from federal taxation issued by

the Internal Revenue Service. In addition, the authorized list must include the Racing Scholarship Trust Fund, the Historical Resources Operating Trust Fund, major state and private institutions of higher learning, and Florida community colleges.

(3) The permitholder shall, within 120 days after the conclusion of its fiscal year, pay to the authorized charities the total of all profits derived from the operation of the charity day performances conducted. If charity days are operated on behalf of another permitholder pursuant to law, the permitholder entitled to distribute the proceeds shall distribute the proceeds to charity within 30 days after the actual receipt of the proceeds.

(4) The total of all profits derived from the conduct of a charity day performance must include all revenues derived from the conduct of that ~~racing~~ performance, including all state taxes that would otherwise be due to the state, except that the daily license fee as provided in s. 550.0951(1) and the breaks for the promotional trust funds as provided in s. 550.2625(3), (4), (5), (7), and (8) shall be paid to the commission. All other revenues from the charity ~~racing~~ performance, including the commissions, breaks, and admissions and the revenues from parking, programs, and concessions, shall be included in the total of all profits.

(5) In determining profit, the permitholder may elect to distribute as proceeds only the amount equal to the state tax

that would otherwise be paid to the state if the charity day were conducted as a regular or matinee performance.

(6)(a) The commission shall authorize one additional scholarship day for horseracing in addition to the regular racing days authorized by law and any additional days authorized by this section, to be conducted at all horse racetracks located in Hillsborough County. The permitholder shall conduct a full schedule of racing on the scholarship day.

(b) The funds derived from the operation of the additional scholarship day shall be allocated as provided in this section and paid to Pasco-Hernando Community College.

(c) When a charity or scholarship performance is conducted as a matinee performance, the commission may authorize the permitholder to conduct the evening performances of that operation day as a regular performance in addition to the regular operating days authorized by law.

(7) In addition to the eligible charities that meet the criteria set forth in this section, a jai alai permitholder is authorized to conduct two additional charity performances each fiscal year for a fund to benefit retired jai alai players. This performance shall be known as the "Retired Jai Alai Players Charity Day." The administration of this fund shall be determined by rule by the commission.

Section 5. Paragraph (a) of subsection (9) of section 550.054, Florida Statutes, is amended to read:

550.054 Application for permit to conduct pari-mutuel wagering.—

(9)(a) After a permit has been granted by the commission and has been ratified and approved by the majority of the electors participating in the election in the county designated in the permit, the commission shall grant to the lawful permitholder, subject to the conditions of this chapter, a license to conduct pari-mutuel operations under this chapter, and, except as provided in s. 550.5251, the commission shall fix annually the time, place, and number of days during which pari-mutuel operations may be conducted by the permitholder at the location fixed in the permit and ratified in the election. After the first license has been issued to the holder of a ratified permit ~~for racing~~ in any county, all subsequent annual applications for a license by that permitholder must be accompanied by proof, in such form as the commission requires, that the ratified permitholder still possesses all the qualifications prescribed by this chapter and that the permit has not been recalled at a later election held in the county.

Section 6. Subsections (1) and (5) of section 550.0951, Florida Statutes, are amended to read:

550.0951 Payment of daily license fee and taxes; penalties.—

(1) DAILY LICENSE FEE.—

(a) Each person engaged in the business of conducting race

meetings or jai alai games under this chapter, hereinafter referred to as the "permitholder," "licensee," or "permittee," shall pay to the commission, for the use of the commission, a daily license fee on each live or simulcast pari-mutuel event of $100 for each horserace and $80 for each dograce and $40 for each jai alai game conducted at a racetrack or fronton licensed under this chapter. In addition to the tax exemption specified in s. 550.09514(1) of $360,000 or $500,000 per greyhound permitholder per state fiscal year, each greyhound permitholder shall receive in the current state fiscal year a tax credit equal to the number of live greyhound races conducted in the previous state fiscal year times the daily license fee specified for each dograce in this subsection applicable for the previous state fiscal year. This tax credit and the exemption in s. 550.09514(1) apply ~~shall be applicable~~ to any tax imposed by this chapter or the daily license fees imposed by this chapter except during any charity or scholarship performances conducted pursuant to s. 550.0351. Each permitholder shall pay daily license fees not to exceed $500 per day on any simulcast races or games on which such permitholder accepts wagers regardless of the number of out-of-state events taken or the number of out-of-state locations from which such events are taken. This license fee shall be deposited with the Chief Financial Officer to the credit of the Pari-mutuel Wagering Trust Fund.

(b) Each permitholder that cannot utilize the full amount

of the exemption of $360,000 or $500,000 provided in s. 550.09514(1) or the daily license fee credit provided in this section may, after notifying the commission in writing, elect once per state fiscal year on a form provided by the commission to transfer such exemption or credit or any portion thereof to any greyhound permitholder which acts as a host track to such permitholder for the purpose of intertrack wagering. Once an election to transfer such exemption or credit is filed with the commission, it may ~~shall~~ not be rescinded. The commission shall disapprove the transfer when the amount of the exemption or credit or portion thereof is unavailable to the transferring permitholder or when the permitholder who is entitled to transfer the exemption or credit or who is entitled to receive the exemption or credit owes taxes to the state pursuant to a deficiency letter or administrative complaint issued by the commission. Upon approval of the transfer by the commission, the transferred tax exemption or credit is ~~shall be~~ effective for the ~~first performance of the~~ next payment period as specified in subsection (5). The exemption or credit transferred to such host track may be applied by such host track against any taxes imposed by this chapter or daily license fees imposed by this chapter. The greyhound permitholder host track to which such exemption or credit is transferred shall reimburse such permitholder the exact monetary value of such transferred exemption or credit as actually applied against the taxes and

daily license fees of the host track. The commission shall ensure that all transfers of exemption or credit are made in accordance with this subsection and has ~~shall have~~ the authority to adopt rules to ensure the implementation of this section.

(5) PAYMENT AND DISPOSITION OF FEES AND TAXES.—Payments imposed by this section must ~~shall~~ be paid to the commission. The commission shall deposit these sums with the Chief Financial Officer, to the credit of the Pari-mutuel Wagering Trust Fund, hereby established. The permitholder shall remit to the commission payment for the daily license fee, the admission tax, the tax on handle, and the breaks tax. Such ~~payments shall be remitted by 3 p.m. Wednesday of each week for taxes imposed and collected for the preceding week ending on Sunday. Beginning on July 1, 2012, such~~ payments must ~~shall~~ be remitted by 3 p.m. on the 5th day of each calendar month for taxes imposed and collected for the preceding calendar month. If the 5th day of the calendar month falls on a weekend, payments must ~~shall~~ be remitted by 3 p.m. the first Monday following the weekend. Permitholders shall file a report under oath by the 5th day of each calendar month for all taxes remitted during the preceding calendar month. Such payments must ~~shall~~ be accompanied by a report under oath showing the total of all admissions, the pari-mutuel wagering activities for the preceding calendar month, and such other information as may be prescribed by the commission.

Section 7. Subsection (7) of section 550.09515, Florida

Statutes, is amended, and subsection (4) of that section is reenacted for the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, to read:

550.09515 Thoroughbred horse taxes; abandoned interest in a permit for nonpayment of taxes.—

(4) In the event that a court of competent jurisdiction determines any of the provisions of this section to be unconstitutional, it is the intent of the Legislature that the provisions contained in this section shall be null and void and that the provisions of s. 550.0951 shall apply to all thoroughbred horse permitholders beginning on the date of such judicial determination. To this end, the Legislature declares that it would not have enacted any of the provisions of this section individually and, to that end, expressly finds them not to be severable.

~~(7) If a thoroughbred permitholder fails to operate all performances on its 2001-2002 license, failure to pay tax on handle for a full schedule of live races for those performances in the 2001-2002 fiscal year does not constitute failure to pay taxes on handle for a full schedule of live races in a fiscal year for the purposes of subsection (3). This subsection may not be construed as forgiving a thoroughbred permitholder from paying taxes on performances conducted at its facility pursuant to its 2001-2002 license other than for failure to operate all performances on its 2001-2002 license. This subsection expires~~

~~July 1, 2003.~~

Section 8. Paragraphs (a) and (c) of subsection (5) of section 550.105, Florida Statutes, are amended to read:

550.105 Occupational licenses of racetrack employees; fees; denial, suspension, and revocation of license; penalties and fines.—

(5)(a) The commission may do the following:

1. Deny a license to or revoke, suspend, or place conditions upon or restrictions on a license of any person who has been refused a license by any other state racing commission or racing authority or has been subject to a provisional suspension or period of ineligibility by the federal Horseracing Integrity and Safety Authority (HISA), or another such authority designated by the Federal Trade Commission.~~;~~

2. Deny, suspend, or place conditions on a license of any person who is under suspension, ~~or~~ has unpaid fines in another jurisdiction, or is subject to a provisional suspension or period of ineligibility under HISA.~~;~~

3. Notwithstanding subparagraph 2. and chapter 120, summarily suspend the occupational license of any person subject to a provisional suspension or period of ineligibility imposed by HISA related to a prohibited substance in an animal's hair or in its blood, urine, saliva, or any other bodily fluid. Any suspension imposed pursuant to this subparagraph expires on the date that the provisional suspension or period of ineligibility

imposed by HISA expires. If an occupational licensee is summarily suspended under this subparagraph, the commission must offer the licensee a postsuspension hearing within 72 hours after commencement of the suspension. The occupational licensee has the burden of proving by clear and convincing evidence that he or she is not subject to a provisional suspension or period of ineligibility imposed by HISA. The standard of review applicable to the commission under this subparagraph is whether the commission's action was an abuse of discretion ~~if the state racing commission or racing authority of such other state or jurisdiction extends to the commission reciprocal courtesy to maintain the disciplinary control~~.

(c) The commission may deny, declare ineligible, or revoke any occupational license if the applicant for such license has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States, if such felony or misdemeanor is related to gambling or bookmaking, as contemplated in s. 849.25, or involves cruelty to animals. If the applicant establishes that she or he is of good moral character, that she or he has been rehabilitated, and that the crime she or he was convicted of is not related to pari-mutuel wagering and is not a capital offense, the restrictions excluding offenders may be waived by ~~the director of~~ the commission.

Section 9. Paragraph (a) of subsection (2) of section

550.125, Florida Statutes, is amended to read:

550.125 Uniform reporting system; bond requirement.—

(2)(a) Each permitholder issued an operating license ~~that conducts race meetings or jai alai exhibitions~~ under this chapter shall keep records that clearly show the ~~total number of admissions and the~~ total amount of money contributed to ~~each~~ pari-mutuel pools, cardroom gross receipts, and slot machine revenues ~~pool on each race or exhibition separately and the amount of money received daily from admission fees~~ and, within 120 days after the end of its fiscal year, shall submit to the commission a complete annual report of its accounts, audited by a certified public accountant licensed to practice in this ~~the~~ state.

Section 10. Effective upon becoming a law, subsection (3) of section 550.3551, Florida Statutes, is amended, and paragraph (b) of subsection (2) and subsection (4) are reenacted to read:

550.3551 Transmission of racing and jai alai information; commingling of pari-mutuel pools.—

(2) Any horse track or fronton licensed under this chapter may transmit broadcasts of races or games conducted at the enclosure of the licensee to locations outside this state.

(b) Wagers accepted by any out-of-state pari-mutuel permitholder or licensed betting system on a race broadcasted under this subsection may be, but are not required to be, included in the pari-mutuel pools of the horse track in this

state that broadcasts the race upon which wagers are accepted. The handle, as referred to in s. 550.0951(3), does not include any wagers accepted by an out-of-state pari-mutuel permitholder or licensed betting system, irrespective of whether such wagers are included in the pari-mutuel pools of the Florida permitholder as authorized by this subsection.

(3) Any horse track licensed under this chapter may receive broadcasts of horseraces conducted at other horse racetracks located outside this state at the racetrack enclosure of the licensee, if the horse track conducted a full schedule of live racing during the preceding state fiscal year, or if the horse track does not conduct live racing as authorized under s. 550.01215 ~~during its racing meet~~.

(a) All broadcasts of horseraces received from locations outside this state must comply with the provisions of the Interstate Horseracing Act of 1978, 92 Stat. 1811, 15 U.S.C. ss. 3001 et seq.

(b) Wagers accepted at the horse track in this state may be, but are not required to be, included in the pari-mutuel pools of the out-of-state horse track that broadcasts the race. Notwithstanding any contrary provisions of this chapter, if the horse track in this state elects to include wagers accepted on such races in the pari-mutuel pools of the out-of-state horse track that broadcasts the race, from the amount wagered by patrons at the horse track in this state and included in the

pari-mutuel pools of the out-of-state horse track, the horse track in this state shall deduct as the takeout from the amount wagered by patrons at the horse track in this state and included in the pari-mutuel pools of the out-of-state horse track a percentage equal to the percentage deducted from the amount wagered at the out-of-state racetrack as is authorized by the laws of the jurisdiction exercising regulatory authority over the out-of-state horse track.

(c) All forms of pari-mutuel wagering are allowed on races broadcast under this section, and all money wagered by patrons on such races shall be computed as part of the total amount of money wagered at each racing performance for purposes of taxation under ss. 550.0951, 550.09512, and 550.09515. Section 550.2625(2)(a), (b), and (c) does not apply to any money wagered on races broadcast under this section. Similarly, the takeout shall be increased by breaks and uncashed tickets for wagers on races broadcast under this section, notwithstanding any contrary provision of this chapter.

(4) Any greyhound permitholder or jai alai permitholder licensed under this chapter may receive at its licensed location broadcasts of dograces or jai alai games conducted at other tracks or frontons located outside the state. All forms of pari-mutuel wagering are allowed on dograces or jai alai games broadcast under this subsection. All money wagered by patrons on dograces broadcast under this subsection shall be computed in

the amount of money wagered each performance for purposes of taxation under ss. 550.0951 and 550.09511.

Section 11. Section 550.475, Florida Statutes, is amended to read:

550.475 Lease of pari-mutuel facilities by pari-mutuel permitholders.—Holders of valid pari-mutuel permits for the conduct of any pari-mutuel wagering in this state are entitled to lease any and all of their facilities to any other holder of a same class valid pari-mutuel permit or to any jai alai permitholder, when located within a 35-mile radius of each other; and such lessee is entitled to a permit and license to conduct intertrack wagering and operate its race meet or jai alai games at the leased premises.

Section 12. Subsection (3) of section 550.505, Florida Statutes, is amended to read:

550.505 Nonwagering permits.—

(3)(a) Upon receipt of a nonwagering permit, the permitholder shall apply between January 15 and February 4 ~~must apply to the commission before June 1~~ of each year for a ~~an annual~~ nonwagering license for the next state fiscal ~~succeeding calendar~~ year. Such application must set forth the days and locations at which the permitholder will conduct nonwagering horseracing, must demonstrate that any location to which the nonwagering license applies is available for such use, and must indicate any changes in ownership or management of the

permitholder occurring since the date of application for the prior license.

(b) On or before April 15 ~~August 1~~ of each year, the commission shall issue a license authorizing the nonwagering permitholder to conduct nonwagering horseracing during the next state fiscal ~~succeeding calendar~~ year during the period and for the number of days set forth in the application, subject to ~~all other provisions of~~ this section.

(c) The commission may extend a nonwagering license for the 2024 calendar year through the 2024-2025 fiscal year upon application for such extension by the nonwagering permitholder ~~conduct an eligibility investigation to determine the qualifications of any new ownership or management interest in the permit~~.

Section 13. Subsection (1) of section 550.5251, Florida Statutes, is amended to read:

550.5251 Florida thoroughbred racing; certain permits; operating days.—

(1) Each thoroughbred permitholder shall annually, during the period commencing January ~~December~~ 15 of each year and ending February ~~January~~ 4 of the following year, file in writing with the commission its application to conduct one or more thoroughbred racing meetings during the thoroughbred racing season commencing on the following July 1. Each application shall specify the number and dates of all performances that the

permitholder intends to conduct during that thoroughbred racing season. On or before April ~~March~~ 15 of each year, the commission shall issue a license authorizing each permitholder to conduct performances on the dates specified in its application. Up to March ~~February~~ 28 of each year, each permitholder may request and shall be granted changes in its application to conduct ~~authorized~~ performances; but thereafter, as a condition precedent to the validity of its license and its right to retain its permit, each permitholder must operate the full number of days authorized on each of the dates set forth in its license.

Section 14. Paragraph (b) of subsection (4) and subsection (8) of section 551.104, Florida Statutes, are amended to read:

551.104 License to conduct slot machine gaming.—

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, the slot machine licensee shall:

(b) Continue to be in compliance with chapter 550, when ~~where~~ applicable, and maintain the pari-mutuel permit and license in good standing pursuant to ~~the provisions of~~ chapter 550. ~~Notwithstanding any contrary provision of law and in order to expedite the operation of slot machines at eligible facilities, any eligible facility shall be entitled within 60 days after the effective date of this act to amend its 2006-2007 pari-mutuel wagering operating license issued by the commission under ss. 550.0115 and 550.01215. The commission shall issue a~~

~~new license to the eligible facility to effectuate any approved change.~~

(8) A slot machine licensee shall file with the commission an audit of the receipt and distribution of all slot machine revenues provided by an independent certified public accountant licensed under chapter 473 verifying compliance with all financial and auditing provisions of this chapter and ~~the~~ associated rules ~~adopted under this chapter~~. The audit must include verification of compliance with all statutes and rules regarding all required records of slot machine operations. Such audit must ~~shall~~ be filed within 120 ~~60~~ days after the end of the slot machine licensee's fiscal year ~~completion of the permitholder's pari-mutuel meet~~.

Section 15. Paragraph (b) of subsection (6) of section 551.107, Florida Statutes, is amended to read:

551.107 Slot machine occupational license; findings; application; fee.—

(6)

(b) The commission may deny, revoke, or refuse to renew any slot machine occupational license if the applicant for such license or the licensee has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States if such felony or misdemeanor is related to gambling or bookmaking as described in s. 849.25. The restrictions authorized in this paragraph may be waived by the

commission if the applicant establishes that she or he is of good moral character, that she or he has been rehabilitated, and that the crime she or he was convicted of is not related to slot machine gaming and is not a capital offense.

Section 16. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in references thereto, paragraph (c) of subsection (2) of section 212.04, Florida Statutes, is reenacted to read:

212.04 Admissions tax; rate, procedure, enforcement.—

(2)

(c) The taxes imposed by this section shall be collected in addition to the admission tax collected pursuant to s. 550.0951, but the amount collected under s. 550.0951 shall not be subject to taxation under this chapter.

Section 17. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsection (4) of section 550.0351, Florida Statutes, is reenacted to read:

550.0351 Charity racing days.—

(4) The total of all profits derived from the conduct of a charity day performance must include all revenues derived from the conduct of that racing performance, including all state taxes that would otherwise be due to the state, except that the daily license fee as provided in s. 550.0951(1) and the breaks for the promotional trust funds as provided in s. 550.2625(3),

(4), (5), (7), and (8) shall be paid to the commission. All other revenues from the charity racing performance, including the commissions, breaks, and admissions and the revenues from parking, programs, and concessions, shall be included in the total of all profits.

Section 18. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsection (2) of section 550.09511, Florida Statutes, is reenacted to read:

550.09511 Jai alai taxes; abandoned interest in a permit for nonpayment of taxes.—

(2) Notwithstanding the provisions of s. 550.0951(3)(b), wagering on live jai alai performances shall be subject to the following taxes:

(a)1. The tax on handle per performance for live jai alai performances is 4.25 percent of handle per performance. However, when the live handle of a permitholder during the preceding state fiscal year was less than $15 million, the tax shall be paid on the handle in excess of $30,000 per performance per day.

2. The tax rate shall be applicable only until the requirements of paragraph (b) are met.

(b) At such time as the total of admissions tax, daily license fee, and tax on handle for live jai alai performances paid to the commission by a permitholder during the current state fiscal year exceeds the total state tax revenues from

wagering on live jai alai performances paid or due by the permitholder in fiscal year 1991-1992, the permitholder shall pay tax on handle for live jai alai performances at a rate of 2.55 percent of the handle per performance for the remainder of the current state fiscal year. For purposes of this section, total state tax revenues on live jai alai wagering in fiscal year 1991-1992 shall include any admissions tax, tax on handle, surtaxes on handle, and daily license fees.

(c) If no tax on handle for live jai alai performances were paid to the commission by a jai alai permitholder during the 1991-1992 state fiscal year, then at such time as the total of admissions tax, daily license fee, and tax on handle for live jai alai performances paid to the commission by a permitholder during the current state fiscal year exceeds the total state tax revenues from wagering on live jai alai performances paid or due by the permitholder in the last state fiscal year in which the permitholder conducted a full schedule of live games, the permitholder shall pay tax on handle for live jai alai performances at a rate of 3.3 percent of the handle per performance for the remainder of the current state fiscal year. For purposes of this section, total state tax revenues on live jai alai wagering shall include any admissions tax, tax on handle, surtaxes on handle, and daily license fees. This paragraph shall take effect July 1, 1993.

(d) A permitholder who obtains a new permit issued by the

commission subsequent to the 1991-1992 state fiscal year and a permitholder whose permit has been converted to a jai alai permit under the provisions of this chapter, shall, at such time as the total of admissions tax, daily license fee, and tax on handle for live jai alai performances paid to the commission by the permitholder during the current state fiscal year exceeds the average total state tax revenues from wagering on live jai alai performances for the first 3 consecutive jai alai seasons paid to or due the commission by the permitholder and during which the permitholder conducted a full schedule of live games, pay tax on handle for live jai alai performances at a rate of 3.3 percent of the handle per performance for the remainder of the current state fiscal year.

(e) The payment of taxes pursuant to paragraphs (b), (c), and (d) shall be calculated and commence beginning the day in which the permitholder is first entitled to the reduced rate specified in this section and the report of taxes required by s. 550.0951(5) is submitted to the commission.

(f) A jai alai permitholder paying taxes under this section shall retain the breaks and pay an amount equal to the breaks as special prize awards which shall be in addition to the regular contracted prize money paid to jai alai players at the permitholder's facility. Payment of the special prize money shall be made during the permitholder's current meet.

(g) For purposes of this section, "handle" shall have the

same meaning as in s. 550.0951, and shall not include handle from intertrack wagering.

Section 19. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsection (4) of section 550.09512, Florida Statutes, is reenacted to read:

550.09512 Harness horse taxes; abandoned interest in a permit for nonpayment of taxes.—

(4) In the event that a court of competent jurisdiction determines any of the provisions of this section to be unconstitutional, it is the intent of the Legislature that the provisions contained in this section shall be null and void and that the provisions of s. 550.0951 shall apply to all harness horse permitholders beginning on the date of such judicial determination. To this end, the Legislature declares that it would not have enacted any of the provisions of this section individually and, to that end, expressly finds them not to be severable.

Section 20. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in references thereto, subsection (1) and paragraph (e) of subsection (2) of section 550.09514, Florida Statutes, are reenacted to read:

550.09514 Greyhound dogracing taxes; purse requirements.—

(1) Wagering on greyhound racing is subject to a tax on

handle for live greyhound racing as specified in s. 550.0951(3). However, each permitholder shall pay no tax on handle until such time as this subsection has resulted in a tax savings per state fiscal year of $360,000. Thereafter, each permitholder shall pay the tax as specified in s. 550.0951(3) on all handle for the remainder of the permitholder's current race meet. For the three permitholders that conducted a full schedule of live racing in 1995, and are closest to another state that authorizes greyhound pari-mutuel wagering, the maximum tax savings per state fiscal year shall be $500,000. The provisions of this subsection relating to tax exemptions shall not apply to any charity or scholarship performances conducted pursuant to s. 550.0351.

(2)

(e) In addition to the purse requirements of paragraphs (a)-(c), each greyhound permitholder shall pay as purses an amount equal to one-third of the amount of the tax reduction on live and simulcast handle applicable to such permitholder as a result of the reductions in tax rates provided by this act through the amendments to s. 550.0951(3). With respect to intertrack wagering when the host and guest tracks are greyhound permitholders not within the same market area, an amount equal to the tax reduction applicable to the guest track handle as a result of the reduction in tax rate provided by this act through the amendment to s. 550.0951(3) shall be distributed to the guest track, one-third of which amount shall be paid as purses

at the guest track. However, if the guest track is a greyhound permitholder within the market area of the host or if the guest track is not a greyhound permitholder, an amount equal to such tax reduction applicable to the guest track handle shall be retained by the host track, one-third of which amount shall be paid as purses at the host track. These purse funds shall be disbursed in the week received if the permitholder conducts at least one live performance during that week. If the permitholder does not conduct at least one live performance during the week in which the purse funds are received, the purse funds shall be disbursed weekly during the permitholder's next race meet in an amount determined by dividing the purse amount by the number of performances approved for the permitholder pursuant to its annual license, and multiplying that amount by the number of performances conducted each week. The commission shall conduct audits necessary to ensure compliance with this paragraph.

Section 21. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsection (3) of section 550.09516, Florida Statutes, is reenacted to read:

550.09516 Credit for eligible permitholders conducting thoroughbred racing.—

(3) Beginning July 1, 2023, and each July 1 thereafter, each permitholder granted a credit pursuant to this section may apply the credit to the taxes and fees due under ss. 550.0951,

550.09515, and 550.3551(3), less any credit received by the permitholder under s. 550.09515(6), and less the amount of state taxes that would otherwise be due to the state for the conduct of charity day performances under s. 550.0351(4). The unused portion of the credit may be carried forward and applied each month as taxes and fees become due. Any unused credit remaining at the end of a fiscal year expires and may not be used.

Section 22. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsection (1) of section 550.135, Florida Statutes, is reenacted to read:

550.135 Division of moneys derived under this law.—All moneys that are deposited with the Chief Financial Officer to the credit of the Pari-mutuel Wagering Trust Fund shall be distributed as follows:

(1) The daily license fee revenues collected pursuant to s. 550.0951(1) shall be used to fund the operating cost of the commission; however, other collections in the Pari-mutuel Wagering Trust Fund may also be used to fund the operation of the commission in accordance with authorized appropriations.

Section 23. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in references thereto, subsection (2) of section 550.1625, Florida Statutes, is reenacted to read:

550.1625 Dogracing; taxes.—

(2) A permitholder that conducts a dograce meet under this chapter must pay the daily license fee, the admission tax, the breaks tax, and the tax on pari-mutuel handle as provided in s. 550.0951 and is subject to all penalties and sanctions provided in s. 550.0951(6).

Section 24. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in references thereto, subsections (3) through (6) of section 550.26352, Florida Statutes, are reenacted to read:

550.26352 Breeders' Cup Meet; pools authorized; conflicts; taxes; credits; transmission of races; rules; application.—

(3) If the permitholder conducting the Breeders' Cup Meet is located within 35 miles of one or more permitholders scheduled to conduct a thoroughbred race meet on any of the 3 days of the Breeders' Cup Meet, then operation on any of those 3 days by the other permitholders is prohibited. As compensation for the loss of racing days caused thereby, such operating permitholders shall receive a credit against the taxes otherwise due and payable to the state under ss. 550.0951 and 550.09515. This credit shall be in an amount equal to the operating loss determined to have been suffered by the operating permitholders as a result of not operating on the prohibited racing days, but shall not exceed a total of $950,000. The determination of the amount to be credited shall be made by the commission upon application by the operating permitholder. The tax credits

provided in this subsection shall not be available unless an operating permitholder is required to close a bona fide meet consisting in part of no fewer than 10 scheduled performances in the 15 days immediately preceding or 10 scheduled performances in the 15 days immediately following the Breeders' Cup Meet. Such tax credit shall be in lieu of any other compensation or consideration for the loss of racing days. There shall be no replacement or makeup of any lost racing days.

(4) Notwithstanding any provision of ss. 550.0951 and 550.09515, the permitholder conducting the Breeders' Cup Meet shall pay no taxes on the handle included within the pari-mutuel pools of said permitholder during the Breeders' Cup Meet.

(5) The permitholder conducting the Breeders' Cup Meet shall receive a credit against the taxes otherwise due and payable to the state under ss. 550.0951 and 550.09515 generated during said permitholder's next ensuing regular thoroughbred race meet. This credit shall be in an amount not to exceed $950,000 and shall be utilized by the permitholder to pay the purses offered by the permitholder during the Breeders' Cup Meet in excess of the purses which the permitholder is otherwise required by law to pay. The amount to be credited shall be determined by the commission upon application of the permitholder which is subject to audit by the commission.

(6) The permitholder conducting the Breeders' Cup Meet shall receive a credit against the taxes otherwise due and

payable to the state under ss. 550.0951 and 550.09515 generated during said permitholder's next ensuing regular thoroughbred race meet. This credit shall be in an amount not to exceed $950,000 and shall be utilized by the permitholder for such capital improvements and extraordinary expenses as may be necessary for operation of the Breeders' Cup Meet. The amount to be credited shall be determined by the commission upon application of the permitholder which is subject to audit by the commission.

Section 25. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in references thereto, subsection (4) of section 550.375, Florida Statutes, is reenacted to read:

550.375 Operation of certain harness tracks.—

(4) The permitholder conducting a harness horse race meet must pay the daily license fee, the admission tax, the tax on breaks, and the tax on pari-mutuel handle provided in s. 550.0951 and is subject to all penalties and sanctions provided in s. 550.0951(6).

Section 26. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2024.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to pari-mutuel permitholders; creating s. 16.717, F.S.; authorizing the Florida Gaming Control Commission to deny an application for licensure of, or suspend or revoke the license of, any person who falsely swears under oath or affirmation to certain material statements on his or her application for a license; providing that such persons are subject to other applicable penalties; creating s. 16.718, F.S.; requiring applicants for licenses and licensees to notify the commission of certain contact information and of any change in such contact information and providing penalties for failure to comply; providing that delivery of correspondence to the licensee's or applicant's e-mail or mailing address on record with the commission constitutes sufficient notice for official communications, including administrative complaints or other documents setting forth intended or final agency action; providing discretion to the commission in the method of service of such correspondence; amending s. 550.01215, F.S.; revising the timeframe during which a permitholder is required to annually file an

application for an operating license for a pari-mutuel facility during the next state fiscal year; revising the date by which the commission is required to issue such license; revising the deadline for application amendments; revising the deadline date for the commission to issue a license; authorizing, rather than requiring, the commission to take into consideration the impact of such change on state revenues when determining whether to change a performance date; authorizing, rather than requiring, the commission to take specified actions on a permitholder's license; deleting a provision giving permitholders the right to apply for a license for performances that have been vacated, abandoned, or will not be used by another permitholder; making technical changes; amending ss. 550.0351 and 550.054, F.S.; conforming provisions to changes made by the act; amending s. 550.0951, F.S.; making technical changes; removing obsolete language; reenacting and amending s. 550.09515, F.S.; removing obsolete language; amending s. 550.105, F.S.; expanding the commission's authority to deny, revoke, suspend, or place conditions on certain licenses; authorizing the commission to summarily suspend a license when a person has been subject to a provisional suspension or

period of ineligibility imposed by the federal Horseracing Integrity and Safety Authority related to the finding of a prohibited substance in an animal's hair or bodily fluids; providing that any suspension imposed expires at the same time the Horseracing Integrity and Safety Authority's provisional suspension or period of ineligibility expires; requiring the commission to offer a licensee a postsuspension hearing within a specified timeframe; providing a burden of proof for such hearings; providing a standard of review for the commission for such appeals; amending s. 550.125, F.S.; revising requirements for maintaining certain financial records and applying such requirements to all, rather than specified, pari-mutuel wagering permitholders; reenacting and amending s. 550.3551, F.S.; authorizing a licensed horse track to receive broadcasts of horseraces conducted at horse racetracks outside this state if certain conditions are met; amending s. 550.475, F.S.; revising provisions limiting leasing of pari-mutuel facilities to permitholders of the same class or any jai alai permitholder; amending s. 550.505, F.S.; revising the timeframe for nonwagering permitholders to apply for a nonwagering license; requiring permitholders to demonstrate that locations

designated for nonwagering horseracing are available for such use; revising the date by which the commission is required to issue certain nonwagering licenses; authorizing the commission to extend a certain nonwagering license for a specified timeframe; amending s. 550.5251, F.S.; revising the timeframes for when a thoroughbred permitholder must file with the commission an application for a license to conduct thoroughbred racing meetings, for when the commission must issue such licenses, and for when the permitholder may request changes in its application to conduct performances; amending s. 551.104, F.S.; removing obsolete language; requiring that audits of licensees' receipts and distributions of slot machine revenues be conducted by a certified public accountant licensed under ch. 473, F.S.; revising the timeframe within which such audits must be filed with the commission; amending s. 551.107, F.S.; authorizing the waiver of required action on the part of the commission under certain circumstances; reenacting ss. 212.04(2)(c), 550.0351(4), 550.09511(2), 550.09512(4), 550.09514(1) and (2)(e), 550.09516(3), 550.135(1), 550.1625(2), 550.26352(3)-(6), and 550.375(4), F.S., relating to admissions taxes and rates, charity racing days, jai alai taxes, harness horse taxes, greyhound

dogracing taxes and purse requirements, thoroughbred racing permitholders, daily licensing fees collected from pari-mutuel racing, dogracing taxes, authorizing Breeders' Cup Meet pools, and operating certain harness tracks, respectively, to incorporate the amendment made to s. 550.0951, F.S., in references thereto; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 991 Pub. Rec./Cellular Telephone Numbers and Secure Login Credentials Held by the Department of Financial Services
SPONSOR(S): LaMarca
TIED BILLS: CS/HB 989 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N	Herrera	Lloyd
2) Ethics, Elections & Open Government Subcommittee	17 Y, 0 N	Rando	Toliver
3) Commerce Committee		Herrera	Hamon

SUMMARY ANALYSIS

The Department of Financial Services (DFS) has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner. DFS has a number of regulatory responsibilities over the Florida insurance market. DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters.

The bill creates a public record exemption within s. 626.171, F.S., for cellular telephone numbers and secure login credentials, held by the DFS, associated with a person's application for licensure for insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries. The exemption applies to cellular telephone numbers and secure login credentials held by the DFS before, on, or after the effective date of the bill.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill may have an insignificant negative fiscal impact on state government. *See* Fiscal Comments.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.[1] The Legislature, however, may provide by general law an exemption[2] from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.[3]

Current law also addresses the public policy regarding access to government records by guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.[4] Furthermore, the Open Government Sunset Review (OGSR) Act[5] provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."[6] An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.[7]

Pursuant to the OGSR Act, a new public record exemption, or the substantial amendment of an existing public record exemption, is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.[8]

Organization of the Department of Financial Services

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the state's chief fiscal officer,[9] and is designated as the State Fire Marshal. The CFO is the head of the Department of Financial Services (DFS). Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal, and the Department of Banking and Finance were merged to form DFS. DFS consists of 13 divisions and several specialized offices.[10] DFS is composed of the following divisions and independent office:

- Accounting and Auditing;

[1] Art. I, s. 24(a), Fla. Const.
[2] A "public record exemption" means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. *See* s. 119.011(8), F.S.
[3] Art. I, s. 24(c), Fla. Const.
[4] *See* s. 119.01, F.S.
[5] S. 119.15, F.S.
[6] S. 119.15(6)(b), F.S.
[7] *Id.*
[8] S. 119.15(3), F.S.
[9] Art. IV, s. 4, Fla. Const.
[10] S. 20.121, F.S.

- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;[11]
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

Division of Insurance Agent and Agency Services

DFS has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner.[12] DFS has a number of regulatory responsibilities over the Florida insurance market. DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters and conducts insurance-related consumer outreach through its Consumer Services. The Division of Workers' Compensation within DFS administers the workers' compensation system through enforcement of coverage requirements,[13] administration of workers' compensation health care delivery system,[14] data collection,[15] and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities.[16] DFS also administers the rehabilitation and liquidation of insolvent insurers.

No person may be, act as, or advertise, or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by DFS and appointed by an appropriate appointing entity or person.[17] There are several types of insurance representatives. These include:

- General lines agents;
- Life insurance agents;
- Health insurance agents;
- Title insurance agents;
- Personal lines agents; and
- Unaffiliated insurance agents.[18]

General Lines Agent

A general lines agent[19] is one who sells the following lines of insurance: property;[20] casualty,[21] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance

[11] This division includes the Bureau of Forensic Services; Bureau of Fire, Arson, and Explosives Investigations; Office of Fiscal Integrity; Bureau of Insurance Fraud; and Bureau of Workers' Compensation Fraud.
[12] *See*, e.g., Florida Department of Financial Services, *What is the Purpose of the Department*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4103#:~:text=The%20office%20protects%20the%20public,entrants%20to%20the%20Florida%20market (last visited Jan. 25, 2024).
[13] S. 440.107(3), F.S.
[14] S. 440.13, F.S.
[15] Ss. 440.185 and 440.593, F.S.
[16] S. 440.191, F.S.
[17] S. 626.112, F.S.
[18] S. 626.015, F.S.
[19] S. 626.015(7), F.S.
[20] S. 624.604, F.S.
[21] S. 624.605, F.S.

fund,[22] or a workers' compensation self-insurance fund;[23] surety;[24] health;[25] and, marine.[26] The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.[27]

Title Agents and Agencies

Title insurance insures owners of real property (owner's policy) or others having an interest in real property, as well as lenders (mortgagee policies) against loss by encumbrance, defective title, invalidity, or adverse claim to title. It is a policy issued by a title insurer that, after evaluating a search of title, insures against a number of covered risks, including title defects or liens that are not identified as exceptions. In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[28]

Public Adjusters

A public adjuster, excluding duly licensed attorneys, is any individual who, for compensation or any other valuable consideration, directly or indirectly prepares, completes, or submits an insurance claim for an insured or third-party claimant.[29] Additionally, it includes those who, for compensation, act on behalf of or assist an insured or third-party claimant in negotiating or settling a covered insurance claim.[30] The term also encompasses individuals advertising as adjusters for such claims, as well as those who, for compensation, solicit, investigate, or adjust these claims on behalf of the public adjuster, an insured, or a third-party claimant.[31]

Effect of the Bill

The bill creates a public record exemption within s. 626.171, F.S., for cellular telephone numbers and secure login credentials[32] held by the DFS pertaining to applications for licensure for insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries. The bill provides such telephone numbers and secure login credentials are exempt[33] from public record requirements under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The exemption applies to cellular telephone numbers and secure login credentials held by the DFS before, on, or after the effective date of the bill.

The exemption is subject to the OGSR Act, and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

[22] As defined in s. 624.462, F.S.
[23] Pursuant to s. 624.4621, F.S.
[24] S. 626.606, F.S.
[25] S. 624.603, F.S.
[26] S. 624.607, F.S.
[27] S. 626.829, F.S.
[28] S. 627.786, F.S.
[29] S. 626.854(1), F.S.
[30] *Id*.
[31] *Id*.
[32] The bill defines the term "secure login credential" to mean information held by the DFS for purposes of authenticating a user's logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible via the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.
[33] There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 04-09 (2004).

The bill is effective upon the same date that HB 989 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof becomes law.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.171, F.S., relating to application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.

Section 2. Provides a statement of public necessity.

Section 3. Contains unnumbered section of law.

Section 4. Provides that the bill is effective on the same date as HB 989 or similar bill takes effect.

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:

   The bill may have an insignificant negative fiscal impact on the DFS, as staff responsible for complying with public record requests may require training related to the newly-created public record exemption. However, any additional costs will likely be absorbed within existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Vote Requirement
   Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement. The public necessity statement states that the Legislature finds, in part, that without the public record exemption, the effective and efficient administration of the electronic filing system would be hindered.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for cellular telephone numbers and secure login credentials held by the DFS associated with insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries. The purpose of the exemption is to protect sensitive personal information linked to individuals in these roles, that the DFS receives for the purpose of electronic filing or record review. As such, the bill appears to be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking 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 public records; amending s. 626.171, F.S.; providing a public records exemption for cellular telephone numbers and secure login credentials obtained by the Department of Financial Services through certain insurance license applications; providing applicability; providing a definition; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a directive to the Division of Law Revision; providing a contingent effective date.

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

Section 1. Subsection (8) is added to section 626.171, Florida Statutes, as amended by HB 989 or similar legislation, 2024 Regular Session, to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.—

(8)(a) Cellular telephone numbers collected by the department under subsection (2) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to cellular telephone numbers held by the department

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

before, on, or after the effective date of this act.

(b) Secure login credentials held by the department for the purpose of allowing a person to electronically file or review records under this section are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to secure login credentials held by the department before, on, or after the effective date of this act. As used in this paragraph, the term "secure login credential" means information held by the department for purposes of authenticating a user's logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible via the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all cellular phone numbers and secure login credentials held by the Department of Financial Services relating to electronically filed applications for licenses as insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries be made exempt

from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The unintentional publication of such information may subject the filer to identity theft, financial harm, or other adverse impacts. Without this public records exemption, the effective and efficient administration of the electronic filing system, which is otherwise designed to increase the ease of filing records, would be hindered. For these reasons, the Legislature finds that the public records exemption for all cellular phone numbers and secure login credentials held by the Department of Financial Services relating to electronically filed applications for licenses as insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries serves a public purpose.

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 on the same date that HB 989 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

COMMERCE COMMITTEE

HB 991 by Rep. LaMarca
Pub. Rec./Cellular Telephone Numbers held by the Department of Financial Services

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. LaMarca (Line 27): The amendment conforms the bill to its Senate counterpart by removing the proposed exemption for secure login credentials held by the Department of Financial Services.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 27-64 and insert:

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all cellular telephone numbers collected by the Department of Financial Services pursuant to s. 626.171(2), Florida Statutes, be exempt from public records requirements. The Legislature finds that the unintentional publication of such information may subject the filer to identity theft, financial harm, or other adverse impacts. Without the public records

exemption, the effective and efficient administration of the electronic filing system, which is otherwise designed to increase the ease of filing records, would be hindered. For these reasons, the Legislature finds that it is a public necessity to exempt such information from public records requirements.

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

Remove lines 4-8 and insert:
for cellular telephone numbers obtained by the Department of Financial Services through certain insurance license applications; providing for future legislative review

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1021 Community Associations
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Regulatory Reform & Economic Development Subcommittee, Lopez, V. and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1178

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Larkin	Anstead
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N, As CS	Helpling	Topp
3) Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

Related to community association managers (CAMs) and CAM firms, the bill:

- Requires a CAM to return all community association records in its possession within 20 days of termination of services agreement or a written request whichever occurs first.
- Provides conflict of interest disclosure requirements and a process for associations to follow when approving contracts with a CAM or a relative that may present a conflict of interest.

Related to official records, the bill:

- Provides that on January 1, 2026, condominium associations with 25 units or more will be required maintain specified records available for download on the association's website or by an application on a mobile device.
- Requires associations to maintain additional accounting records (e.g., invoices and other documentation that substantiates any receipt or expenditure).
- Provides that a condominium association may satisfy a request for access to records by making the records available for download on the association website or through an application on a mobile device.
- Provides criminal penalties related to the association refusing to release or destroy official records.

The bill:

- Provides criminal penalties for accepting a kickback and for fraudulent voting activities.
- Requires directors to annually complete continuing education on recent changes to the condominium laws and rules.
- Requires a residential condominium association of 10 or more units to meet once each quarter for the purpose of responding to inquiries from members and informing members on the state of condominium.
- Allows the board with regard to the structural integrity reserve study to recommend a temporary pause in the reserve funding or reduced funding in certain circumstances.
- Provides that the jurisdiction of the Division of Condominiums, Timeshares and Mobile Homes after turnover occurs includes investigation of complaints related to the procedural aspects of meetings; disclosure of conflicts of interests; and any written inquiries by unit owners to the association related to the matters under the Division's jurisdictional authority.
- Requires the Division to conduct random audits of community associations, give its employees the right to attend board meetings, and require them to refer suspected criminal activity to law enforcement agencies.

The bill provides appropriations and staff to implement the bill. *See* Fiscal Analysis and Economic Impact Statement.

The bill has an effective date of July 1, 2024, unless otherwise expressly provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations – Background

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium associations;
- Cooperative associations;
- Florida mobile home parks and related associations;
- Vacation units and timeshares;
- Yacht and ship brokers and related business entities; and
- Homeowners' associations (limited to arbitration of election and recall disputes).

Community Association Managers- Current Situation

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation (DBPR) pursuant to part VIII of ch. 468, F.S. Community association managers are regulated by the seven-member Regulatory Council of Community Association Managers at DBPR.[1]

Section 468.431(2), F.S., defines "community association management" to mean:

> any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of $100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A license is not required for a person who:

- Performs clerical or ministerial functions under the direct supervision and control of a licensed manager, or
- Performs only the maintenance of a community association and does not assist in any of the management services.[2]

To become licensed as a CAM, a license applicant must:

- Submit to a background check to determine good moral character,
- Attend a DBPR-approved in-person training prior to taking the examination, and
- Pass the licensure examination.[3]

CAMs must also complete not more than 10 hours of continuing education hours as approved by the council to renew and maintain their licenses.[4]

[1] S. 468.4315(1), F.S.
[2] S. 468.431(2), F.S.
[3] S. 468.433, F.S.
[4] S. 468.4336 and 468.4337, F.S.

Section 468.4334, F.S., outlines the professional practice standards for CAMs and CAM firms, including the duty to "discharge the duties performed on behalf of the association as authorized by [ch. 468, F.S.], loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees."

The license of a CAM or CAM firm may be disciplined, including a suspension or revocation of their license, or denial of a license renewal, for the grounds specified in s. 468.436, F.S., including:

- Committing acts of gross misconduct or gross negligence in connection with the profession.
- Contracting, on behalf of an association, with any entity in which the CAM has a financial interest that is not disclosed.
- Violating any provision of chapter 718 (relating to condominiums), chapter 719 (relating to cooperatives), or chapter 720 (relating to homeowners' associations) during the course of performing community association management services pursuant to a contract with a community association.[5]

Community Association Managers- Effect of the Bill

Return of Official Records

The bill provides additional professional practice standards for CAMs and CAM firms. The bill requires CAMs and CAM firms to return all community association official records in its possession within 20 days of termination of a contractual agreement to provide CAM services or a written request for the return of the official records, whichever occurs first.

Failure of a CAM or a CAM firm to timely return all of the official records within its possession to the community association creates a rebuttable presumption that such CAM or CAM firm willfully failed to comply. If the CAM or CAM firm fails to timely return the applicable official records to the community association, the CAM or CAM firm will be subjected to:

- suspension of its license under s. 468.436, F.S., and
- a civil penalty of $1,000 per day (up to 10 days) which is assessed beginning on the 21st day after the termination of a contractual agreement receipt of a written request from the association for return of the records.

The bill provides such notice of termination must be sent by:

- Certified mail;
- Return receipt request; or
- In the manner required in the management contract.

The CAM or CAM firm may retain, up to 20 business days, those records necessary to complete an ending financial statement or report. Failure of the association to provide access or retention of accounting records to prepare the statement or report shall relieve such CAM or CAM firm of any further responsibility or liability for the preparation of the statement or report.

Conflicts of Interest

The bill creates a conflict of interest disclosure process for CAMs and CAM firms, including directors, officers, persons with a financial interest in a CAM firm, or a relative[6] of such persons (collectively used as "individual" under this subheading). The bill provides that individuals must disclose to the community association any activity that may reasonably be construed to be a conflict of interest.
If any of the following exist without providing prior notice, there is a presumption that there is a conflict of interest unless proven otherwise:

- An individual enters into a contract for good or services with the association.

[5] S. 468.436(2)(b)5.-7., F.S.
[6] The term "relative" in the bill means a relative within the third degree of consanguinity by blood or by marriage.

- An individual holds an interest in, or receives compensation or anything of value from a business entity that conducts business with the association or proposes to enter a contract or other transaction with the association. The business entities include:
  - A corporation;
  - Limited liability corporation;
  - Partnership;
  - Limited liability partnership; or
  - Other business entity.

Under the bill, if the association receives and considers a bid to provide a good or service, other than a CAM service, from an individual with a financial interest in the community association, the association must also consider at least three bids from other third-party providers of such good or service.

If an individual discloses that he or she engages in an activity that is a conflict of interest as described above:
- Such activity must be listed on all contracts;
- Transactional documents related to the proposed activity must be attached to the meeting agenda of the next board meeting; and
- The disclosures of a possible conflict of interest must be entered into the written minutes of the meeting.

The bill provides that a contract or other transaction with a possible conflict of interest must be approved by an affirmative vote of two-thirds of all other directors present.

Moreover, the bill provides that the contract or other transaction with a possible conflict of interest must be disclosed to the members at the next regular or special meeting. Under the bill, if the board finds that a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, the association may cancel its community association management contract with the community association manager or the community association management firm. If such contract is canceled, the association:
- would only be liable for the reasonable value of the goods and services provided up to the time of cancellation, and
- would not be liable for any termination fees, liquidated damages, or other form of penalty for such cancellation.

The bill provides a procedure for terminating a contract if a conflict of interest was not properly disclosed. The bill provides that a contract is voidable and terminates upon the association filing a written notice of the termination of the contract with its board of directors and the notice must contain the consent of at least 20 percent of the voting interests of the association if:
- an association enters a contract with an individual or the individual has an interest in an activity that is a possible conflict of interest, and
- such activity has not been properly disclosed as a conflict of interest or potential conflict of interest.

The bill revises the disciplinary grounds for CAMs and CAM firms to provide a disciplinary ground on the basis of a CAM or CAM firm's failure to disclose a conflict of interest as required by s. 468.4335, F.S.

The bill makes conforming changes.

Condominiums and Cooperatives Background

Condominiums

A condominium is a form of real property ownership created under ch. 718, F.S., the "Condominium Act." Persons own condominium units along with an undivided right of access to the condominium's common elements.[7] A condominium is created by recording a declaration of condominium, which governs the relationship between condominium unit owners and the condominium association, in the public records of the county where the condominium is located.[8] All unit owners are members of the condominium association, and the association is responsible for common elements operation and maintenance.[9] The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration," which is responsible for the association's administration.[10]

Cooperatives

A cooperative is a form of property ownership created under ch. 719, F.S., the "Cooperative Act," in which the real property is owned by the cooperative association and individual units are leased to the residents, who own shares in the association.[11] The lease payment amount is the pro-rata share of the cooperative's operational expenses. Cooperatives operate similarly to condominiums, and the laws regulating cooperatives are largely identical to those regulating condominiums.

Fiduciary Relationship

Board members and officers of a condominium or cooperative association have a fiduciary relationship with the unit owners in their condominium or cooperative. This fiduciary relationship requires board members and officers to act in good faith and in the best interests of the unit owners. Under the "business judgment rule," the board must act within the scope of its authority, in a reasonable manner, and must perform its duties with the care and responsibility that an ordinarily prudent person would exercise under similar circumstances.[12]

Board members and officers can be the subject of a cause of action for a breach of their fiduciary duty. However, a person bringing such action must prove that the board member or officer had a fiduciary duty that was breached that caused damages and rose to the level of criminal activity, fraud, self-dealing, unjust enrichment, or other improper personal benefit.[13]

To determine if a board member or officer breached his or her fiduciary duty, Florida courts look to see if the board member or officer violated the business judgment rule by determining if the association had the contractual or statutory authority to perform the relevant act and if the decision was reasonable. The business judgment rule generally will protect association board members and officers, as long those board members or officers act within the scope of their authority and in a reasonable manner.[14]

It is a breach of a board member or officer's fiduciary duty if an association fails to complete a milestone inspection or structural integrity reserve study.

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[7] S. 718.103(11), F.S.
[8] S. 718.104(2), F.S.
[9] S. 718.103(2), F.S.
[10] S. 718.103(4), F.S.
[11] S. 719.103(2), (26), F.S.
[12] S. 718.111(1), F.S.
[13] Harris B. Katz, *Condo column: Can board members be sued and how can an association remove a director?*, TC Palm (Oct. 17, 2019) https://www.tcpalm.com/story/news/local/florida/2019/10/17/can-condo-board-members-sued-and-how-can-association-remove-director/3907749002/ (last visited Jan. 29, 2024).
[14] *Id.*; *Hollywood Towers Condominium Association v. Hampton*, 40 So. 3d 784, 787 (Fla. 4th DCA 2010).

Condominium Associations

Official Records - Current Situation

Florida law specifies certain official records that condominium associations must permanently maintain from the inception of the association. These records include:[15]

- A copy of the plans, permits, warranties, and other items provided by the developer.
- A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.
- A photocopy of the recorded bylaws of the association and each amendment to the bylaws.
- A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.
- A copy of the current rules of the association.
- A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.
- A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is provided.
- All current insurance policies of the association and condominiums operated by the association.
- A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.
- Bills of sale or transfer for all property owned by the association.

Generally, other official records must be maintained for at least 7 years. These records include:

- Accounting records for the association and separate accounting records for each condominium that the association operates.
- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates.
- All rental records if the association is acting as agent for the rental of condominium units.
- A copy of the current question and answer sheet as described in s. 718.504, F.S.
- A copy of the milestone inspection and turnover inspection reports and any other inspection report relating to a structural or life safety inspection of condominium property. Such record must be maintained by the association for 15 years after receipt of the report.
- Bids for materials, equipment, or services.
- All affirmative acknowledgments made pursuant to s. 718.121(4)(c), F.S.
- All other written records of the association which are related to the operation of the association.

An association must maintain its official records within the state of Florida and make them available for inspection within 45 miles of the association or within the county where the association is located.[16]

Unit owners may request to inspect and make copies of an association's official records. An association must make the records available for inspection within 10 business days of receiving a written request. Failure to provide an owner or renter the requested records within 10 business days of receiving a request creates a rebuttable presumption that the association willfully failed to provide the records. An owner who is denied access to the records is entitled to damages and costs.[17]

Any person who knowingly or intentionally defaces or destroys accounting records that were required to be maintained for a certain period of time, or who knowingly or intentionally fails to create or maintain

[15] See s. 718.111(12), F.S.
[16] S. 718.111(12)(b)-(c), F.S.
[17] *Id.*

accounting records with the intent of causing harm to the association or one or more of its members, is subject to a civil penalty.[18]

An association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An association also has the option to make the official records available electronically via the Internet or in an electronic format viewable on a computer screen.[19] Additionally, condominium associations with 150 or more units must maintain a website with digital copies of certain official records such as meeting notices, a copy of the articles of incorporation, declaration, bylaws, and rules of the association.[20]

However, the following records are not available for inspection by owners:[21]

- Records protected by the lawyer-client privilege;
- Information obtained by an association in connection with the transfer of a unit or parcel;
- Personnel records of association or management company employees;
- Unit owner medical records;
- Personnel identifying information such as social security numbers, driver license numbers, and credit card numbers;
- Electronic security measures that are used to safeguard data; and
- The software and operating system used by the association which allow the manipulation of data.

If a unit owner presents the Division with evidence that the association has failed or has refused to respond to two official records requests, the Division must issue a subpoena requiring the production of the requested records where the records are located.[22]

Official Records – Effect of the Bill

The bill allows an association to fulfill its obligation to let people copy and inspect official records if:

- The requested records are posted on the website or are available for download through an application on a mobile device, and
- The association directs all persons authorized to request access to the official records.

The bill provides that on January 1, 2026, a condominium association with **25 or more units**, instead of 150 or more units, is required to post digital copies of specified documents on its website or make such documents available through an application that can be downloaded on a mobile device.

Under the bill, **a copy of all building permits issued for ongoing or planned construction** is considered an official record which must be maintained for at least 7 years.

The bill clarifies that the e-mail addresses and facsimile numbers are only accessible to unit owners if consent to receive notice by electronic transmission is provided.

The bill provides that accounting records include:

- All invoices;
- Transaction receipts; or
- Deposit slips that substantiate any receipt or expenditure of funds by the association.

The bill requires that the official records must be maintained in an organized manner that makes the inspection of the records easier for the unit owner. The bill provides that in the event that the records are lost, destroyed, or otherwise unavailable, the obligation to maintain official records includes a good faith obligation to obtain and recreate those records to the fullest extent possible.

[18] S. 718.111(12)(c)2., F.S.
[19] *Id.*
[20] Ss. 718.111(12)(b), and (g), F.S.
[21] S. 718.111(12)(c), F.S.
[22] S. 718.501(1)(d)7., F.S.

Under the bill, the association must provide a checklist of the available official records for copying and inspecting and the records that are not available when a person provides a written request to inspect records. This checklist must be maintained for 7 years. An association delivering a checklist and affidavit creates a rebuttable presumption that the association has complied.

The bill provides criminal penalties for the association refusing to release or destroy official records. These include:

- A second-degree misdemeanor for any director or member of the board or association to knowingly, willfully, and "repeatedly" [23] violate any specified requirements relating to inspection and copying of official records of an association, he or she will be deemed removed from office and a vacancy declared.
- A **first-degree misdemeanor**, a civil penalty, and he or she will be **deemed removed from office and a vacancy declared**, for a person who:
  - knowingly or intentionally defaces or destroys accounting records that were required to be maintained for a certain period of time, or
  - who knowingly or intentionally fails to create or maintain accounting records with the intent of causing harm to the association or one or more of its members.
- A third-degree felony for willfully and knowingly refusing to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, and he or she will be deemed removed from office and a vacancy declared.

The bill makes conforming changes.

The bill requires the Division to provide the official records to the unit owner at **no charge** when the association has failed to or refused to respond to a unit owner's record requests.

Association Meetings- Current Situation

Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The Division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency.[24]

Association Meetings- Effect of the Bill

Under the bill, the board of a residential condominium association of more than 10 units, the board must meet at least four times each year for the purpose of responding to inquiries from members and informing members on the state of the condominium, including:

- The status of construction or repair projects;
- The status of the association's revenue and expenditures during the fiscal year; or
- Other issues affecting the association.

The bill provides that if an agenda item relates to the approval of a contract for goods or services, a copy of the contract must be provided with the notice of the meeting, and made available for inspection and copying upon a written request from a unit owner, or made available on the association's website or through an application that can be downloaded on a mobile device.

Powers and Duties of Officers and Directors- Current Situation

[23] In the bill, "repeatedly" means two or more violations within a 12-month period.
[24] S. 718.112(2)(c), F.S.

Breaches of a Fiduciary Duty and Prohibited Acts

Officers and directors of a condominium association have a fiduciary relationship to the unit owners, and may be sanctioned for breach of their fiduciary duty. "An officer [or director] may be liable to the association members for breaches of trust, fraud, negligence,[25] and he or she may be subject to removal from office and other civil penalties imposed by the Division of Florida Condominiums, Timeshares, and Mobile Homes for a willful and knowing violation of Condominium Act or a rule of the Division.[26]"[27]

An officer, director, or agent is liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breaches or fails to perform his or her duties. The breach of, or failure to perform, such duties constitutes:

- A violation of criminal law as provided in s. 617.0834, F.S.;
- A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or
- Recklessness[28] or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

An officer, director, or manager may not solicit, offer to accept, or accept anything or service of value or a kickback for which consideration has not been provided for the benefit of such person or immediate family members from any person providing or proposing to provide goods or services to the association.[29]

Any such officer, director, or manager who knowingly solicits, offers to accept, or accepts anything or service of value or kickback is subject to a civil penalty pursuant to s. 718.501(1)(d), F.S., and, if applicable, a criminal penalty as provided in s. 718.111(1)(d), F.S.

Moreover, any person who knowingly or intentionally defaces or destroys accounting records that are required to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty.[30]

Criminal Penalties

A directors and officers are subject to criminal penalties for the following:

- A third-degree felony for forgery of a ballot envelope or voting certificate used in a condominium association election; and[31]
- Theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014, F.S.

Removal from Office

A director or officer charged with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. While such director or officer has such criminal charge pending, he or she may not be

[25] S. 718.111(1)(d), F.S.
[26] *Id*.
[27] Peter M. Dunbar, The Condominium Concept, Pineapple Press (2022), p. 94.
[28] Section 617.0834(2)(a), F.S. defines "recklessness" as the acting, or omission to act, in conscious disregard of a risk:

- Known, or so obvious that it should have been known, to the officer or director; and
  Known to the officer or director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

[29] S. 718.111(1)(a), F.S.
[30] S. 718.111(12)(c)2., F.S., *see also*, s. 718.501(1), F.S.
[31] S. 718.111(1)(d), F.S.

appointed or elected to a position as a director or officer. However, if the charges are resolved without a finding of guilt, the director or officer will be reinstated for the remainder of his or her term of office, if applicable. [32]

Directors or officers charged with forgery of a ballot envelope or voting certificate, theft or embezzlement of association funds, and destruction of or refusal to allow inspection or copying of association records must be removed from office, and the vacancy[33] must be filled until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first. If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if applicable.

Debit Card Usage

An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.[34] Use of a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud.[35]

Officers and Directors- Effect of the Bill

Criminal Penalties

In addition to current requirements, the bill provides that an association officer, director, or CAM that accepts a kickback:

- Commits a third-degree felony, and
- Is deemed removed from office and a vacancy declared.

The bill provides that each of the following actions relating to condominium association elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:

- Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.
- Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This provision does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

[32] S. 718.112(2)(q), F.S.

[33] Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. *See* s. 718.112(2)(d)2., F.S.

[34] S. 718.111(15)(a), F.S.

[35] S. 718.111(15)(b), F.S.

- Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

In addition, the bill provides that the following actions relating to condominium association elections are fraudulent voting activities and constitute a misdemeanor of the first degree:

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment. This does not apply to a licensed attorney giving legal advice to a client.

Removal from Office

The bill expands the criminal offenses for which an officer or director charged by information or indictment must be removed from office to include:

- Forgery of a ballot envelope or voting certificate used in a condominium association election punishable as a felony crime as provided in s. 831.01, F.S.; and
- Destruction of or refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime which is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.

Under the bill, if a criminal charge is pending against an officer or director, he or she may not have access to the official records of any association, except pursuant to a court order.

Debit Card Usage

The bill provides that a person using a debit card that is issued to the association or billed the association for any expense that is not a lawful obligation of the association:

- Commits **theft under s. 812.014, F.S**, instead of being prosecuted as credit card fraud, and
- Shall be deemed removed from office and a vacancy declared.

The bill defines "lawful obligation of the association" as an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget.

Director Education- Current Situation

Newly elected or appointed directors of the board of a residential condominium association are required to complete an educational curriculum or written certification. Within 90 days after being elected or appointed, a newly elected or appointed director for a condominium must certify that he or she:[36]

- Has read the declaration of condominium for all condominiums operated by the association and the declaration of condominium, articles of incorporation, bylaws, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.[37] The curriculum must be administered by a condominium education provider approved by the Division.[38] A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board. The association is required to retain the educational certificates of the directors for 5 years.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.[39] If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a board director's election or the duration of the director's uninterrupted tenure, whichever is longer.[40] The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.[41]

Director Education- Effect of the Bill

The bill provides that:

- An existing director and a newly elected or an appointed director is required to submit both the writing certification and a certificate of completing the educational curriculum.
- Such educational curriculum may also be administered by the Division.
- Requires 4 hours of instruction for the initial education and the renewal of the education certificate. Such instruction to include milestone inspections, structural integrity reserve studies, recordkeeping, financial literacy and transparency, levying fines, and notice and meeting requirements.
- A director of a residential condominium that was elected or appointed before July 1, 2024 must comply with the written certification and educational certificate requirement by June 2025.
- The written certification **and** educational certificate are valid **for 7 years after the date of issuance** and does not have to be resubmitted as long as the director serves on the board without interruption during a **7-year period.**
- A director who is appointed by the developer may satisfy the educational certificate requirement for any subsequent appointment to a board by a developer within 7 years after the date of issuance of the most recent educational certificate, including any interruption of service on a board or appointment to a board in another association within that 7-year period.
- After the certificates are submitted, directors are required to annually submit to the secretary of the association a certificate of having satisfactorily completed a one-hour of continuing education administered by the Division, or Division-approved condominium education provider, relating to any recent changes.

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[36] S. 718.112(2)(d)4.b., F.S.
[37] The Division's Internet site provides a listing of approved educational providers for the certification of board members. *See* Department of Business and Professional Regulation, *Condominium & Cooperatives – Education, available at*: http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/education/ (last visited Jan. 30, 2024).
[38] S. 718.112(2)(d)4.b., F.S.
[39] *Id.*
[40] *Id.*
[41] *Id.*

- The association is required to retain the educational certificates of the directors for **7 years**, instead of 5 years.

Conflicts of Interest for Directors and Officers- Current Situation

An officer or director of an association, and their relatives, must disclose to the board any activity that may be construed as a conflict of interest. A rebuttable presumption of a conflict of interest exists if, without prior notice:[42]

- Any director, officer, or relative[43] of a director or officer enters into a contract for goods or services with the association; or
- Any director, officer, or relative holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract with the association.

Timeshare condominiums are exempted from this provision.[44]

If a director, officer, or relative of a director or officer proposes to engage in an activity that is a conflict of interest, the proposed activity must be listed on the meeting agenda and all contracts and transactional documents for the proposed activity must attached to the meeting agenda. The board must provide all these documents to the unit owners as well. The interested director or officer may attend the meeting at which the contract is considered and may make a presentation to the board regarding the activity. After the presentation, the director, officer, or relative must leave the room. Any director or officer who has an interest in the contract must recuse himself or herself from the vote.[45] Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other directors present.[46]

If the board rejects the proposed contract, the director, officer, or relative must notify the board in writing of his or her intent not to pursue the contract further or the director or officer must withdraw from office. If the board finds that a director or officer has not notified it of his or her intent to pursue the contract further, the officer or director is deemed removed from office, and the vacancy must be filled according to general law.[47]

Any contract entered into between any director, officer, or relative that is not properly noticed before consideration by the board is voidable. The contract is terminated upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.[48]

Conflicts of Interest for Directors and Officers- Effect of the Bill

The bill provides that the attendance of a director or an officer with a possible conflict of interest at the meeting of the board counts for purposes of quorum for the meeting. However, the vote on such matters containing a possible conflict of interest must occur in his or her absence on the proposed activity.

[42] S. 718.3027(1), F.S.
[43] "Relative" means in s. 718.3027, F.S. a relative within the third degree of consanguinity by blood or marriage.
[44] S. 718.3027(5), F.S.
[45] S. 718.3027(4), F.S.
[46] S. 718.3027(2), F.S.
[47] S. 718.3027(3), F.S.
[48] S. 718.3027(5), F.S.

Condominium Fines and Suspensions- Current Situation

Condominium associations may levy fines against or suspend the right of an owner, occupant, or an owner or occupant's guest, to use the common elements for failing to comply with any provision in the association's declaration, bylaws, or rules.[49]

A board may not impose a fine or suspension without giving at least 14 days' written notice of the fine or suspension and the opportunity for a hearing. The hearing must be held before a committee of unit or parcel owners who are not board members or residing in a board member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension.[50]

If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner. The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.[51]

An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. The suspension ends when the full payment of all past due obligations currently due the association are paid.[52]

Condominium Fines and Suspensions- Effect of the Bill

The bill provides that at least 90 days before an election, an association must notify a unit owner or member that his or her voting rights may be suspended due to a nonpayment of any fee, or monetary obligation.

Structural Integrity Reserve Study and Reserves – Current Situation

A reserve study is a budget-planning tool for community associations. Generally, a reserve study consists of the following two parts: physical analysis and financial analysis.[53]

In Florida law, "structural integrity reserve study" (SIRS) means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A SIRS may be performed by any person qualified to perform such study. However, the visual inspection portion of the SIRS must be performed by a:[54]

- Licensed engineer,
- Licensed architect, or
- person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts (CAIAPRA).

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[49] S. 718.303(3) F.S.
[50] S. 718.303(3)(b), F.S.
[51] *Id.*
[52] S. 718.303(4), F.S.
[53] Cedar Management Group, *HOA Reserve Study: Why Does Your Community Need It?*, https://cedarmanagementgroup.com/hoa-reserve-study-community/#what (last visited Jab. 29, 2024); Kevin Leonard and Robert Nordlund, Understanding Reserves: A guide to your association's reserve fund & reserve study, 26-29 (1st ed. 2021); Community Associations Institute, *National Reserve Study Standards*, https://www.reservestudy.com/wp-content/uploads/2019/01/NRSS-998-CAI-version-updated-2016.pdf (last visited Jan. 29, 2024).
[54] S. 718.112(2)(g)2., F.S.

At a minimum, a SIRS must:[55]

- Identify each item of the condominium property being visually inspected,
- State the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item of the condominium property being visually inspected, and
- Provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of condominium property being visually inspected by the end of the estimated remaining useful life of the item.

The SIRS may recommend for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined or with an estimated remaining useful life of greater than 25 years:[56]

- That reserves do not need to be maintained, or
- A deferred maintenance expense amount for such item.

A condominium or cooperative must have a SIRS completed at least every 10 years after the condominium's or cooperative's creation for each building on the condominium or cooperative property that is three stories or higher in height which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building (SIRS items):[57]

- Roof.
- Structure, including load-bearing walls and other primary structural members and primary structural systems.
- Fireproofing and fire protection systems.
- Plumbing.
- Electrical systems.
- Waterproofing and exterior painting.
- Windows and exterior doors.
- Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed above as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study.

The SIRS requirements do not apply to:[58]

- Buildings less than three stories in height;
- Single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground;
- Any portion or component of a building that has not been submitted to the condominium form of ownership; or
- Any portion or component of a building that is maintained by a party other than the association.

Condominium or cooperative associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a SIRS completed by December 31, 2024, for each building on the condominium or cooperative property that is three stories or higher in height. However, an association that is required to complete a milestone inspection on or before December 31, 2026, may complete the SIRS simultaneously with the milestone inspection. In no event may the SIRS be completed after December 31, 2026.[59]

If a condominium or cooperative association willfully and knowingly fails to complete a SIRS, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners.[60]

[55] S. 718.112(2)(g)3., F.S.
[56] *Id.*
[57] S. 718.112(2)(g)1., F.S.
[58] S. 718.112(2)(g)4., F.S.
[59] S. 718.112(2)(g)6., F.S.
[60] S. 718.112(2)(g)8., F.S.

Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report for each building on the condominium or cooperative property that is three stories or higher in height.[61]

Reserves

Every condominium and cooperative association must have a budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the association. The budget is adopted for a 12-month period reflecting an association's fiscal year, and it must provide a detailed listing of the estimated revenues and expenses that the association reasonably projects for the coming fiscal year. The annual budget is made up of two parts, the part covering the regular operations of the association and the part covering the cost for capital expenses and deferred maintenance (reserves).[62]

Reserves are funds that are set aside for capital expenses and deferred maintenance. Reserves provide funds for major capital repairs or replacements that are needed intermittently such as replacing a roof. The reserves are designed to ensure that an association will have the funds when the repairs are needed and will not have to do a large special assessment.[63]

The amount of funds that must be placed in reserve is determined by the condominium or cooperative association's most recent structural integrity reserve study. If the amount to be reserved for an item is not in the association's most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, then the association may use the traditional formula or alternative formula to determine the amount of funds to reserve.

Current law also requires associations to have and fund reserve accounts for roof replacement, building painting, pavement resurfacing, and any item for which the deferred maintenance expense or replacement cost is greater than $10,000.[64] There are two methods of calculating these reserves.

The first is the traditional formula, and the second is the alternative formula. The traditional formula takes into account the estimated deferred maintenance or capital expenditure amount, estimated fund balance, and number of years remaining until deferred maintenance or a capital expenditure is needed.[65]

The alternative formula allows associations to maintain a pooled account for multiple reserve assets that are similar or related. For example, an association responsible for managing two swimming pools may create a pool reserve account for both pools instead of a reserve account for each pool. The formula for a pooled account must provide for an annual contribution that will ensure the balance on hand in the account is equal to or greater than the annual projected outflows from the account.[66] However, pooled reserves are not permitted for SIRS items listed in the statute as being required in the SIRS are permitted to be pooled.

Waiver of Reserves

For a budget adopted on or after December 1, 2024, a unit-owner controlled association that must obtain a structural integrity reserve study may not waive collecting reserves or collect less reserve funds than required for items that are required to be inspected in a SIRS for an association building that is three stories or higher in height. In addition, unit-owner controlled associations may not use such reserve funds for purposes other than their intended purpose. Associations operating a

[61] S. 718.112(2)(g)5., F.S.
[62] S. 718.112(2)(f), F.S.
[63] S. 718.112(2)(f), F.S.
[64] *Id.*
[65] *Id.*; Rules 61B-22.005(3), and 61B-76.005(1), F.A.C.
[66] Rules 61B-22.005(1), (3), and 61B-76.005(1), (3), F.A.C.

multicondominium to provide no reserves or less reserves than required by the SIRS if such multicondominium uses an alternative funding method[67] approved by the Division.
For other reserve items, associations may waive funding reserves for capital expenditures and deferred maintenance or provide funds that are less than the required amount by a majority of the voting interests present at a properly called meeting. The waiver of reserves by the membership is only for the current year, and a separate vote must be taken each year to waive the reserves or fund less than the required amount.[68] Associations may also vote to use reserve funds for purposes other than their intended purpose, such as using funds from the roof reserve account for painting buildings, by a majority of the voting interests present at a properly called meeting.[69]

Structural Integrity Reserve Study and Reserves – Effect of the Bill

Structural Integrity Reserve Study (Condominiums and Cooperatives)

The bill provides that the association is required within 45 days after the receipt of a SIRS to:

- Distribute a copy of the SIRS to each unit owner; or
- Deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request.

The bill provides the manner in which the copy or the notice may be distributed. Distribution of a copy of the study or notice must be made by:

- United States mail or personal delivery to the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements or,
- By electronic transmission to the e-mail address or facsimile number on file.

The bill requires that the SIRS be included in the turnover inspection report that is delivered to the association once the developer turns over control of the association.

Reserves

The bill provides that:

- The board, upon the approval of a majority of its members, may pause its contributions to its reserves or reduce reserve funding if the local building official[70] determines that the entire condominium building is uninhabitable due to a natural emergency until the local building official determines that such building is habitable.[71]
- Any reserve account funds held by the association may be expended to make such building and structures habitable, pursuant to the board determination.
- The association must immediately resume contributing to its reserves once the building official determines that the building is habitable.

[67] "Alternative funding method" is defined as "a method approved by the Division for funding the capital expenditures and deferred maintenance obligations for a multicondominium association operating at least 25 condominiums which may reasonably be expected to fully satisfy the association's reserve funding obligations by the allocation of funds in the annual operating budget.
[68] S. 718.112(2)(f), F.S.; Rule 61B-22.005(8), F.A.C.
[69] S. 718.112(2)(f), F.S.
[70] See definition of building official in s. 468.603(2), F.S.
[71] "Natural emergency" means an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake. S. 252.34(8), F.S.

Financial Reporting- Current Situation

Condominium associations are required to complete an annual financial report of the previous year's financial activities and provide the report to unit owners. To comply with financial reporting requirements, associations must:[72]

- Complete an annual financial report for the previous fiscal year within 90 days after the end of the fiscal year, calendar year, or annually on a date provided in the bylaws;
- Provide unit or parcel owners the financial report or notice that the report is available upon request without charge within 21 days after the final financial report is completed by the condominium or received from the third party, but not later than 120 days after the end of the fiscal year or calendar year, or other date as provided in the bylaws; and
- Prepare financial statements according to generally accepted accounting principles and in a manner dictated by the total revenue of the association, specifically:
    - An association having total annual revenues between $150,000 and $300,000 must prepare compiled financial statements;
    - An association having total annual revenues between $300,000 and $500,000 must prepare reviewed financial statements;
    - An association having total revenues more than $500,000 must prepare audited financial statements; and
    - An association with total annual revenue of less than $150,000 must prepare a report of cash receipts and expenditures.

If a unit owner does not receive the financial report, he or she may contact the Division to report an association's failure to provide a copy of the financial report within the required time. If the Division determines that the association failed to provide the financial report in a timely manner, the Division requires the association to provide the financial report to the unit owner and the Division within 5 business days. If the association fails to comply with the Division's request, the association is prohibited from waiving the financial annual financial reporting requirements for the fiscal year in which the unit owner's request is made and the following fiscal year.

An association may vote to waive the annual financial reporting requirements and prepare a report of cash receipts and expenditures by approval of a majority of voting interests. Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year.

Financial Reporting- Effect of the Bill

The bill prohibits an association from waiving the annual financial reporting requirements and preparing a report of cash receipts and expenditures by approval of a majority of voting interests for consecutive fiscal years.

Hurricane Protection- Current Situation

Each board of administration of a residential condominium required to adopt specifications for each building within each condominium operated by the association which include:[73]

- Color;
- Style; and
- Other factors deemed relevant to the board.

All specifications adopted by the board must comply with the applicable building code. The board may, subject to the bidding process for contracts for goods and services and the approval of the of a majority of the voting interests of the residential condominium, install hurricane shutters, impact glass, code-

[72] S. 718.111(13), F.S.
[73] S. 718.113(5), F.S.

complaint windows, or doors, or other types of code-complaint hurricane protection that comply or exceed the applicable building code.[74]

A condominium association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.[75]

The board is authorized to operate shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed without the permission of the unit owners only if such operation is necessary to preserve and protect the condominium property or and association property.[76] The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are not a material alteration to the common elements or association property.[77]

Notwithstanding any other provision in the residential condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of hurricane protection by a unit owner conforming to the specifications adopted by the board.[78]

The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board constitutes a common expense and shall be collected by the association if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium.[79]

Further, a unit owner who has previously installed code-compliant shutters, impact glass, windows, or doors, must receive a credit when code-compliant shutters, impact glass, windows, or doors are installed.[80] A unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code, must receive a credit when the impact glass or code-compliant windows or doors are installed. A unit owner who has installed other types of code-compliant hurricane protection that comply with the currently applicable building code is entitled to receive a credit when the same type of other code-compliant hurricane protection is installed, and the credit must be equal to the pro rata portion of the assessed installation cost assigned to each unit.

Hurricane Protection- Effect of the Bill

The bill defines "hurricane protection" as hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property.

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[74] S. 718.113(5)(a), F.S.
[75] S. 718.113(5)(b), F.S.
[76] S. 718.113(5)(c), F.S.
[77] Section 718.110, F.S., provides the procedure for amending the declaration of condominium. It provides that, "unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment."
[78] S. 718.113(5)(d), F.S.
[79] S. 718.115(1)(e), F.S.
[80] S. 718.115(1)(e), F.S.

The bill clarifies the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections exterior doors, windows, and glass apertures.

The bill requires the declarations of residential condominiums and mixed-use condominiums to describe the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections. The bill provides that the hurricane protection provisions apply to all residential and **mixed-use condominiums** in Florida, regardless of when the condominium is created pursuant to the declaration.

The bill provides that the installation, maintenance, repair, replacement, and operation of hurricane protection in accordance with the hurricane protection requirements is not considered a material alteration or substantial addition to the common elements or association property.

A vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date that the hurricane protection must be installed. The certificate must:

- Be recorded in the public records of the county where the condominium is located.
- Include the recording data identifying the declaration of the condominium and must be executed in the form required for the execution of a deed.

Once the certificate is recorded, the board must mail or hand-deliver a copy of the recorded certificate to the unit owners at the owners' address as reflected in the records of the association. The board may provide a copy of the recorded certificate by electronic transmission to unit owners who previously consented to receive notice by electronic transmission. The board's failure to record the certificate or to send a copy of the recorded certificate to the unit owners does not affect the validity or enforceability of the vote of the unit owners.

The bill provides that if hurricane protection that complies with or exceeds the current applicable building code has been previously installed, the board may not install the **same type of** hurricane protection **or require that unit owners install the same type of hurricane protection unless the unit owners installed hurricane protection has reached the end of its useful life or it is necessary to prevent damage to the common elements or the unit**.

The bill allows the board to require that unit owners adhere to an existing unified building scheme regarding the external appearance of the condominium.

Regarding a unit owner's responsibility for the costs of installation or removal of hurricane protection, the bill provides that the unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection if:

- The unit owner installed the hurricane protection and
- Its removal is necessary for the maintenance, repair, or replacement of the condominium property or association property for which the association is responsible.

If such removal or installation is completed by the association, the association may not charge that cost to the unit owner. If such installation of removal is completed by the unit owner, the association must reimburse the unit owner for the cost or apply the cost as a credit toward future assessments.

Under the bill, the board must determine if the removal or reinstallation of hurricane protection is the responsibility of the unit owner, including costs, and if such removal or reinstallation is completed by the association, then the costs incurred by the association may be charged to the unit owner. If the association charges a unit owner for the removal or installation of hurricane protection, such charges are enforceable as an assessment and may be collected as such.

The bill deletes the requirement that the expense of installation, replacement, operation, repair, and maintenance of hurricane protection by the board constitutes a common expense and must be collected as a common expense if the association is responsible for the maintenance, repair, and

replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium.

The bill deletes the requirement that a unit owner who previously installed hurricane shutters that comply with the current applicable building codes receive a credit when the shutters are installed. The bill provides that a unit owner who has previously installed such items must receive a credit when the impact glass or code-compliant windows or doors are installed.

The bill provides, notwithstanding the limitation in s. 718.116(9), F.S., and regardless of what the declaration states about the responsibility of hurricane protection, an owner **of a unit in which** hurricane protection that **complies** with the current applicable building code **has been installed is excused from any assessment levied by the association** or will receive a credit **if** the same type of hurricane protection is installed **by the association**.

Credit is applicable if the installation of hurricane protection is for all other units that do not have hurricane protection and the cost of such installation is funded by the association's budget, including the use of reserve funds.

The bill adds that the credit must be equal to the amount that the unit owner would have been assessed to install the hurricane protection and that expenses for the installation, replacement, operation, repair, or maintenance of hurricane protection on common elements and association property are common expenses.

Prohibition against SLAPP Suits- Current Situation

Generally, "strategic lawsuits against public participation" (SLAPP) are legal actions brought against individuals for speaking out on issues that are important to the public in an effort to silence or discourage such individuals from speaking out. In the association context, a SLAPP suit may be related to an association member's exercise of their rights of free speech and assembly, which may be based on their appearance and presentation before a governmental entity on matters related to the condominium association.[81]

Florida has adopted anti-SLAPP laws[82] in the association context which prohibit governmental entities, business organizations, and individuals from filing or causing to be filed:

- Any lawsuit,
- Cause of action,
- Claim,
- Cross-claim, or counterclaim against a condominium unit owner without merit, and
- Solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.[83]

Current law does not specifically prohibit condominium associations from engaging in SLAPP suits, instead the prohibition generally applies to governmental entities, business organizations, and individuals.

The unit owners sued by a governmental entity, business organization, or individual have a right to an expeditious resolution of such an action, including the right to petition for a motion to dismiss or for a summary judgment. The court may award the unit owner actual damages for a violation of this prohibition and may also award treble damages. However, the court must state a basis for an award of treble damages. The court is further required to award the prevailing party reasonable attorney's fees

[81] S. 718.1224(1), F.S.
[82] Florida also has general anti-SLAPP laws that prohibit suits for exercising their right to free speech and assembly. S. 768.295, F.S.
[83] S. 718.1224, F.S.

and costs. Governmental entities, business organizations, individuals, and condominium associations[84] are barred from expending funds in prosecuting a SLAPP suit against a unit owner.

Prohibition against SLAPP Suits and Other Prohibited Actions- Effect of the Bill

The bill clarifies that a condominium association cannot engage in SLAAP suits.

The bill specifically prohibits condominium associations from:

- Retaliating against a unit owner, by imposing or threatening:
  - A fine,
  - An increase in a unit's assessments,
  - To bring or bringing an action for possession, or
  - other civil action, including a defamation, libel, slander, or tortious interference action.
- Spending association funds in support of defamation, libel, or tortious interference actions against a unit owner.

The bill allows the unit owner to present evidence of retaliatory conduct as a defense in any action brought against him or her for possession. The bill provides that a unit owner may use the defense of retaliatory conduct if the unit owner acted in good faith and not for any improper purposes. The bill provides that an improper purpose includes:

- Harassment;
- Cause unnecessary delay or for frivolous purpose; or
- Needless increase in the cost of litigation.

The bill provides examples of conduct for which a condominium association, an officer, a director, or an agent of an association are prohibited from retaliating include, but are not limited to, situations in which:

- The unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the condominium;
- The unit owner has organized, encouraged, or participated in a unit owners' organization;
- The unit owner submitted information or filed a complaint alleging criminal violations or violations of the Condominium Act or rules of the Division, with:
  - The Division;
  - Office of the Condominium Ombudsman;
  - A law enforcement agency;
  - A state attorney;
  - The Attorney General; or
  - Any other governmental agency.
- The unit owner has exercised his or her rights under the Condominium Act;
- The unit owner has complained to the association or any of the association's representatives for the failure to comply with the Condominium Act or Corporations Not For Profit Act; or
- The unit owner has made public statements critical of the operation or management of the association.

In addition, the bill prohibits associations from expending association funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim against a unit owner based on such retaliatory conduct.

The Division's Duties and Authority – Current Situation

For condominium associations, the Division has jurisdiction to investigate complaints and enforce compliance with the Condominium Act for associations that are controlled by a developer, a bulk buyer, or a bulk assignee. Once a developer has turned over control of the condominium to the association, the Division only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records, and the procedural completion of structural reserve studies.[85]

[84] S. 718.1224(4), F.S.
[85] S. 718.501(1), F.S.

If a person believes there is a violation of the Condominium Act, he or she may file a complaint with the Division. If the complaint is within the Division's jurisdiction, the Division assigns an investigator to the complaint. For purposes of any investigation, the Division director or any officer or employee designated by the Division director may:[86]

- Administer oaths or affirmations,
- Subpoena witnesses and compel their attendance,
- Take evidence, and
- Require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

After investigating the complaint, if the Division has reasonable cause to believe that a violation occurred, it may initiate an enforcement proceeding in its own name as follows:[87]

- Enter into a voluntary consent proceeding with the person who violated the Condominium Act where he or she consents to stopping the violation.
- Issue a cease and desist order.
- File an administrative complaint against the person.
- File an enforcement action in circuit court to seek declaratory or injunctive relief on behalf of the unit owners.
- Remove an individual from his or her position as an officer or board member of a condominium or cooperative.
- Impose civil penalties in the amount of up to $5,000 per violation.

In order to enforce the Condominium Act, the Division may conduct investigations, take sworn statements, receive evidence, and subpoena individuals and documentation. If the Division believes a person has destroyed or altered association documents or impaired the availability of association documents during an investigation, the Division must refer it to local law enforcement.[88]

Annual Report

The Division is required to submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report by September 30 following the end of the fiscal year that includes:[89]

- The number of training programs provided for condominium association board members and unit owners;
- The number of complaints received by type;
- The number and percent of complaints acknowledged in writing within 30 days;
- The number and percent of investigations acted upon within 90 days;[90]
- The number of investigations exceeding the 90-day requirement;
- An evaluation of the Division's core business processes; and
- Make recommendations for improvements, including statutory changes.

Alternative Dispute Resolution

There is an alternative dispute resolution process for certain disputes between unit owners and condominium or cooperative associations. Before the institution of court litigation, a party to certain disputes must either petition the Division for nonbinding arbitration or initiate pre-suit mediation.[91] Alternative dispute resolution offers a more efficient, cost-effective option to court litigation, but

[86] S. 718.501(1)(c), F.S.
[87] S. 718.501(1)(d), (m), F.S.
[88] S. 718.501(1)(c), F.S.
[89] S. 718.501(1)(s), F.S.
[90] In accordance with s. 718.501(1)(m), F.S.
[91] S. 718.1255, F.S.

alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.[92]

Alternative dispute resolution is required for any disagreements between two or more parties that involves:[93]

- The authority of the board of directors to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements;[94]
- The board of directors' failure to:
  - Properly conduct elections;
  - Give adequate notice of meetings or other actions;
  - Properly conduct meetings;
  - Provide access to association books and records; and
- A plan of termination.

The Division does not have jurisdiction to arbitrate or mediate disputes between a unit owner and an association that involve: [95]

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

Recall and election disputes in condominium, cooperative, and homeowners' associations are not eligible for pre-suit mediation and must be arbitrated by the Division or filed directly with a court of competent jurisdiction.[96]

Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in the arbitration,[97] or if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days after the arbitration decision is rendered.[98]

The filing fee for a petition to the Division to initiate nonbinding arbitration or pre-suit mediation is $50.[99] The Division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration.

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center.[100]

The mediation of disputes in condominium and cooperative associations is regulated under s. 720.311, F.S., which also provides for the mediation of the certain homeowners' association disputes. An aggrieved party in a dispute must initiate the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.[101]

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[92] S. 718.1255(3)(b), F.S.
[93] S. 718.1255(1)(a), F.S.
[94] *Id.*
[95] *Id.*
[96] S. 718.1255(5), F.S.
[97] S. 718.1255(4)(a), F.S.
[98] S. 718.1255(4)(k), F.S.
[99] S. 718.1255(4)(a), F.S.
[100] S. 718.1255(2), F.S.
[101] *Id.*

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.[102]

The bylaws for condominium and cooperative associations must provide for mandatory dispute resolution.[103]

The Division's Duties and Authority – Effect of the Bill

The bill adds to the Division's jurisdiction after turnover occurs to include investigation of complaints related to the procedural aspects of meetings; disclosure of conflicts of interests; and any written inquiries by unit owners to the association related to the matters under the Division's jurisdictional authority.

Conflicts of interests under the Division's authority include:

- When a director or officer is delinquent in payment for a certain amount of time then he or she is considered to have abandoned office, creating a vacancy in the office to be filled according to law;
- When a director or officer is charged with certain crimes and must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period or suspension or the end of the director's term of office, whichever occurs first.
- An officer, director, or manager who accepts a kickback.
- An association hiring an attorney who represents the management company of the association.
- Directors and officers, and the relatives of such directors and officers have a conflict of interest which he or she is required to disclose.

The bill clarifies the Division's jurisdictional grant of authority for financial issues and elections by citing specific statutes.

The bill clarifies that "financial issues" under the Division's jurisdiction include:

- Assessments;
- Financial Reporting;
- Commingling;
- Debit cards;
- Budget meetings; and
- Annual budget.

The bill clarifies that "elections" under the Division's jurisdiction include:

- Quorum, voting requirements, and proxies;
- Elections of board members;
- Recall of board members;
- Electronic voting;
- Fraudulent voting activities; and
- Elections that occur in accordance with the condominium association's emergency powers.

The bill requires the Division to refer to local law enforcement authorities any person whom the Division believes has engaged in fraud, theft, embezzlement, or other criminal activity or has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.

[102] S. 720.311(2)(b), F.S.
[103] S. 718.112(2)(k), F.S.

The bill provides that the Division director, any officer or employee of the Division, the condominium ombudsman, or employee of the Office of the Condominium Ombudsman,[104] may attend and observe any meeting of the board of administration or unit owner meeting, including any meeting of a subcommittee or special committee, that is open to members of the association for the purpose of performing the duties of the Division or the Office of the Ombudsman.

The bill requires the Division to routinely conduct random audits of condominium associations to determine compliance with the website or application requirements for official records under s. 718.111(12)(g), F.S.

The bill requires the Division submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees, a review of the website or application requirements for official records under s. 718.111(12)(g), F.S., and make recommendations regarding any additional official records of a condominium association that should be included in the record maintenance requirement in the provision.

The Office of the Condominium Ombudsman- Current Situation

The Office of the Condominium Ombudsman was established to be a neutral resource for unit owners, board members, condominium associations, and others. The ombudsman is authorized to prepare and issue reports and recommendation to the Governor, DBPR, the Division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the Division.[105] The Ombudsman is an attorney appointed by the Governor who is charged with certain duties, including but not limited to:

- Preparing and issuing reports and recommendations to the Governor, the Department, the Division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division;
- Acting as a liaison between the Division, unit owners, boards of directors, board members, community association managers, and other affected parties;
- Monitoring and reviewing procedures and disputes concerning condominium elections or meetings, including enforcement when the Ombudsman believes election misconduct has occurred;
- Making recommendations to the Division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers;
- Providing resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with the statutes, Division rules, and the condominium documents governing the association;
- Encouraging and facilitating voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy; and
- Assisting with the resolution of disputes between unit owners and the association or between unit owners when the dispute is not within the jurisdiction of the Division to resolve.[106]

The Office of the Condominium Ombudsman- Effect of the Bill

The bill provides that:

- The Secretary of the Division, instead of the Governor, shall appoint the ombudsman; and
- The ombudsman does not have to be an attorney.

B. SECTION DIRECTORY:

Section 1: Amends s. 468.4334, F.S., relating to professional practice standards.

[104] Ss. 718.5011-718.5014, F.S
[105] S. 718.5012(3), F.S.
[106] S. 718.5012, F.S.

Section 2: Creates s. 468.4335, F.S., relating to conflicts of interest.
Section 3: Amends s. 468.436, F.S., relating to disciplinary proceedings.
Section 4: Amends s. 718.103, F.S., relating to definitions.
Section 5: Amends s. 718.104, F.S., relating to the hurricane protection.
Section 6: Amends s. 718.111, F.S., relating to the association.
Section 7: Amends s. 718.111, F.S., relating to the association, effective January 1, 2026.
Section 8: Amends s. 718.112, F.S., relating to bylaws.
Section 9: Amends s. 718.113, F.S., relating to hurricane protection.
Section 10: Amends s. 718.115, F.S., relating to common expenses and common surplus.
Section 11: Amends s. 718.121, F.S., relating to liens.
Section 12: Amends s. 718.1224, F.S., relating to SLAPP suits.
Section 13: Amends s. 718.301, F.S., relating to transfer of association control.
Section 14: Amends s. 718.3027, F.S., relating to conflicts of interest.
Section 15: Amends s. 718.303, F.S., relating to obligations of owners and occupants.
Section 16: Amends s. 718.501, F.S., relating to authority and duties of the Division.
Section 17: Amends s. 718.5011, F.S., relating to the appointment of the ombudsman.
Section 18: Amends s. 719.106, F.S., relating to bylaws; cooperative ownership.
Section 19: Amends s. 719.301, F.S., relating to transfer of association control.
Section 20: Provides that the Division is required to submit a report.
Section 21: Provides appropriations.
Section 22: Provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

For the 2024-2025 fiscal year, the bill appropriates $6.1 million in recurring and $1.3 million in nonrecurring from the General Revenue Fund and 65 positions for the purpose of implementing the act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The condominium association may have to employ additional staff to make certain records available on a website or mobile device application, as well as carrying out other provisions in the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Division may create a Division-approved education curriculum. The Division may have to generate rules regarding additional duties and enforcement provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Regulatory Reform & Economic Development Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that community association managers and firms may retain records for up to 20 days after their contract is terminated in order to complete an ending financial statement or report.
- Provides that maintenance of official records includes a **good faith** obligation to recover records as may be reasonably possible in the event records are lost, destroyed, or otherwise unavailable.
- Provides that a condominium association may satisfy a request for access to records by making the records available for download on the association website or **through an application on a mobile device.**
- Removes the requirement that the checklist made in response to a records request be **accompanied by a sworn affidavit**.
- Provides a **first-degree misdemeanor** for knowingly or intentionally defacing or destroying required accounting records or knowingly and intentionally failing to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members.
- Provides that officers and directors charged with a specified criminal violation are deemed removed from office and a vacancy declared.
- Requires that meetings of the board must be **once each quarter** instead of four times a year.
- Removes the requirement that a special assessment must be recorded in the public record.
- Changes the retention period for a director's educational certificate to **7 years**, instead of 5 years.
- Revises educational curriculum to:
    - Require 4 hours of instruction for the initial education and the renewal of the education certificate.
    - Requires such instruction to include milestone inspections, structural integrity reserve studies, recordkeeping, financial literacy and transparency, levying fines, and notice and meeting requirements.
    - Require a director to annually complete **one hour** of continuing education regarding the recent changes in the past year.
- Clarifies that a board may stop contributing to the reserves if there is a determination that the building is uninhabitable due to a natural emergency.
- Requires reserve contributions to immediately resume when the building is determined to be habitable.
- Removes provisions related to allowing the association to use a line of credit.
- Clarifies jurisdiction of the Division after turnover occurs includes investigation of complaints alleging violations of the Condominium Act and other relevant rules or orders.
- Provides that the Secretary, instead of the Governor, must appoint the ombudsman and that the ombudsman does not have to be an attorney.

On February 13, 2024, the State Administration & Technology Appropriations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Add to the Division's jurisdiction after turnover occurs to include investigation of complaints related to the procedural aspects of meetings; disclosure of conflicts of interests; and any written inquiries by unit owners to the association related to the matters under the Division's jurisdictional authority.

- Clarifies the Division's jurisdictional grant of authority for financial issues and elections by citing specific statutes.
- Provides appropriations and staff.

This analysis is drafted to the committee substitute as passed by the State Administration & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to community associations; amending s. 468.4334, F.S.; requiring community association managers and community association management firms to return official records of an association within a specified time after termination of a contract; requiring notices of termination of certain contractual agreements to be sent in a specified manner; authorizing community association managers and community association management firms to retain, for a specified timeframe, records necessary to complete an ending financial statement or report; relieving community association managers and community association management firms from certain responsibilities and liability under certain circumstances; providing a rebuttable presumption regarding noncompliance; providing penalties for the failure to timely return official records; creating s. 468.4335, F.S.; requiring community association managers and community association management firms to disclose certain conflicts of interest to the association's board; providing a rebuttable presumption as to the existence of a conflict; requiring an association to solicit and consider multiple bids for goods or services under certain

circumstances; providing requirements for an association to approve any activity that is a conflict of interest; authorizing certain contracts to be canceled, subject to certain requirements; specifying liability and nonliability of the association upon cancellation of such a contract; authorizing an association to cancel a contract if certain conflicts were not disclosed; specifying liability and nonliability of the association upon cancellation of a contract; defining the term "relative"; reenacting and amending s. 468.436, F.S.; revising the list of grounds for which the Department of Business and Professional Regulation may take disciplinary actions against community association managers or community association firms; amending s. 718.103, F.S.; defining the term "hurricane protection"; amending s. 718.104, F.S.; requiring declarations to specify the entity responsible for the installation, maintenance, repair, or replacement of hurricane protection; amending s. 718.111, F.S.; providing criminal penalties for any officer, director, or manager of an association who unlawfully solicits, offers to accept, or accepts any thing or service of value or kickback; requiring such officers, directors, or managers to be removed from office and a vacancy declared; revising the list of

records that constitute the official records of an association; revising maintenance requirements for official records; revising requirements regarding requests to inspect or copy association records; requiring an association to provide a checklist in response to certain records requests; providing a rebuttable presumption and criminal penalties; requiring certain persons to be removed from office and a vacancy declared under certain circumstances; defining the term "repeatedly"; requiring copies of certain building permits be posted on an association's website or application; modifying the method of delivery of certain financial reports to unit owners; revising circumstances under which an association may prepare certain reports; revising criminal penalties for persons who unlawfully use a debit card issued in the name of an association; requiring certain persons to be removed from office and a vacancy declared under certain circumstances; defining the term "lawful obligation of the association"; revising the threshold for associations that must post certain documents on its website or through an application; amending s. 718.112, F.S.; requiring the boards of certain associations to meet at least once every quarter; revising requirements regarding notice of such

meetings; requiring a director to complete an educational requirement within a specified time period before or after election or appointment to the board; providing requirements for the educational curriculum; providing transitional provisions; requiring a director to complete a certain amount of continuing education each year relating to changes in the law; requiring the secretary of the association to maintain certain information for inspection for a specified number of years; authorizing members of an association to pause the contribution to reserves or reduce reserves under certain circumstances and for a limited time; authorizing the board to expend reserve account funds to make the condominium building and structures habitable; requiring an association to distribute or deliver copies of a structural integrity reserve study to unit owners within a specified timeframe; specifying the manner of distribution or delivery; revising the circumstances under which a director or an officer must be removed from office after being charged by information or indictment of certain crimes; prohibiting such officers and directors with pending criminal charges from accessing the official records of any association; providing an exception; providing criminal penalties for certain fraudulent

voting activities relating to association elections; amending s. 718.113, F.S.; providing applicability; specifying that certain actions are not material alterations or substantial additions; authorizing the boards of residential and mixed-use condominiums to install or require unit owners to install hurricane protection; requiring a vote of the unit owners for the installation of hurricane protection; requiring that such vote be attested to in a certificate and recorded in certain public records; requiring the board to provide, in various manners, to the unit owners a copy of the recorded certificate; providing that the validity or enforceability of a vote is not affected if the board fails to take certain actions; providing that a vote of the unit owners is not required under certain circumstances; prohibiting installation of the same type of hurricane protection previously installed; providing exceptions; prohibiting the boards of residential and mixed-use condominiums from refusing to approve certain hurricane protections; authorizing the board to require owners to adhere to certain guidelines regarding the external appearance of a condominium; revising responsibility for the cost of the removal or reinstallation of hurricane protection, including

exterior windows, doors, or apertures; prohibiting the association from charging certain expenses to unit owners; requiring reimbursement or a credit toward future assessments to the unit owner in certain circumstances; authorizing the association to collect certain charges and specifying that such charges are enforceable as assessments under certain circumstances; amending s. 718.115, F.S.; specifying when the cost of installation of hurricane protection is not a common expense; authorizing certain expenses to be enforceable as assessments; requiring certain unit owners to be excused from certain assessments or to receive a credit for hurricane protection that has been installed; providing credit applicability under certain circumstances; providing for the amount of credit that a unit owner must receive; specifying that certain expenses are common expenses; amending s. 718.121, F.S.; conforming a cross-reference; amending s. 718.1224, F.S.; revising legislative findings and intent; revising the definition of the term "governmental entity"; prohibiting an association from filing strategic lawsuits, taking certain actions against unit owners, and expending funds to support certain actions; amending s. 718.301, F.S.; requiring developers to deliver a structural integrity reserve

report to an association upon relinquishing control of the association; amending s. 718.3027, F.S.; revising requirements regarding attendance at a board meeting in the event of a conflict of interest; modifying circumstances under which a contract may be voided; amending s. 718.303, F.S.; requiring an association to provide certain notice to a unit owner by a specified time before an election; amending s. 718.501, F.S.; revising circumstances under which the Division of Florida Condominiums, Timeshares, and Mobile Homes has jurisdiction to investigate and enforce complaints relating to certain matters; requiring that the division provide official records, without charge, to a unit owner denied access; requiring the division to provide an educational curriculum free of charge and issue a certificate to directors of a board of administration; requiring that the division refer suspected criminal acts to the appropriate law enforcement authority; authorizing certain division officials to attend association meetings; requiring that the division conduct random audits of associations for specified purposes; requiring an association's annual fee be filed concurrently with the annual certification; specifying requirements for the annual certification; amending s. 718.5011, F.S.;

providing that the secretary of the Department of Business and Professional Regulation, rather than the Governor, appoints the condominium ombudsman; amending s. 719.106, F.S.; requiring an association to distribute or deliver copies of a structural integrity reserve study to unit owners within a specified timeframe; specifying the manner of distribution or delivery; amending s. 719.301, F.S.; requiring developers to deliver a structural integrity reserve study to a cooperative association upon relinquishing control of association property; requiring the division to conduct a review of statutory requirements regarding posting of official records on a condominium association's website or application; requiring the division to submit its findings, including any recommendations, to the Governor and the Legislature by a specified date; providing appropriations; providing effective dates.

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

Section 1. Subsection (3) is added to section 468.4334, Florida Statutes, to read:

468.4334 Professional practice standards; liability.—

(3) A community association manager or a community

association management firm shall return all community association official records within its possession to the community association within 20 business days after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request for return of the official records, whichever occurs first. A notice of termination of a contractual agreement to provide community association management services must be sent by certified mail, return receipt requested, or in the manner required under such contractual agreement. The community association manager or community association management firm may retain, for up to 20 business days, those records necessary to complete an ending financial statement or report. If an association fails to provide access to or retention of the accounting records to prepare an ending financial statement or report, the community association manager or community association management firm is relieved from any further responsibility or liability relating to the preparation of such ending financial statement or report. Failure of a community association manager or a community association management firm to timely return all of the official records within its possession to the community association creates a rebuttable presumption that the community association manager or community association management firm willfully failed to comply with this subsection. A community association manager or a community

association management firm that fails to timely return community association records is subject to suspension of its license under s. 468.436, and a civil penalty of $1,000 per day for up to 10 business days, assessed beginning on the 21st business day after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request from the association for return of the records, whichever occurs first.

Section 2. Section 468.4335, Florida Statutes, is created to read:

468.4335 Conflicts of interest.—

(1) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, must disclose to the board of a community association any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice:

(a) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, enters into a contract for goods or services with the association.

(b) A community association manager or a community

association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, holds an interest in or receives compensation or any thing of value from a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

(2) If the association receives and considers a bid to provide a good or service, other than community association management services, from a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, the association must also solicit and consider at least three bids from other third-party providers of such good or service.

(3) If a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, proposes to engage in an activity that is a conflict of interest as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda of the next board of administration meeting. The disclosures of

a possible conflict of interest must be entered into the written minutes of the meeting. Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other directors present. At the next regular or special meeting of the members, the existence of the contract or other transaction must be disclosed to the members.

(4) If the board finds that a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, has violated this section, the association may cancel its community association management contract with the community association manager or the community association management firm. If the contract is canceled, the association is liable only for the reasonable value of the management services provided up to the time of cancellation and is not liable for any termination fees, liquidated damages, or other form of penalty for such cancellation.

(5) If an association enters into a contract with a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, which is a party to or has an interest in an activity that is a possible conflict of interest as described in subsection (1) and such activity has not been

properly disclosed as a conflict of interest or potential conflict of interest as required by this section, the contract is voidable and terminates upon the association filing a written notice terminating the contract with its board of directors which contains the consent of at least 20 percent of the voting interests of the association.

(6) As used in this section, the term "relative" means a relative within the third degree of consanguinity by blood or marriage.

Section 3. Paragraph (b) of subsection (2) of section 468.436, Florida Statutes, is amended, and subsection (4) of that section is reenacted, to read:

468.436 Disciplinary proceedings.—

(2) The following acts constitute grounds for which the disciplinary actions in subsection (4) may be taken:

(b)1. Violation of ~~any provision of~~ this part.

2. Violation of any lawful order or rule rendered or adopted by the department or the council.

3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.

4. Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

5. Committing acts of gross misconduct or gross negligence in connection with the profession.

6. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

7. Failing to disclose any conflict of interest as required by s. 468.4335.

8.~~7.~~ Violating ~~any provision of~~ chapter 718, chapter 719, or chapter 720 during the course of performing community association management services pursuant to a contract with a community association as defined in s. 468.431(1).

(4) When the department finds any community association manager or firm guilty of any of the grounds set forth in subsection (2), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $5,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the community association manager on probation for a period of time and subject to such conditions as the department specifies.

(f) Restriction of the authorized scope of practice by the community association manager.

Section 4. Subsections (19) through (32) of section 718.103, Florida Statutes, are renumbered as subsections (20)

through (33), respectively, and a new subsection (19) is added to that section, to read:

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

(19) "Hurricane protection" means hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property.

Section 5. Paragraph (p) is added to subsection (4) of section 718.104, Florida Statutes, to read:

718.104 Creation of condominiums; contents of declaration.—Every condominium created in this state shall be created pursuant to this chapter.

(4) The declaration must contain or provide for the following matters:

(p) For both residential condominiums and mixed-use condominiums, a statement that specifies whether the unit owner or the association is responsible for the installation, maintenance, repair, or replacement of hurricane protection that is for the preservation and protection of the condominium property and association property.

Section 6. Paragraph (a) of subsection (1) and subsections (12), (13), and (15) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts any thing or service of value or kickback commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, is subject to a civil penalty pursuant to s. 718.501(1)(d), and must be removed from office and a vacancy declared ~~and, if applicable, a criminal penalty as provided in paragraph (d)~~. However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade

fairs or education programs. An association may operate more than one condominium.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer under s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. ~~The e-~~

~~mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided~~ In accordance with sub-subparagraph (c)5.e., the e-mail addresses and facsimile numbers are only accessible to unit owners if consent to receive notice by electronic transmission is provided ~~(c)3.e~~. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not

limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. All invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the association.

c.~~b.~~ A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

d.~~c.~~ All audits, reviews, accounting statements, structural integrity reserve studies, and financial reports of the association or condominium. Structural integrity reserve studies must be maintained for at least 15 years after the study is completed.

e.~~d.~~ All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as

agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. A copy of the inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property. Such record must be maintained by the association for 15 years after receipt of the report.

16. Bids for materials, equipment, or services.

17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

18. A copy of all building permits issued for ongoing or planned construction.

19.~~18.~~ All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. The official records must be maintained in an organized manner that facilitates inspection of the records by a unit owner. In the event that the official

records are lost, destroyed, or otherwise unavailable, the obligation to maintain the official records includes a good faith obligation to obtain and re-create those records to the fullest extent possible. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph and paragraph (c) may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet as provided under paragraph (g) or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative in compliance with this chapter unless the association has an affirmative duty not to disclose such information under this chapter.

(c)1.a.~~(c)1.~~ The official records of the association are open to inspection by any association member and any person authorized by an association member as a representative of such

member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member and of the person authorized by the association member as a representative of such member. A renter of a unit has a right to inspect and copy only the declaration of condominium, the association's bylaws and rules, and the inspection reports described in ss. 553.899 and 718.301(4)(p). The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. If the requested records are posted on an association's website, or are available for download through an application on a mobile

device, the association may fulfill its obligations under this paragraph by directing to the website or the application all persons authorized to request access.

b. In response to a written request to inspect records, the association must simultaneously provide to the requestor a checklist of all records made available for inspection and copying. The checklist must also identify any of the association's official records that were not made available to the requestor. An association must maintain a checklist provided under this sub-subparagraph for 7 years. An association delivering a checklist pursuant to this sub-subparagraph creates a rebuttable presumption that the association has complied with this paragraph.

2. A director or member of the board or association or a community association manager who knowingly, willfully, and repeatedly violates subparagraph 1. commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and must be removed from office and a vacancy declared. For purposes of this subparagraph, the term "repeatedly" means two or more violations within a 12-month period.

3.~~2.~~ Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required

to be created or maintained, with the intent of causing harm to the association or one or more of its members, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, is personally subject to a civil penalty pursuant to s. 718.501(1)(d), and must be removed from office and a vacancy declared.

4. A person who willfully and knowingly refuses to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and must be removed from office and a vacancy declared.

5.~~3.~~ The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an

electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that

indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

(d) The association shall prepare a question and answer sheet as described in s. 718.504, and shall update it annually.

(e)1. The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed $150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my

ability as to their accuracy."

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be

accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the

unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6., and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view

on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

o. Copies of all building permits issued for ongoing or planned construction.

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's

website or application, the association shall ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall deliver ~~mail~~ to each unit owner by United States mail or personal delivery at the mailing address, property address, e-mail address, or facsimile number provided to fulfill the association's notice requirements ~~at the address last furnished to the association by the unit owner, or hand deliver to each unit owner~~, a copy of the most recent financial

report, and ~~or~~ a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken. An association may not prepare a financial report pursuant to this paragraph for consecutive fiscal years, ~~except that the approval may also be effective for the following fiscal year~~. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's

financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association.

(e) A unit owner may provide written notice to the division of the association's failure to mail or hand deliver him or her a copy of the most recent financial report within 5 business days after he or she submitted a written request to the association for a copy of such report. If the division determines that the association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division's request may not waive the financial reporting

requirement provided in paragraph (d) for the fiscal year in which the unit owner's request was made and the following fiscal year. A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

(15) DEBIT CARDS.—

(a) An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.

(b) A person who uses ~~Use of~~ a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association commits theft under s. 812.014 and must be removed from office and a vacancy declared. For the purposes of this paragraph, the term "lawful obligation of the association" means an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget ~~may be prosecuted as credit card fraud pursuant to s. 817.61~~.

Section 7. Effective January 1, 2026, paragraph (g) of subsection (12) of section 718.111, Florida Statutes, as amended by this act, is amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(g)1. ~~By January 1, 2019,~~ An association managing a condominium with 25 ~~150~~ or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents

that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any

proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6., and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

o. Copies of all building permits issued for ongoing or planned construction.

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information

required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Section 8. Paragraphs (c), (d), (f), (g), and (q) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (r) is added to that subsection, to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(c) *Board of administration meetings.*—In a residential condominium association of more than 10 units, the board of administration shall meet once each quarter for the purpose of responding to inquiries from members and informing members on the state of the condominium, including the status of any construction or repair projects, the status of the association's revenue and expenditures during the fiscal year, or other issues affecting the association. Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall

adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. ~~Notice of any meeting in which regular or special assessments against unit owners are to~~

~~be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments.~~

2. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property at which ~~where~~ all notices of board meetings must be posted. If there is no condominium property at which ~~where~~ notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for

conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website at which ~~where~~ the notice is posted, to unit owners whose e-mail addresses are included in the association's official records.

3. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments. If an agenda item relates to the approval of a contract for goods or services, a copy of the contract must be provided with the notice and be made available for inspection and copying upon a written request from a unit owner or made available on the association's website or through an application that can be downloaded on a mobile device.

4.~~2.~~ Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board

regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

5.~~3.~~ Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an

eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a

residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if

committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice of an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; and be posted in a conspicuous place on the condominium property or association property at least 14 continuous days before the annual meeting. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the bylaws. If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association

property at which ~~where~~ all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which

must include a hyperlink to the website at which ~~where~~ the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or

otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates not less than 14 days or more than 34 days before the date of the election. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to

reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. A director of a ~~Within 90 days after being elected or appointed to the~~ board of an association of a residential condominium~~, each newly elected or appointed director~~ shall:

(I) Certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such

documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members.

(II) Submit to the secretary of the association ~~In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit~~ a certificate of having satisfactorily completed the educational curriculum administered by the division or a division-approved condominium education provider. The educational curriculum must be at least 4 hours long and include instruction on milestone inspections, structural integrity reserve studies, recordkeeping, financial literacy and transparency, levying of fines, and notice and meeting requirements ~~within 1 year before or 90 days after the date of election or appointment~~.

Each newly elected or appointed director must submit to the secretary of the association the written certification and educational certificate within 1 year before being elected or appointed or 90 days after the date of election or appointment. A director of an association of a residential condominium who was elected or appointed before July 1, 2024, must comply with the written certification and educational certificate requirements in this sub-subparagraph by June 30, 2025. The written certification and ~~or~~ educational certificate is valid

for 7 years after the date of issuance and does not have to be resubmitted as long as the director serves on the board without interruption during the 7-year period. A director who is appointed by the developer may satisfy the educational certificate requirement in sub-sub-subparagraph (II) for any subsequent appointment to a board by a developer within 7 years after the date of issuance of the most recent educational certificate, including any interruption of service on a board or appointment to a board in another association within that 7-year period. One year after submission of the most recent written certification and educational certificate, and annually thereafter, a director of an association of a residential condominium must submit to the secretary of the association a certificate of having satisfactorily completed at least 1 hour of continuing education administered by the division, or a division-approved condominium education provider, relating to any recent changes to this chapter and the related administrative rules during the past year. A director of an association of a residential condominium who fails to timely file the written certification and ~~or~~ educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification and ~~or~~ educational certificate for inspection by

the members for 7 ~~5~~ years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification and ~~or~~ educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration; unit owner meetings, except unit owner meetings called to recall board members under paragraph (l); and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely

responsible for removing or bypassing filters that block receipt of mass e-mails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (l) and rules adopted by the division.

10. This chapter does not limit the use of general or

limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least 14 days before the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association must adopt a separate budget of

common expenses for each condominium the association operates and must adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they do not need to be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the reserve item. In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (g) for which the association is responsible pursuant to the declaration of condominium, and the reserve amount for such items must be based

on the findings and recommendations of the association's most recent structural integrity reserve study. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of deferred maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. The members of a unit-owner-controlled association may determine, by a majority vote of the total voting interests of the association, to provide no reserves or less reserves than required by this subsection. For a budget adopted on or after December 31, 2024, the members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not determine to provide no reserves or less reserves than required by this subsection for items listed in paragraph (g), except that members of an association operating a multicondominium may determine to provide no reserves or less reserves than required by this subsection if an alternative funding method has been approved by the division. If the local building official, as defined in s. 468.603, determines that the

entire condominium building is uninhabitable due to a natural emergency, as defined in s. 252.34, the board, upon the approval of a majority of its members, may pause the contribution to its reserves or reduce reserve funding until the local building official determines that the condominium building is habitable. Any reserve account funds held by the association may be expended, pursuant to the board's determination, to make the condominium building and its structures habitable. Upon the determination by the local building official that the condominium building is habitable, the association must immediately resume contributing funds to its reserves.

b. Before turnover of control of an association by a developer to unit owners other than a developer under s. 718.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote of all the

total voting interests of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended. For a budget adopted on or after December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, for any other purpose other than the replacement or deferred maintenance costs of the components listed in paragraph (g).

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(g) *Structural integrity reserve study.*—

1. A residential condominium association must have a structural integrity reserve study completed at least every 10 years after the condominium's creation for each building on the condominium property that is three stories or higher in height, as determined by the Florida Building Code, which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. Fireproofing and fire protection systems.

d. Plumbing.

e. Electrical systems.

f. Waterproofing and exterior painting.

g. Windows and exterior doors.

h. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the condominium property. A structural integrity reserve study may be performed by any person qualified

to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the condominium property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item of the condominium property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of condominium property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a deferred maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a deferred

maintenance expense amount for such item.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the condominium form of ownership; or any portion or component of a building that is maintained by a party other than the association.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report in compliance with s. 718.301(4)(p) and (q) for each building on the condominium property that is three stories or higher in height.

6. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three stories or higher in height. An association that is required to complete a milestone inspection in accordance with s. 553.899 on or before December 31, 2026, may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was

performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 718.111(1).

9. Within 45 days after receiving the structural integrity reserve study, the association must distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request. Distribution of a copy of the study or notice must be made by United States mail or personal delivery to the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter, or by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission.

(q) *Director or officer offenses.*—

1. A director or an officer charged by information or indictment with any of the following crimes must be removed from

office:

a. Forgery, as provided in s. 831.01, of a ballot envelope or voting certificate used in a condominium association election.

b. Theft, as provided in s. 812.014, or embezzlement involving the association's funds or property.

c. Destruction of, or the refusal to allow inspection or copying of, an official record of a condominium association which is accessible to unit owners within the time periods required by general law, in furtherance of any crime. Such act constitutes tampering with physical evidence as provided in s. 918.13.

d. Obstruction of justice under chapter 843.

2. The board shall fill the vacancy in accordance with paragraph (2)(d) ~~a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law~~ until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the director or officer shall be

reinstated for the remainder of his or her term of office, if any.

(r) *Fraudulent voting activities relating to association elections; penalties.*—

1. A person who engages in the following acts of fraudulent voting activity relating to association elections commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

a. Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.

b. Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.

c. Preventing a member from voting or preventing a member from voting as he or she intended by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.

d. Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when the member is voting.

e. Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that

member or another member in casting his or her vote. This sub-subparagraph does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

f. Using or threatening to use, directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on a particular ballot measure.

2. Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

a. Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.

b. Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.

c. Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment. This sub-subparagraph does not apply to a licensed attorney giving legal advice to a client.

Section 9. Subsection (5) of section 718.113, Florida

Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane ~~shutters and~~ protection; display of religious decorations.—

(5) To protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protections installed by condominium associations and unit owners, this subsection applies to all residential and mixed-use condominiums in the state, regardless of when the condominium is created pursuant to the declaration of condominium. Each board of administration of a residential condominium or mixed-use condominium must ~~shall~~ adopt hurricane protection ~~shutter~~ specifications for each building within each condominium operated by the association which may ~~shall~~ include color, style, and other factors deemed relevant by the board. All specifications adopted by the board must comply with the applicable building code. The installation, maintenance, repair, replacement, and operation of hurricane protection in accordance with this subsection is not considered a material alteration or substantial addition to the common elements or association property within the meaning of this section.

(a) The board may, subject to s. 718.3026 and the approval of a majority of voting interests of the residential condominium or mixed-use condominium, install or require that unit owners install hurricane ~~shutters, impact glass, code-compliant windows~~

~~or doors, or other types of code-compliant hurricane~~ protection that complies ~~comply~~ with or exceeds ~~exceed~~ the applicable building code. A vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date that the hurricane protection must be installed. The board must record the certificate in the public records of the county in which the condominium is located. Once the certificate is recorded, the board must mail or hand deliver a copy of the recorded certificate to the unit owners at the owners' addresses, as reflected in the records of the association. The board may provide to unit owners who previously consented to receive notice by electronic transmission a copy of the recorded certificate by electronic transmission. The failure to record the certificate or send a copy of the recorded certificate to the unit owners does not affect the validity or enforceability of the vote of the unit owners. ~~However,~~ A vote of the unit owners under this paragraph is not required if the installation, maintenance, repair, and replacement of the hurricane ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane~~ protection, or any exterior windows, doors, or other apertures protected by the hurricane protection, is ~~are~~ the responsibility of the association pursuant to the declaration of condominium as originally recorded or as amended, or if the unit owners are required to install hurricane

protection pursuant to the declaration of condominium as originally recorded or as amended. If hurricane protection ~~or laminated glass or window film architecturally designed to function as hurricane protection~~ that complies with or exceeds the current applicable building code has been previously installed, the board may not install the same type of ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection or require that unit owners install the same type of hurricane protection unless the installed hurricane protection has reached the end of its useful life or unless it is necessary to prevent damage to the common elements or to a unit ~~except upon approval by a majority vote of the voting interests~~.

~~(b) The association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by this subsection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.~~

(b) ~~(c)~~ The board may operate ~~shutters, impact glass, code-~~

~~compliant windows or doors, or other types of code-compliant~~ hurricane protection ~~installed pursuant to this subsection~~ without permission of the unit owners only if such operation is necessary to preserve and protect the condominium property or ~~and~~ association property. ~~The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in this paragraph are not a material alteration to the common elements or association property within the meaning of this section.~~

(c) ~~(d)~~ Notwithstanding any other provision in the residential condominium or mixed-use condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection by a unit owner which conforms ~~conforming~~ to the specifications adopted by the board. However, a board may require the unit owner to adhere to an existing unified building scheme regarding the external appearance of the condominium.

(d) A unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection, including exterior windows, doors, or other apertures, if its removal is necessary for the maintenance, repair, or replacement of other

condominium property or association property for which the association is responsible. The board shall determine if the removal or reinstallation of hurricane protection must be completed by the unit owner or the association. If such removal or reinstallation is completed by the association, the costs incurred by the association may not be charged to the unit owner. If such removal or reinstallation is completed by the unit owner, the association must reimburse the unit owner for the cost of the removal or reinstallation or the association must apply a credit toward future assessments in the amount of the unit owner's cost to remove or reinstall the hurricane protection.

(e) If the removal or reinstallation of hurricane protection, including exterior windows, doors, or other apertures, is the responsibility of the unit owner and the association completes such removal or reinstallation and then charges the unit owner for such removal or reinstallation, such charges are enforceable as an assessment and may be collected in the manner provided under s. 718.116.

Section 10. Paragraph (e) of subsection (1) of section 718.115, Florida Statutes, is amended to read:

718.115 Common expenses and common surplus.—

(1)

(e)1. Except as provided in s. 718.113(5)(d), ~~The expense of installation, replacement, operation, repair, and maintenance~~

~~of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5) constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. However,~~ if the installation of ~~maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection is ~~are~~ the responsibility of the unit owners pursuant to the declaration of condominium or a vote of the unit owners under s. 718.113(5), the cost of the installation of ~~the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection by the association is not a common expense and must ~~shall~~ be charged individually to the unit owners based on the cost of installation of ~~the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection appurtenant to the unit. The costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116.

2. Notwithstanding s. 718.116(9), and regardless of

whether ~~or not~~ the declaration requires the association or unit owners to install, maintain, repair, or replace ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection, the ~~a unit~~ owner of a unit in which ~~who has previously installed hurricane shutters in accordance with s. 718.113(5) that comply with the current applicable building code shall receive a credit when the shutters are installed; a unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code shall receive a credit when the impact glass or code-compliant windows or doors are installed; and a unit owner who has installed other types of code-compliant~~ hurricane protection that complies ~~comply~~ with the current applicable building code has been installed is excused from any assessment levied by the association or shall receive a credit if ~~when~~ the same type of ~~other code-compliant~~ hurricane protection is installed by the association. A credit is applicable if the installation of hurricane protection is for all other units that do not have hurricane protection and the cost of such installation is funded by the association's budget, including the use of reserve funds. The credit must be equal to the amount that the unit owner would have been assessed to install the hurricane protection~~, and the credit shall be equal to the pro rata portion of the assessed installation cost assigned to each unit~~. However, such unit owner remains

responsible for the pro rata share of expenses for ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection installed on common elements and association property by the board pursuant to s. 718.113(5) and remains responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection. Expenses for the installation, replacement, operation, repair, or maintenance of hurricane protection on common elements and association property are common expenses.

Section 11. Paragraph (a) of subsection (4) of section 718.121, Florida Statutes, is amended to read:

718.121 Liens.—

(4)(a) If an association sends out an invoice for assessments or a unit's statement of the account described in s. 718.111(12)(a)11.c. ~~s. 718.111(12)(a)11.b.~~, the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

Section 12. Section 718.1224, Florida Statutes, is amended to read:

718.1224 Prohibition against SLAPP suits; other prohibited actions.—

(1) It is the intent of the Legislature to protect the right of condominium unit owners to exercise their rights to instruct their representatives and petition for redress of grievances before their condominium association and the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that strategic lawsuits against public participation, or "SLAPP suits," as they are typically referred to, have occurred when association members are sued by condominium associations, individuals, business entities, or governmental entities arising out of a condominium unit owner's appearance and presentation before the board of the condominium association or a governmental entity on matters related to the condominium association. However, it is the public policy of this state that condominium associations, governmental entities, business organizations, and individuals not engage in SLAPP suits, because such actions are inconsistent with the right of condominium unit owners to participate in their condominium association and in the state's institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by condominium associations, governmental entities, business entities, and individuals against condominium unit owners who address matters concerning their condominium association will preserve this fundamental state policy,

preserve the constitutional rights of condominium unit owners, ~~and~~ ensure the continuation of representative government in this state, and ensure unit owner participation in condominium associations. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts. As used in this subsection, the term "governmental entity" means the state, including the executive, legislative, and judicial branches of government; law enforcement agencies; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies of these branches that are subject to chapter 286.

(2) A condominium association, governmental entity, business organization, or individual in this state may not file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the condominium association or the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(3) It is unlawful for a condominium association to fine, discriminatorily increase a unit owner's assessments, discriminatorily decrease services to a unit owner, or bring or

threaten to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action, based on conduct described in this subsection. In order for the unit owner to raise the defense of retaliatory conduct, the unit owner must have acted in good faith and not for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. Examples of conduct for which a condominium association, an officer, a director, or an agent of an association may not retaliate include, but are not limited to, situations in which:

(a) The unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the condominium;

(b) The unit owner has organized, encouraged, or participated in a unit owners' organization;

(c) The unit owner submitted information or filed a complaint alleging criminal violations or violations of this chapter or the rules of the division with the division, the Office of the Condominium Ombudsman, a law enforcement agency, a state attorney, the Attorney General, or any other governmental agency;

(d) The unit owner has exercised his or her rights under this chapter;

(e) The unit owner has complained to the association or any of the association's representatives for the failure to comply with this chapter or chapter 617; or

(f) The unit owner has made public statements critical of the operation or management of the association.

(4) Evidence of retaliatory conduct may be raised by the unit owner as a defense in any action brought against him or her for possession.

(5)~~(3)~~ A condominium unit owner sued by a condominium association, governmental entity, business organization, or individual in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A condominium unit owner may petition the court for an order dismissing the action or granting final judgment in favor of that condominium unit owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the condominium association's, governmental entity's, business organization's, or individual's lawsuit has been brought in violation of this section. The condominium association, governmental entity, business organization, or individual shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the condominium association's, governmental

entity's, business organization's, or individual's response. The court may award the condominium unit owner sued by the condominium association, governmental entity, business organization, or individual actual damages arising from the condominium association's, governmental entity's, individual's, or business organization's violation of this section. A court may treble the damages awarded to a prevailing condominium unit owner and shall state the basis for the treble damages award in its judgment. The court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(6) ~~(4)~~ Condominium associations may not expend association funds in prosecuting a SLAPP suit against a condominium unit owner.

(7) Condominium associations may not expend association funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim against a unit owner based on conduct described in subsection (3).

Section 13. Paragraph (p) of subsection (4) of section 718.301, Florida Statutes, is amended to read:

718.301 Transfer of association control; claims of defect by association.—

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration

of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and consisting of a structural integrity reserve study attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing.

5. Electrical systems.

6. Waterproofing and exterior painting.

7. Windows and exterior doors.

Section 14. Subsections (4) and (5) of section 718.3027, Florida Statutes, are amended to read:

718.3027 Conflicts of interest.—

(4) A director or an officer, or a relative of a director or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the director or officer, and any ~~or the~~ relative of the director or officer, must leave the meeting during the discussion of, and the vote on, the activity. A director or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote. The attendance of a director or an officer with a possible conflict of interest at the meeting of the board is sufficient to constitute a quorum for the meeting and the vote in his or her absence on the proposed activity.

(5) A contract entered into between a director or an officer, or a relative of a director or an officer, and the association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest

or potential conflict of interest as required by this section or s. 617.0832 ~~s. 718.111(12)(g)~~ is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

Section 15. Subsection (5) of section 718.303, Florida Statutes, is amended to read:

718.303 Obligations of owners and occupants; remedies.—

(5) An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. At least 90 days before an election, an association must notify a unit owner or member that his or her voting rights may be suspended due to a nonpayment of a fee or other monetary obligation. A voting interest or consent right allocated to a unit owner or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number

of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

Section 16. Subsections (1) and (2) of section 718.501, Florida Statutes, are amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has

occurred, the division has jurisdiction to investigate complaints related only to financial issues relating to or concerning ss. 718.111(4), (13), (14), and (15) and 718.112(2)(e), (f), and (i);~~,~~ elections relating to or concerning ss. 718.112(2)(b), (d), (l), and (r), 718.128, and 718.1265(1)(a);~~, and~~ the maintenance of and unit owner access to association records relating to or concerning ~~under~~ s. 718.111(12); the procedural aspects of meetings relating to or concerning s. 718.112(2)(b), (c), and (d); disclosure of conflicts of interest relating to or concerning ss. 718.111(1)(a) and (3)(f), 718.112(2)(p) and (q), and 718.3027; the procedural completion of structural integrity reserve studies relating to or concerning ~~under~~ s. 718.112(2)(g); and any written inquiries by unit owners to the association relating to such matters.

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the

financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to

believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement

entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer fails to pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the

enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought under subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed under subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the

division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, upon the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative

intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county in which ~~where~~ the violation occurred.

7. If a unit owner presents the division with proof that

the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records at the location in which ~~where~~ the records are kept pursuant to s. 718.112. Upon receipt of the records, the division must provide to the unit owner who was denied access to such records the produced official records without charge.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce

this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner. The division shall provide to

directors of the board of administration at no charge the educational curriculum required under s. 718.112(2)(d) and issue a certificate of satisfactory completion, including when the required educational curriculum is provided by a division-approved condominium education provider.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in alternative dispute resolution proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division must conduct its

inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing under ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association

management firms have an ongoing duty to reasonably cooperate with the division in any investigation under this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation. The division shall refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or when the division has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.

(o) The division director or any officer or employee of the division and the condominium ombudsman or any employee of the Office of the Condominium Ombudsman may attend and observe any meeting of the board of administration or unit owner meeting, including any meeting of a subcommittee or special committee, which is open to members of the association for the purpose of performing the duties of the division or the Office of the Condominium Ombudsman under this chapter.

(p) ~~(o)~~ The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(q) ~~(p)~~ The division shall cooperate with similar agencies

in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(r) ~~(q)~~ The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(s) ~~(r)~~ In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(t) The division shall routinely conduct random audits of condominium associations to determine compliance with the website or application requirements for official records under s. 718.111(12)(g).

(u) ~~(s)~~ The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations

exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

(2)(a) Each condominium association that ~~which~~ operates more than two units shall pay to the division an annual fee in the amount of $4 for each residential unit in condominiums operated by the association. The annual fee shall be filed together with the annual certification described in paragraph (c). If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

(c) On the certification form provided by the division, the directors of the association shall certify that each director of the association has completed the written certification and educational certificate requirements in s. 718.112(2)(d)4.b.

Section 17. Subsection (2) of section 718.5011, Florida Statutes, is amended to read:

718.5011 Ombudsman; appointment; administration.—

(2) The secretary of the Department of Business and Professional Regulation ~~Governor~~ shall appoint the ombudsman. The ombudsman ~~must be an attorney admitted to practice before the Florida Supreme Court and~~ shall serve at the pleasure of the Governor. A vacancy in the office shall be filled in the same manner as the original appointment. An officer or full-time employee of the ombudsman's office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office; serve as the representative of any political party, executive committee, or other governing body of a political party; serve as an executive, officer, or employee of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office. The ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

Section 18. Paragraph (k) of subsection (1) of section 719.106, Florida Statutes, is amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(k) *Structural integrity reserve study.*—

1. A residential cooperative association must have a structural integrity reserve study completed at least every 10 years for each building on the cooperative property that is three stories or higher in height, as determined by the Florida Building Code, that includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. Fireproofing and fire protection systems.

d. Plumbing.

e. Electrical systems.

f. Waterproofing and exterior painting.

g. Windows and exterior doors.

h. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the cooperative property. A structural integrity reserve study may be performed by any person qualified

to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the cooperative property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item of the cooperative property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of cooperative property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a deferred maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a deferred

maintenance expense amount for such item.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the association.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report in compliance with s. 719.301(4)(p) and (q) for each building on the cooperative property that is three stories or higher in height.

6. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the cooperative property that is three stories or higher in height. An association that is required to complete a milestone inspection on or before December 31, 2026, in accordance with s. 553.899 may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was

performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 719.104(9).

9. Within 45 days after receiving the structural integrity reserve study, the association must distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request. Distribution of a copy of the study or notice must be made by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter, or by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission.

Section 19. Paragraph (p) of subsection (4) of section 719.301, Florida Statutes, is amended to read:

719.301 Transfer of association control.—

(4) When unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, consisting of a structural integrity reserve study attesting to required maintenance, condition, useful life, and replacement costs of the following applicable cooperative property:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing.

5. Electrical systems.

6. Waterproofing and exterior painting.

7. Windows and exterior doors.

Section 20. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall complete a review of the website or application requirements for official records under s. 718.111(12)(g), Florida Statutes, and make recommendations regarding any additional official records of a condominium association that should be included in the record maintenance requirement in the statute. The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees with jurisdiction over chapter 718, Florida Statutes, the findings of its review by February 1, 2025.

Section 21. For the 2024-2025 fiscal year, the sums of $6,122,390 in recurring and $1,293,879 in nonrecurring funds from the General Revenue Fund are appropriated to the Department of Business and Professional Regulation, and 65 full-time equivalent positions with associated salary rate of 3,180,319 are authorized, for the purpose of implementing this act.

Section 22. Except as otherwise expressly provided in this

act, this act shall take effect July 1, 2024.

COMMERCE COMMITTEE

CS/CS/HB 1021 by Rep. Lopez, V.

AMENDMENT SUMMARY
February 22, 2023

Amendment 1 by Rep. Lopez, V. (strike-all):

- Provides that certain parts of the bill do not apply to timeshare condominiums but are instead controlled by the timeshare laws.
- Provides that a community association manager or community management firm that has previously disclosed a conflict of interest in an existing management contract entered into between the board of directors and the community association manager or management firm does not need to be additionally noticed and voted on during the term of the contract, but must be noticed and voted on in accordance with the conflict disclosure process upon renewal.
- Requires an association that receives and considers a bid to provide a good or service that **exceeds $2,500** from a community association manager or a community association management firm, and a person with a financial interest in a community association management firm, or a relative of such persons to solicit **multiple** bids, instead of three, from other third-party providers of such good or services.
- Provides that the milestone inspection report is not required for a **four-family dwelling** with three or fewer habitable stories above ground.
- Defines "kickback" as any thing or service of value for which consideration has not been provided for an officer's, director's, or manager's own benefit, or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association.
- Provides that if an association member consents to receiving information by e-mail or fax, the e-mail address or the fax number must be only be used for business operations; and be redacted before disseminated if such information is on documents released to third parties.
- Adds completed board member education certificates as an official record.
- Clarifies that if official records are lost, destroyed, or otherwise unavailable, the obligation to maintain the official records includes a good faith obligation to obtain and **recover** those records as **may be reasonably** possible.
- Requires a condominium and cooperative association to notify the division within 45 days after the structural integrity reserve study is completed.
- Provides that statute of limitations and statute of **repose** for certain actions available to a condominium association or a cooperative association, do not begin to run until the unit owners have elected a majority of the members of the board of administration.
- Requires the division to provide a division-approved education provider with a template certificate for issuance directly to the association board of directors who have completed the education requirements. Provides the division with rulemaking authority to carry out such process.
- Removes requirement for the division to conduct random audits of official records on association websites, and provides that the division can request access and investigate such website if the division receives a complaint.
- Provides that after December 31, 2024, the division must include a list of the condominium associations who have completed their structural integrity reserve study in its annual report.
- Requires the division to create a database on its website of the condominium and cooperative associations that have completed their structural integrity reserve study by January 1, 2025.
- Effective on October 1, 2024, the amendment provides requirements for condominiums created within a portion of a building or within a multiple parcel building.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee
Representative Lopez, V. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (3) is added to section 468.4334, Florida Statutes, to read:

468.4334 Professional practice standards; liability.—

(3) A community association manager or a community association management firm shall return all community association official records within its possession to the community association within 20 business days after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request for return of the official records, whichever occurs first. A notice of termination of a contractual agreement

to provide community association management services must be sent by certified mail, return receipt requested, or in the manner required under such contractual agreement. The community association manager or community association management firm may retain, for up to 20 business days, those records necessary to complete an ending financial statement or report. If an association fails to provide access to or retention of the accounting records to prepare an ending financial statement or report, the community association manager or community association management firm is relieved from any further responsibility or liability relating to the preparation of such ending financial statement or report. Failure of a community association manager or a community association management firm to timely return all of the official records within its possession to the community association creates a rebuttable presumption that the community association manager or community association management firm willfully failed to comply with this subsection. A community association manager or a community association management firm that fails to timely return community association records is subject to suspension of its license under s. 468.436, and a civil penalty of $1,000 per day for up to 10 business days, assessed beginning on the 21st business day after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request from the

association for return of the records, whichever occurs first. However, related to a timeshare plan licensed under chapter 721, the time periods provided in s. 721.14(4)(b) are applicable.

Section 2. Section 468.4335, Florida Statutes, is created to read:

468.4335 Conflicts of interest.—

(1) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, must disclose to the board of a community association any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice:

(a) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, enters into a contract for goods or services with the association.

(b) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, holds an interest in or receives compensation or any thing of value from a corporation, limited liability corporation, partnership,

limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

(2) If the association receives and considers a bid to provide a good or service that exceeds $2,500, other than community association management services, from a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, the association must solicit multiple bids from other third-party providers of such goods or services.

(3) If a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, proposes to engage in an activity that is a conflict of interest as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda of the next board of administration meeting. The disclosures of a possible conflict of interest must be entered into the written minutes of the meeting. Approval of the contract, including a management contract between the community association and the community association manager or management firm, or other transaction requires an affirmative vote of two-thirds of all

directors present. At the next regular or special meeting of the members, the existence of the conflict of interest and the contract or other transaction must be disclosed to the members. If a community association manager or community management firm has previously disclosed a conflict of interest in an existing management contract entered into between the board of directors and the community association manager or management firm, the conflict of interest does not need to be additionally noticed and voted on during the term of the contract between the community association and the community association manager or management firm, but must be noticed and voted on in accordance with this provision upon renewal.

(4) If the board finds that a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, has violated this section, the association may cancel its community association management contract with the community association manager or the community association management firm. If the contract is canceled, the association is liable only for the reasonable value of the management services provided up to the time of cancellation and is not liable for any termination fees, liquidated damages, or other form of penalty for such cancellation.

(5) If an association enters into a contract with a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, which is a party to or has an interest in an activity that is a possible conflict of interest as described in subsection (1) and such activity has not been properly disclosed as a conflict of interest or potential conflict of interest as required by this section, the contract is voidable and terminates upon the association filing a written notice terminating the contract with its board of directors which contains the consent of at least 20 percent of the voting interests of the association.

(6) As used in this section, the term "relative" means a relative within the third degree of consanguinity by blood or marriage.

Section 3. Paragraph (b) of subsection (2) of section 468.436, Florida Statutes, is amended, and subsection (4) of that section is reenacted, to read:

468.436 Disciplinary proceedings.—

(2) The following acts constitute grounds for which the disciplinary actions in subsection (4) may be taken:

(b)1. Violation of ~~any provision of~~ this part.

2. Violation of any lawful order or rule rendered or adopted by the department or the council.

3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.

4. Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

5. Committing acts of gross misconduct or gross negligence in connection with the profession.

6. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

7. Failing to disclose any conflict of interest as required by s. 468.4335.

8.~~7.~~ Violating ~~any provision of~~ chapter 718, chapter 719, or chapter 720 during the course of performing community association management services pursuant to a contract with a community association as defined in s. 468.431(1).

(4) When the department finds any community association manager or firm guilty of any of the grounds set forth in subsection (2), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $5,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the community association manager on probation for a period of time and subject to such conditions as the department specifies.

(f) Restriction of the authorized scope of practice by the community association manager.

Section 4. Subsection (4) of section 553.899, Florida Statutes, is amended to read:

553.899 Mandatory structural inspections for condominium and cooperative buildings.—

(4) The milestone inspection report must be arranged by a condominium or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership. The condominium association or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership are each responsible for ensuring compliance with the requirements of this section. The condominium association or cooperative association is responsible for all costs associated with the milestone inspection attributable to the portions of a building which the association is responsible to maintain under the governing documents of the association. This section does not apply to a single-family, two-family, ~~or~~ three-family dwelling<u>, or four-family dwelling</u> with three or fewer habitable stories above ground.

Section 4. Subsection (14) of section 718.103, Florida Statutes, is amended, and subsections (19) through (32) of section 718.103, Florida Statutes, are renumbered as subsections (21) through (34), respectively, and new subsections (19) and (20) are added to that section, to read:

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

(14) "Condominium property" means the lands, leaseholds, improvements, any ~~and~~ personal property, and all easements and rights appurtenant thereto, regardless of whether contiguous, which ~~that~~ are subjected to condominium ownership~~, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium~~.

(19) "Kickback" means any thing or service of value, for which consideration has not been provided, for an officer's, a director's, or a manager's own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association.

(20) "Hurricane protection" means hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property.

Section 5. Paragraph (b) of subsection (4) of section 718.104, Florida Statutes, is amended, and paragraph(p) is added to subsection (4) of section 718.104, Florida Statutes, to read:

718.104 Creation of condominiums; contents of declaration.—Every condominium created in this state shall be created pursuant to this chapter.

(4) The declaration must contain or provide for the following matters:

(b) The name by which the condominium property is to be identified, which shall include the word "condominium" or be followed by the words "a condominium." Condominiums created within a portion of a building or within a multiple parcel building shall include the name by which the condominium is to be identified and be followed by "a condominium within a portion of a building or within a multiple parcel building."

(p) For both residential condominiums and mixed-use condominiums, a statement that specifies whether the unit owner or the association is responsible for the installation, maintenance, repair, or replacement of hurricane protection that is for the preservation and protection of the condominium property and association property.

Section 6. Paragraph (a) of subsection (1) and subsections (12), (13), and (15) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a

Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts ~~any thing or service of value or~~ a kickback commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, is subject to a civil penalty pursuant to s. 718.501(1)(d), and must be removed from office and a vacancy declared ~~and, if applicable, a criminal penalty as provided in paragraph (d)~~. However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs. An association may operate more than one condominium.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer under s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. ~~The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission~~

~~is not provided~~ In accordance with sub-subparagraph (c)5.e., the e-mail addresses and facsimile numbers are only accessible to unit owners if consent to receive notice by electronic transmission is provided, or if the unit owner has expressly indicated that such personal information can be shared with other unit owners, and the unit owner has not provided the association with a request to opt-out of such dissemination with other unit owners. ~~(c)3.e.~~ An association must ensure that such e-mail addresses and facsimile numbers are only used for the business operation of the association and may not be sold or shared with outside third parties. If such personal information is included in documents released to third parties other than unit owners, the association must redact such personal information before the document is disseminated. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices unless disclosure was made with a knowing or intentional disregard of the protected nature of such information.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. All invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the association.

c.~~b.~~ A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

d.~~c.~~ All audits, reviews, accounting statements, structural integrity reserve studies, and financial reports of the association or condominium. Structural integrity reserve studies must be maintained for at least 15 years after the study is completed.

e.~~d.~~ All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. A copy of the inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property. Such record must be maintained by the association for 15 years after receipt of the report.

16. Bids for materials, equipment, or services.

17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

18. A copy of all building permits issued for ongoing or planned construction.

19.~~18.~~ All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

20. A copy of all satisfactorily completed board member educational certificates.

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. The official records must be maintained in an organized manner that facilitates inspection of the records by a unit owner. In the event that the official records are lost, destroyed, or otherwise unavailable, the obligation to maintain the official records includes a good faith obligation to obtain and recover those records as may be reasonably possible. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph and paragraph (c) may be complied with by having a copy of the

official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet as provided under paragraph (g) or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative in compliance with this chapter unless the association has an affirmative duty not to disclose such information under this chapter.

(c)1.a. ~~(c)1.~~ The official records of the association are open to inspection by any association member and any person authorized by an association member as a representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member and of the person authorized by the association member as a representative of such member. A renter of a unit has a right to inspect and copy only the declaration of condominium, the association's bylaws and rules, and the inspection reports described in ss. 553.899 and 718.301(4)(p). The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying but may not require a member to demonstrate any purpose or state any reason for the inspection.

The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. If the requested records are posted on an association's website, or are available for download through an application on a mobile device, the association may fulfill its obligations under this paragraph by directing to the website or the application all persons authorized to request access.

b. In response to a written request to inspect records, the association must simultaneously provide to the requestor a checklist of all records made available for inspection and copying. The checklist must also identify any of the association's official records that were not made available to the requestor. An association must maintain a checklist provided under this sub-subparagraph for 7 years. An association delivering a checklist pursuant to this sub-subparagraph creates

a rebuttable presumption that the association has complied with this paragraph.

2. A director or member of the board or association or a community association manager who knowingly, willfully, and repeatedly violates subparagraph 1. commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and must be removed from office and a vacancy declared. For purposes of this subparagraph, the term "repeatedly" means two or more violations within a 12-month period.

3.~~2.~~ Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, is personally subject to a civil penalty pursuant to s. 718.501(1)(d), and must be removed from office and a vacancy declared.

4. A person who willfully and knowingly refuses to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, commits a felony of the third degree,

punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and must be removed from office and a vacancy declared.

5.~~3.~~ The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy,

or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the

restrictions in this sub-subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

(d) The association shall prepare a question and answer sheet as described in s. 718.504, and shall update it annually.

(e)1. The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the condominium or the association other than

information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed $150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents

specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

o. Copies of all building permits issued for ongoing or planned construction.

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall deliver ~~mail~~ to each unit owner by United States mail or personal delivery at the mailing address, property address, e-mail address, or facsimile number provided to fulfill the association's notice requirements ~~at the address last furnished to the association by the unit owner, or hand deliver to each unit owner~~, a copy of the most recent financial report, and ~~or~~ a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The

rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken. An association may not prepare a financial report pursuant to this paragraph for consecutive fiscal years, ~~except that the approval may also be effective for the following fiscal year~~. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not

accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association.

(e) A unit owner may provide written notice to the division of the association's failure to mail or hand deliver him or her a copy of the most recent financial report within 5 business days after he or she submitted a written request to the association for a copy of such report. If the division determines that the association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d) for the fiscal year in which the unit owner's request was made and the following fiscal year. A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall

provide a copy of such report to an association member upon his or her request.

(15) DEBIT CARDS.—

(a) An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.

(b) A person who uses ~~Use of~~ a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association commits theft under s. 812.014 and must be removed from office and a vacancy declared. For the purposes of this paragraph, the term "lawful obligation of the association" means an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget ~~may be prosecuted as credit card fraud pursuant to s. 817.61~~.

Section 7. Effective January 1, 2026, paragraph (g) of subsection (12) of section 718.111, Florida Statutes, as amended by this act, is amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(g)1. ~~By January 1, 2019,~~ An association managing a condominium with 25 ~~150~~ or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such

documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

o. Copies of all building permits issued for ongoing or planned construction.

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Section 8. Paragraphs (c), (d), (f), (g), and (q) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (r) is added to that subsection, to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(c) *Board of administration meetings.*—In a residential condominium association of more than 10 units, the board of administration shall meet once each quarter for the purpose of responding to inquiries from members and informing members on the state of the condominium, including the status of any construction or repair projects, the status of the association's revenue and expenditures during the fiscal year, or other issues affecting the association. Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written

reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. ~~Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be~~

~~considered and provide the estimated cost and description of the purposes for such assessments.~~

2. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property at which ~~where~~ all notices of board meetings must be posted. If there is no condominium property at which ~~where~~ notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a

website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website at which ~~where~~ the notice is posted, to unit owners whose e-mail addresses are included in the association's official records.

3. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments. If an agenda item relates to the approval of a contract for goods or services, a copy of the contract must be provided with the notice and be made available for inspection and copying upon a written request from a unit owner or made available on the association's website or through an application that can be downloaded on a mobile device.

4.~~2.~~ Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section,

unless those meetings are exempted from this section by the bylaws of the association.

5.~~3.~~ Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as

described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include

timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership

unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice of an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; and be posted in a conspicuous place on the condominium property or association property at least 14 continuous days before the annual meeting. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the bylaws. If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property <u>at which</u> ~~where~~ all notices of unit owner meetings must

be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website at which ~~where~~ the

notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This

subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates not less than 14 days or more than 34 days before the date of the election. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the

information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. A director of a ~~Within 90 days after being elected or appointed to the~~ board of an association of a residential condominium~~, each newly elected or appointed director~~ shall:

(I) Certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and

that he or she will faithfully discharge his or her fiduciary responsibility to the association's members.

(II) Submit to the secretary of the association ~~In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit~~ a certificate of having satisfactorily completed the educational curriculum administered by the division or a division-approved condominium education provider. The educational curriculum must be at least 4 hours long and include instruction on milestone inspections, structural integrity reserve studies, recordkeeping, financial literacy and transparency, levying of fines, and notice and meeting requirements ~~within 1 year before or 90 days after the date of election or appointment~~.

Each newly elected or appointed director must submit to the secretary of the association the written certification and educational certificate within 1 year before being elected or appointed or 90 days after the date of election or appointment. A director of an association of a residential condominium who was elected or appointed before July 1, 2024, must comply with the written certification and educational certificate requirements in this sub-subparagraph by June 30, 2025. The written certification and ~~or~~ educational certificate is valid for 7 years after the date of issuance and does not have to be

resubmitted as long as the director serves on the board without interruption during the 7-year period. A director who is appointed by the developer may satisfy the educational certificate requirement in sub-sub-subparagraph (II) for any subsequent appointment to a board by a developer within 7 years after the date of issuance of the most recent educational certificate, including any interruption of service on a board or appointment to a board in another association within that 7-year period. One year after submission of the most recent written certification and educational certificate, and annually thereafter, a director of an association of a residential condominium must submit to the secretary of the association a certificate of having satisfactorily completed at least 1 hour of continuing education administered by the division, or a division-approved condominium education provider, relating to any recent changes to this chapter and the related administrative rules during the past year. A director of an association of a residential condominium who fails to timely file the written certification and ~~or~~ educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification and ~~or~~ educational certificate for inspection by the members for 7 ~~5~~ years after a director's election or the

duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification and ~~or~~ educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decision-making, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration; unit owner meetings, except unit owner meetings called to recall board members under paragraph (l); and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt

of mass e-mails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (l) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies,

or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least 14 days before the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association must adopt a separate budget of common expenses for each condominium the association operates

and must adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they do not need to be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the reserve item. In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (g) for which the association is responsible pursuant to the declaration of condominium, and the reserve amount for such items must be based on the findings and recommendations of the association's most

recent structural integrity reserve study. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of deferred maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. The members of a unit-owner-controlled association may determine, by a majority vote of the total voting interests of the association, to provide no reserves or less reserves than required by this subsection. For a budget adopted on or after December 31, 2024, the members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not determine to provide no reserves or less reserves than required by this subsection for items listed in paragraph (g), except that members of an association operating a multicondominium may determine to provide no reserves or less reserves than required by this subsection if an alternative funding method has been approved by the division. <u>If the local building official, as defined in s. 468.603, determines that the entire condominium building is uninhabitable due to a natural</u>

emergency, as defined in s. 252.34, the board, upon the approval of a majority of its members, may pause the contribution to its reserves or reduce reserve funding until the local building official determines that the condominium building is habitable. Any reserve account funds held by the association may be expended, pursuant to the board's determination, to make the condominium building and its structures habitable. Upon the determination by the local building official that the condominium building is habitable, the association must immediately resume contributing funds to its reserves.

b. Before turnover of control of an association by a developer to unit owners other than a developer under s. 718.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote of all the total voting interests of the association. Before turnover of

control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended. For a budget adopted on or after December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, for any other purpose other than the replacement or deferred maintenance costs of the components listed in paragraph (g).

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(g) *Structural integrity reserve study.*—

1. A residential condominium association must have a structural integrity reserve study completed at least every 10 years after the condominium's creation for each building on the condominium property that is three stories or higher in height, as determined by the Florida Building Code, which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. Fireproofing and fire protection systems.

d. Plumbing.

e. Electrical systems.

f. Waterproofing and exterior painting.

g. Windows and exterior doors.

h. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the condominium property. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of

the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the condominium property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item of the condominium property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of condominium property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a deferred maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a deferred maintenance expense amount for such item.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the condominium form of ownership; or any portion or component of a building that is maintained by a party other than the association.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report in compliance with s. 718.301(4)(p) and (q) for each building on the condominium property that is three stories or higher in height.

6. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three stories or higher in height. An association that is required to complete a milestone inspection in accordance with s. 553.899 on or before December 31, 2026, may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of

this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 718.111(1).

9. Within 45 days after receiving the structural integrity reserve study, the association must distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request. Distribution of a copy of the study or notice must be made by United States mail or personal delivery to the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter, or by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission.

10. Within 45 days after receiving the structural integrity reserve study, the association must provide the division with a statement indicating that such study was completed and that the association provided or made available such study to each unit

owner in accordance with this section. Such statement shall be provided to the division in the manner provided by the division using a form posted on the division's website.

(q) *Director or officer offenses.*—

1. A director or an officer charged by information or indictment with any of the following crimes must be removed from office:

a. Forgery, as provided in s. 831.01, of a ballot envelope or voting certificate used in a condominium association election.

b. Theft, as provided in s. 812.014, or embezzlement involving the association's funds or property.

c. Destruction of, or the refusal to allow inspection or copying of, an official record of a condominium association which is accessible to unit owners within the time periods required by general law, in furtherance of any crime. Such act constitutes tampering with physical evidence as provided in s. 918.13.

d. Obstruction of justice under chapter 843.

2. The board shall fill the vacancy in accordance with paragraph (2)(d) ~~a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law~~ until the end of the period of the suspension or the end of the director's term of office, whichever occurs

first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the director or officer shall be reinstated for the remainder of his or her term of office, if any.

(r) *Fraudulent voting activities relating to association elections; penalties.*—

1. A person who engages in the following acts of fraudulent voting activity relating to association elections commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

a. Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.

b. Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.

c. Preventing a member from voting or preventing a member from voting as he or she intended by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.

d. Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when the member is voting.

e. Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This sub-subparagraph does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

f. Using or threatening to use, directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on a particular ballot measure.

2. Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

a. Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.

b. Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.

c. Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment. This sub-subparagraph does not apply to a licensed attorney giving legal advice to a client.

Section 9. Subsection (5) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane ~~shutters and~~ protection; display of religious decorations.—

(5) To protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protections installed by condominium associations and unit owners, this subsection applies to all residential and mixed-use condominiums in the state, regardless of when the condominium is created pursuant to the declaration of condominium. Each board of administration of a residential condominium or mixed-use condominium must ~~shall~~ adopt hurricane protection ~~shutter~~ specifications for each building within each condominium operated by the association which may ~~shall~~ include color, style, and other factors deemed relevant by the board. All specifications adopted by the board must comply with the applicable building code. The installation, maintenance, repair, replacement, and operation of hurricane protection in accordance

with this subsection is not considered a material alteration or substantial addition to the common elements or association property within the meaning of this section.

(a) The board may, subject to s. 718.3026 and the approval of a majority of voting interests of the residential condominium or mixed-use condominium, install or require that unit owners install hurricane ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane~~ protection that complies ~~comply~~ with or exceeds ~~exceed~~ the applicable building code. A vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date that the hurricane protection must be installed. The board must record the certificate in the public records of the county in which the condominium is located. Once the certificate is recorded, the board must mail or hand deliver a copy of the recorded certificate to the unit owners at the owners' addresses, as reflected in the records of the association. The board may provide to unit owners who previously consented to receive notice by electronic transmission a copy of the recorded certificate by electronic transmission. The failure to record the certificate or send a copy of the recorded certificate to the unit owners does not affect the validity or enforceability of the vote of the unit owners. ~~However,~~ A vote of the unit owners under this paragraph is not required if the installation,

maintenance, repair, and replacement of the hurricane ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane~~ protection, or any exterior windows, doors, or other apertures protected by the hurricane protection, is ~~are~~ the responsibility of the association pursuant to the declaration of condominium as originally recorded or as amended, or if the unit owners are required to install hurricane protection pursuant to the declaration of condominium as originally recorded or as amended. If hurricane protection ~~or laminated glass or window film architecturally designed to function as hurricane protection~~ that complies with or exceeds the current applicable building code has been previously installed, the board may not install the same type of ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection or require that unit owners install the same type of hurricane protection unless the installed hurricane protection has reached the end of its useful life or unless it is necessary to prevent damage to the common elements or to a unit ~~except upon approval by a majority vote of the voting interests~~.

~~(b) The association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by this subsection if such property is the responsibility of the association pursuant~~

~~to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.~~

(b) ~~(c)~~ The board may operate ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection ~~installed pursuant to this subsection~~ without permission of the unit owners only if such operation is necessary to preserve and protect the condominium property or ~~and~~ association property. ~~The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in this paragraph are not a material alteration to the common elements or association property within the meaning of this section.~~

(c) ~~(d)~~ Notwithstanding any other provision in the residential condominium or mixed-use condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection by a unit owner which conforms ~~conforming~~ to the specifications adopted by the board.

However, a board may require the unit owner to adhere to an existing unified building scheme regarding the external appearance of the condominium.

(d) A unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection, including exterior windows, doors, or other apertures, if its removal is necessary for the maintenance, repair, or replacement of other condominium property or association property for which the association is responsible. The board shall determine if the removal or reinstallation of hurricane protection must be completed by the unit owner or the association. If such removal or reinstallation is completed by the association, the costs incurred by the association may not be charged to the unit owner. If such removal or reinstallation is completed by the unit owner, the association must reimburse the unit owner for the cost of the removal or reinstallation or the association must apply a credit toward future assessments in the amount of the unit owner's cost to remove or reinstall the hurricane protection.

(e) If the removal or reinstallation of hurricane protection, including exterior windows, doors, or other apertures, is the responsibility of the unit owner and the association completes such removal or reinstallation and then charges the unit owner for such removal or reinstallation, such

charges are enforceable as an assessment and may be collected in the manner provided under s. 718.116.

Section 10. Paragraph (e) of subsection (1) of section 718.115, Florida Statutes, is amended to read:

718.115 Common expenses and common surplus.—

(1)

(e)1. Except as provided in s. 718.113(5)(d), ~~The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5) constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. However,~~ if the installation of ~~maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection is ~~are~~ the responsibility of the unit owners pursuant to the declaration of condominium or a vote of the unit owners under s. 718.113(5), the cost of the installation of ~~the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection by the association is not a common expense

and must ~~shall~~ be charged individually to the unit owners based on the cost of installation of ~~the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection appurtenant to the unit. The costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116.

2. Notwithstanding s. 718.116(9), and regardless of whether ~~or not~~ the declaration requires the association or unit owners to install, maintain, repair, or replace ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection, the ~~a unit~~ owner of a unit in which ~~who has previously installed hurricane shutters in accordance with s. 718.113(5) that comply with the current applicable building code shall receive a credit when the shutters are installed; a unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code shall receive a credit when the impact glass or code-compliant windows or doors are installed; and a unit owner who has installed other types of code-compliant~~ hurricane protection that complies ~~comply~~ with the current applicable building code has been installed is excused from any assessment levied by the association or shall receive a credit if ~~when~~ the same type of ~~other code-compliant~~ hurricane protection is installed by the association. A credit

is applicable if the installation of hurricane protection is for all other units that do not have hurricane protection and the cost of such installation is funded by the association's budget, including the use of reserve funds. The credit must be equal to the amount that the unit owner would have been assessed to install the hurricane protection~~, and the credit shall be equal to the pro rata portion of the assessed installation cost assigned to each unit~~. However, such unit owner remains responsible for the pro rata share of expenses for ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection installed on common elements and association property by the board pursuant to s. 718.113(5) and remains responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection. Expenses for the installation, replacement, operation, repair, or maintenance of hurricane protection on common elements and association property are common expenses.

Section 11. Paragraph (a) of subsection (4) of section 718.121, Florida Statutes, is amended to read:

718.121 Liens.—

(4)(a) If an association sends out an invoice for assessments or a unit's statement of the account described in s. 718.111(12)(a)11.c. ~~s. 718.111(12)(a)11.b.~~, the invoice for

assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

Section 12. Section 718.124, Florida Statutes, is amended to read:

718.124 Limitation on actions by association.—The statute of limitations and repose for any actions in law or equity which a condominium association or a cooperative association may have shall not begin to run until the unit owners have elected a majority of the members of the board of administration.

Section 13. Section 718.1224, Florida Statutes, is amended to read:

718.1224 Prohibition against SLAPP suits; other prohibited actions.—

(1) It is the intent of the Legislature to protect the right of condominium unit owners to exercise their rights to instruct their representatives and petition for redress of grievances before their condominium association and the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that strategic lawsuits against public participation, or "SLAPP suits," as they are typically referred to, have occurred when association members are sued by condominium associations,

individuals, business entities, or governmental entities arising out of a condominium unit owner's appearance and presentation before the board of the condominium association or a governmental entity on matters related to the condominium association. However, it is the public policy of this state that condominium associations, governmental entities, business organizations, and individuals not engage in SLAPP suits, because such actions are inconsistent with the right of condominium unit owners to participate in their condominium association and in the state's institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by condominium associations, governmental entities, business entities, and individuals against condominium unit owners who address matters concerning their condominium association will preserve this fundamental state policy, preserve the constitutional rights of condominium unit owners, ~~and~~ ensure the continuation of representative government in this state, and ensure unit owner participation in condominium associations. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts. As used in this subsection, the term "governmental entity" means the state, including the executive, legislative, and judicial branches of government; law enforcement agencies; the independent establishments of the state, counties, municipalities,

districts, authorities, boards, or commissions; or any agencies of these branches that are subject to chapter 286.

(2) A condominium association, governmental entity, business organization, or individual in this state may not file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the condominium association or the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(3) It is unlawful for a condominium association to fine, discriminatorily increase a unit owner's assessments, discriminatorily decrease services to a unit owner, or bring or threaten to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action, based on conduct described in this subsection. In order for the unit owner to raise the defense of retaliatory conduct, the unit owner must have acted in good faith and not for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. Examples of conduct for which a condominium association, an officer, a director, or an

agent of an association may not retaliate include, but are not limited to, situations in which:

(a) The unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the condominium;

(b) The unit owner has organized, encouraged, or participated in a unit owners' organization;

(c) The unit owner submitted information or filed a complaint alleging criminal violations or violations of this chapter or the rules of the division with the division, the Office of the Condominium Ombudsman, a law enforcement agency, a state attorney, the Attorney General, or any other governmental agency;

(d) The unit owner has exercised his or her rights under this chapter;

(e) The unit owner has complained to the association or any of the association's representatives for the failure to comply with this chapter or chapter 617; or

(f) The unit owner has made public statements critical of the operation or management of the association.

(4) Evidence of retaliatory conduct may be raised by the unit owner as a defense in any action brought against him or her for possession.

(5)~~(3)~~ A condominium unit owner sued by a condominium association, governmental entity, business organization, or individual in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A condominium unit owner may petition the court for an order dismissing the action or granting final judgment in favor of that condominium unit owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the condominium association's, governmental entity's, business organization's, or individual's lawsuit has been brought in violation of this section. The condominium association, governmental entity, business organization, or individual shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the condominium association's, governmental entity's, business organization's, or individual's response. The court may award the condominium unit owner sued by the condominium association, governmental entity, business organization, or individual actual damages arising from the condominium association's, governmental entity's, individual's, or business organization's violation of this section. A court may treble the damages awarded to a prevailing condominium unit owner and shall state the basis for the treble damages award in

its judgment. The court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(6)~~(4)~~ Condominium associations may not expend association funds in prosecuting a SLAPP suit against a condominium unit owner.

(7) Condominium associations may not expend association funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim against a unit owner based on conduct described in subsection (3).

Section 14. Section 718.128, Florida Statutes, is amended to read:

718.128 Electronic voting.—The association may conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, electronically or in writing, to online voting and if the following requirements are met:

(1) The association provides each unit owner with:

(a) A method to authenticate the unit owner's identity to the online voting system.

(b) For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.

(c) A method to confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.

(2) The association uses an online voting system that is:

(a) Able to authenticate the unit owner's identity.

(b) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.

(c) Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote.

(d) For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.

(e) Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

(3) A unit owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is established based on unit owners voting electronically pursuant to this section.

(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. If the board authorizes online

voting, the board must honor a unit owners' request to vote electronically at all subsequent elections, unless such unit owner opts-out of online voting. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, electronically or in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.

(5) A unit owner's consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board of administration pursuant to subsection (4).

(6) This section may apply to any matter that requires a vote of the unit owners who are not members of a timeshare condominium association.

Section 15. Paragraph (p) of subsection (4) of section 718.301, Florida Statutes, is amended to read:

718.301 Transfer of association control; claims of defect by association.—

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and <u>consisting of a structural integrity reserve study</u> attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing.

5. Electrical systems.

6. Waterproofing and exterior painting.

7. Windows and exterior doors.

Section 17. Effective October 1, 2024, subsections (1) and (3) of section 718.202, Florida Statutes, are amended to read:

718.202 Sales or reservation deposits prior to closing.—

(1) If a developer contracts to sell a condominium parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing <u>concerning residential condominiums</u>, the division director has the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements

of this section. With respect to nonresidential condominiums, the developer shall have the option of delivering to the escrow agent a surety bond or an irrevocable letter of credit in an amount equivalent to the aggregate of some or all of all payments up to 10 percent of the sale price received by the developer from all buyers towards the sale price, in all cases the aggregate of initial 10 percent deposits monies being released secured by a surety bond or irrevocable letter of credit in an equivalent amount. Default determinations and refund of deposits shall be governed by the escrow release provision of this subsection. Funds shall be released from escrow as follows:

(a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the buyer together with any interest earned.

(b) If the buyer defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(c) If the contract does not provide for the payment of any interest earned on the escrowed funds, interest shall be paid to the developer at the closing of the transaction.

(d) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at

the closing of the transaction, unless prior to the disbursement the escrow agent receives from the buyer written notice of a dispute between the buyer and developer.

(3) If the contract for sale of the condominium unit so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. He or she may use the funds for the actual costs incurred by the developer in the construction and development of the condominium property in which the unit to be sold is located or the easements and rights appurtenant thereto. For purposes of this subsection, the term "actual costs" includes, but is not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property or the easements and rights appurtenant thereto. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons; for advertising, marketing, or promotional purposes; or for loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs. A contract that ~~which~~ permits use of the advance payments for these purposes must ~~shall~~ include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the

place for the signature of the buyer: "ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER."

Section 16. Subsections (4) and (5) of section 718.3027, Florida Statutes, are amended to read:

718.3027 Conflicts of interest.—

(4) A director or an officer, or a relative of a director or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the director or officer, and any ~~or the~~ relative of the director or officer, must leave the meeting during the discussion of, and the vote on, the activity. A director or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote. The attendance of a director or an officer with a possible conflict of interest at the meeting of the board is sufficient to constitute a quorum for the meeting and the vote in his or her absence on the proposed activity.

(5) A contract entered into between a director or an officer, or a relative of a director or an officer, and the association, which is not a timeshare condominium association,

that has not been properly disclosed as a conflict of interest or potential conflict of interest as required by this section or s. 617.0832 ~~s. 718.111(12)(g)~~ is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

Section 17. Subsection (5) of section 718.303, Florida Statutes, is amended to read:

718.303 Obligations of owners and occupants; remedies.—

(5) An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. At least 90 days before an election, an association must notify a unit owner or member that his or her voting rights may be suspended due to a nonpayment of a fee or other monetary obligation. A voting interest or consent right allocated to a unit owner or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any

purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

Section 20. Effective October 1, 2024, section 718.407, Florida Statutes, is created to read:

718.407 Condominiums created within a portion of a building or within a multiple parcel building.—

(1) Notwithstanding s. 718.103(12) or s. 718.108(1), a condominium may be created within a portion of a building or within a multiple parcel building, as defined in s. 193.0237(1), as provided in this section.

(2) Notwithstanding s. 718.103(12) or s. 718.108(1), the common elements of a condominium created within a portion of a building or a multiple parcel building are only those portions of the building submitted to the condominium form of ownership, excluding the units of such condominium.

(3) The declaration of condominium that creates a condominium within a portion of a building or within a multiple

parcel building, the recorded instrument that creates the multiple parcel building, or any other recorded instrument applicable under this section must specify all of the following:

(a) The portions of the building which are included in the condominium and the portions of the building which are excluded.

(b) The party responsible for maintaining and operating those portions of the building which are shared facilities, and which may include, among other things, the roof, the exterior of the building, windows, balconies, elevators, the building lobby, corridors, recreational amenities, and utilities.

(c)1. The manner in which the expenses for the maintenance and operation of the shared facilities will be apportioned. An owner of a portion of a building which is not submitted to condominium form of ownership, or the condominium association, as applicable to the portion of the building submitted to condominium form of ownership, must approve any increase in the apportionment of expenses to such portion of the building. The apportionment of the expenses for the maintenance and operation of the shared facilities may be based on any of the following criteria or any combination thereof:

a. The area or volume of each portion of the building in relation to the total area or volume of the entire building, exclusive of the shared facilities.

b. The initial estimated market value of each portion of the building in comparison to the total initial estimated market value of the entire building.

c. The extent to which the owners are permitted to use various shared facilities.

2. This paragraph does not preclude an alternative apportionment of expenses provided that the apportionment is stated in the declaration of condominium that creates a condominium within a portion of a building or within a multiple parcel building, the recorded instrument that creates the multiple parcel building, or any other recorded instrument applicable under this section.

(d) The party responsible for collecting the shared expenses.

(e) The rights and remedies that are available to enforce payment of the shared expenses.

(4) The association of a condominium subject to this section has the right to inspect and copy the books and records upon which the costs for maintaining and operating the shared facilities are based and to receive an annual budget with respect to such costs.

(5) Each contract for the sale of a unit in a condominium subject to this section must contain in conspicuous type a clause that substantially states:

DISCLOSURE SUMMARY

THE CONDOMINIUM IN WHICH YOUR UNIT IS LOCATED IS CREATED WITHIN A PORTION OF A BUILDING OR WITHIN A MULTIPLE PARCEL BUILDING. THE COMMON ELEMENTS OF THE CONDOMINIUM CONSIST ONLY OF THE PORTIONS OF THE BUILDING SUBMITTED TO THE CONDOMINIUM.

BUYER ACKNOWLEDGES:

1) THE CONDOMINIUM MAY HAVE MINIMAL COMMON ELEMENTS.
2) PORTIONS OF THE BUILDING THAT ARE NOT INCLUDED IN THE CONDOMINIUM ARE (OR WILL BE) GOVERNED BY A SEPARATE RECORDED INSTRUMENT. SUCH INSTRUMENT CONTAINS IMPORTANT PROVISIONS AND RIGHTS AND IS (OR WILL BE) AVAILABLE IN PUBLIC RECORDS.
3) THE PARTY THAT CONTROLS THE MAINTENANCE AND OPERATION OF THE PORTIONS OF THE BUILDING THAT ARE NOT INCLUDED IN THE CONDOMINIUM DETERMINES THE BUDGET FOR THE OPERATION AND MAINTENANCE OF SUCH PORTIONS; HOWEVER, THE ASSOCIATION AND UNIT OWNERS ARE STILL RESPONSIBLE FOR THEIR SHARE OF SUCH EXPENSES.
4) THE ALLOCATION BETWEEN THE UNIT OWNERS AND THE OWNERS OF THE PORTIONS OF THE BUILDING THAT ARE NOT INCLUDED IN THE CONDOMINIUM OF THE COSTS TO MAINTAIN AND OPERATE THE BUILDING CAN BE FOUND IN THE DECLARATION OF CONDOMINIUM OR OTHER RECORDED INSTRUMENT.

(6) The creation of a multiple parcel building is not a subdivision of the land upon which such building is situated provided the land itself is not subdivided.

Section 21. Subsections (1) and (2) of section 718.501, Florida Statutes, are amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to:

(a)1. Procedural aspects and records related to financial issues, including annual financial reporting under s. 718.111(13), assessments for common expenses, fines, and commingling of reserve and operating funds under in s. 718.111(14), use of debit cards for other than intended purposes under s. 718.111(15), the annual operating budget and the allocation of reserve funds under s. 718.112(2)(f), and

financial records under s. 718.111(12)(a)11, and any other record necessary to determine the revenues and expenses of the association; ~~,~~

2. Elections, including election and voting requirements under s. 718.112(2)(b) and (d), recall of board members under 718.112(2)(l), electronic voting under s. 718.128, and elections that occur during an emergency under s. 718.1265(1)(a); ~~, and~~

3. The maintenance of and unit owner access to association records under s. 718.111(12) ~~,~~ ;

4. The procedural aspects of meetings, such as, unit owner meetings, quorums, voting requirements, proxies, board of administration meetings, and budget meetings under s. 718.112(2);

5. Disclosure of conflicts of interest under ss. 718.111(1)(a) and s. 718.3027, including limitations contained in s. 718.111(3)(f);

6. Removal of a board director or officer under ss. 718.111(1)(a) and (15), and 718.112(2)(p) and (q) ~~and~~ ;

7. The procedural completion of structural integrity reserve studies under s. 718.112(2)(g); and

8. Any written inquiries by unit owners to the association relating to such matters, including written inquiries under s. 718.112(2)(a)2.

(~~a~~b)1. The division may make necessary public or private investigations within or outside this state to determine whether

any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(~~b~~c) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(~~c~~d) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any

other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(~~d~~e) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager,

or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer fails to pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other

available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought under subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed under subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related

rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by

the violation, upon the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to

pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county in which ~~where~~ the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records at the location in which ~~where~~ the records are kept pursuant to s. 718.112. Upon receipt of the records, the division must provide to the unit owner who was denied access to such records the produced official records without charge.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may

also award to the prevailing party court costs and reasonable attorney fees and, if the division prevails, may also award reasonable costs of investigation.

9. The division may issue citations and promulgate rules to provide for citation bases and citation procedures in accordance with this section.

(~~e~~f) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(~~f~~g) The division may adopt rules to administer and enforce this chapter.

(~~g~~h) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(~~h~~i) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(~~i~~j) The division shall annually provide each association with a summary of declaratory statements and formal legal

opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(~~j~~k) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner. The division shall provide the division-approved provider with the template certificate for issuance directly to the association board of directors who have satisfactorily completed the requirements under s. 718.112(2)(d). The division shall have rulemaking authority to implement this section.

(~~k~~l) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(~~l~~m) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in alternative dispute resolution proceedings under s. 718.1255 requesting a copy of the list. The division shall

include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(~~m~~n) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists

to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing under ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

(o) ~~(n)~~ Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation under this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation. The division shall refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or when the division has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.

(p) The division director or any officer or employee of the division and the condominium ombudsman or any employee of the Office of the Condominium Ombudsman may attend and observe any meeting of the board of administration or any unit owner meeting, including any meeting of a subcommittee or special committee, which is open to members of the association, for the purpose of performing the duties of the division or the Office of the Condominium Ombudsman under this chapter.

(q) ~~(o)~~ The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(r) ~~(p)~~ The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(s) ~~(q)~~ The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(t) ~~(r)~~ In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(u) If the division receives a complaint regarding access to official records on the association website under s. 718.111(12)(g), the division may request access to the association website and investigate. The division may implement rules to carry out this provision.

(v) ~~(s)~~ The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (n) ~~(m)~~, and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. After December 31, 2024, the division must include a list of the associations who have completed their structural reserve study under section 718.112(2)(g). The report shall be submitted by September 30 following the end of the fiscal year.

(2)(a) Each condominium association that ~~which~~ operates more than two units shall pay to the division an annual fee in

the amount of $4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

(c) On the certification form provided by the division, the directors of the association shall certify that each director of the association has completed the written certification and educational certificate requirements in s. 718.112(2)(d)4.b. This certification requirement does not apply to the directors of an association governing a timeshare condominium.

Section 22. Effective October 1, 2024, paragraph (a) of subsection (2) and subsection (3) of section 718.503, Florida Statutes, are amended to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with this subsection before the sale of his or her unit. Each prospective purchaser who has entered into

a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of all of the following:

1. The declaration of condominium.

2. Articles of incorporation of the association.

3. Bylaws and rules of the association.

4. An annual financial statement and an annual budget of the condominium association ~~Financial information required by s. 718.111~~.

5. A copy of the inspector-prepared summary of the milestone inspection report as described in s. 553.899, if applicable.

6. The association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

7. A copy of the inspection report described in s. 718.301(4)(p) and (q) for a turnover inspection performed on or after July 1, 2023.

8. The document entitled "Frequently Asked Questions and Answers" required by s. 718.504.

(3) OTHER DISCLOSURES ~~DISCLOSURE~~.—

(a) If residential condominium parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common elements, or prior to completion of remodeling of previously occupied buildings, the

developer must ~~shall~~ make available to each prospective purchaser or lessee, for his or her inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him or her and of the improvements to the common elements appurtenant to the unit.

(b) Sales brochures, if any, must ~~shall~~ be provided to each purchaser, and the following caveat in conspicuous type must ~~shall~~ be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed: "ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE." If timeshare estates have been or may be created with respect to any unit in the condominium, the sales brochure must ~~shall~~ contain the following statement in conspicuous type: "UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES."

(c) If a unit is located within a condominium that is created within a portion of a building or within a multiple parcel building, the developer or nondeveloper unit owner must provide the disclosures required by s. 718.407(5).

Section 22. Effective October 1, 2024,section 718.504, Florida Statutes, is amended to read:

718.504 Prospectus or offering circular.—Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which shall be in accordance with a format approved by the division and a copy of the financial information required by s. 718.111. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or

otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; shall state whether the condominium is created within a portion of a building or a multiple parcel building; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(1) The front cover or the first page must contain only:

(a) The name of the condominium.

(b) The following statements in conspicuous type:

1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.

2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.

3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

(2) Summary: The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular.

(3) A separate index of the contents and exhibits of the prospectus.

(4) Beginning on the first page of the text (not including the summary and index), a description of the condominium, including, but not limited to, the following information:

(a) Its name and location.

(b) A description of the condominium property, including, without limitation:

1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units, if the condominium is not a phase condominium, or the maximum number of buildings that may be contained within the condominium, the minimum and maximum numbers of units in each building, the minimum and maximum numbers of bathrooms and bedrooms that may be contained in each unit, and the maximum number of units that may be contained

within the condominium, if the condominium is a phase condominium.

2. The page in the condominium documents where a copy of the plot plan and survey of the condominium is located.

3. The estimated latest date of completion of constructing, finishing, and equipping. In lieu of a date, the description shall include a statement that the estimated date of completion of the condominium is in the purchase agreement and a reference to the article or paragraph containing that information.

(c) The maximum number of units that will use facilities in common with the condominium. If the maximum number of units will vary, a description of the basis for variation and the minimum amount of dollars per unit to be spent for additional recreational facilities or enlargement of such facilities. If the addition or enlargement of facilities will result in a material increase of a unit owner's maintenance expense or rental expense, if any, the maximum increase and limitations thereon shall be stated.

(5)(a) A statement in conspicuous type describing whether the condominium is created and being sold as fee simple interests or as leasehold interests. If the condominium is created or being sold on a leasehold, the location of the lease in the disclosure materials shall be stated.

(b) If timeshare estates are or may be created with respect to any unit in the condominium, a statement in conspicuous type stating that timeshare estates are created and being sold in units in the condominium.

(6) A description of the recreational and other commonly used facilities that will be used only by unit owners of the condominium, including, but not limited to, the following:

(a) Each room and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, approximate deck size and capacity, and whether heated.

(c) Additional facilities, as to the number of each facility, its approximate location, approximate size, and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The estimated date when each room or other facility will be available for use by the unit owners.

(f)1. An identification of each room or other facility to be used by unit owners that will not be owned by the unit owners or the association;

2. A reference to the location in the disclosure materials of the lease or other agreements providing for the use of those facilities; and

3. A description of the terms of the lease or other agreements, including the length of the term; the rent payable, directly or indirectly, by each unit owner, and the total rent payable to the lessor, stated in monthly and annual amounts for the entire term of the lease; and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a unit owner's share or only as to the entire leased property.

(g) A statement as to whether the developer may provide additional facilities not described above; their general locations and types; improvements or changes that may be made; the approximate dollar amount to be expended; and the maximum additional common expense or cost to the individual unit owners that may be charged during the first annual period of operation of the modified or added facilities.

Descriptions as to locations, areas, capacities, numbers, volumes, or sizes may be stated as approximations or minimums.

(7) A description of the recreational and other facilities that will be used in common with other condominiums, community associations, or planned developments which require the payment of the maintenance and expenses of such facilities, directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built and a summary description of the structural integrity of each building for which reserves are required pursuant to s. 718.112(2)(g).

(b) Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

(c) As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in paragraph (b), a statement of whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others, and the location in the exhibits of the lease or other document providing for use of those facilities.

(d) The year in which each facility will be available for use by the unit owners or, in the alternative, the maximum number of unit owners in the project at the time each of all of the facilities is committed to be completed.

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(f) If there are leases, a description thereof, including the length of the term, the rent payable, and a description of any option to purchase.

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.

(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other facilities offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: "THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS CONDOMINIUM; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS CONDOMINIUM." There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

(b) If it is mandatory that unit owners pay a fee, rent, dues, or other charges under a recreational facilities lease or

club membership for the use of facilities, there shall be in conspicuous type the applicable statement:

1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS; or

2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or

3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or

4. A similar statement of the nature of the organization or the manner in which the use rights are created, and that unit owners are required to pay.

Immediately following the applicable statement, the location in the disclosure materials where the development is described in detail shall be stated.

(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, reserves, or is entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type: "THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES." Immediately following this statement, the location in the disclosure

materials where the rent or land use fees are described in detail shall be stated.

(d) If, in any recreation format, whether leasehold, club, or other, any person other than the association has the right to a lien on the units to secure the payment of assessments, rent, or other exactions, there shall appear a statement in conspicuous type in substantially the following form:

1. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or

2. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

Immediately following the applicable statement, the location in the disclosure materials where the lien or lien right is described in detail shall be stated.

(9) If the developer or any other person has the right to increase or add to the recreational facilities at any time after

the establishment of the condominium whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: "RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S)." Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

(10) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases. If so, there shall be a description of the plan, including the number and identification of the units and the provisions and term of the proposed leases, and a statement in boldfaced type that: "THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE."

(11) The arrangements for management of the association and maintenance and operation of the condominium property and of other property that will serve the unit owners of the condominium property, and a description of the management contract and all other contracts for these purposes having a term in excess of 1 year, including the following:

(a) The names of contracting parties.

(b) The term of the contract.

(c) The nature of the services included.

(d) The compensation, stated on a monthly and annual basis, and provisions for increases in the compensation.

(e) A reference to the volumes and pages of the condominium documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the condominium property, then a statement in conspicuous type in substantially the following form shall appear, identifying the proposed or existing contract manager: "THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH (NAME OF THE CONTRACT MANAGER)." Immediately following this statement, the location in the disclosure materials of the contract for management of the condominium property shall be stated.

(12) If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed 1 year after the closing of the sale of a majority of the units in that condominium to persons other than successors or alternate developers, then a statement in conspicuous type in substantially the following form shall be included: "THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD." Immediately following this statement, the

location in the disclosure materials where this right to control is described in detail shall be stated.

(13) If there are any restrictions upon the sale, transfer, conveyance, or leasing of a unit, then a statement in conspicuous type in substantially the following form shall be included: "THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED." Immediately following this statement, the location in the disclosure materials where the restriction, limitation, or control on the sale, lease, or transfer of units is described in detail shall be stated.

(14) If the condominium is part of a phase project, the following information shall be stated:

(a) A statement in conspicuous type in substantially the following form: "THIS IS A PHASE CONDOMINIUM. ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS CONDOMINIUM." Immediately following this statement, the location in the disclosure materials where the phasing is described shall be stated.

(b) A summary of the provisions of the declaration which provide for the phasing.

(c) A statement as to whether or not residential buildings and units which are added to the condominium may be substantially different from the residential buildings and units originally in the condominium. If the added residential buildings and units may be substantially different, there shall be a general description of the extent to which such added

residential buildings and units may differ, and a statement in conspicuous type in substantially the following form shall be included: "BUILDINGS AND UNITS WHICH ARE ADDED TO THE CONDOMINIUM MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND UNITS IN THE CONDOMINIUM." Immediately following this statement, the location in the disclosure materials where the extent to which added residential buildings and units may substantially differ is described shall be stated.

(d) A statement of the maximum number of buildings containing units, the maximum and minimum numbers of units in each building, the maximum number of units, and the minimum and maximum square footage of the units that may be contained within each parcel of land which may be added to the condominium.

(15) If a condominium created on or after July 1, 2000, is or may become part of a multicondominium, the following information must be provided:

(a) A statement in conspicuous type in substantially the following form: "THIS CONDOMINIUM IS (MAY BE) PART OF A MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL (MAY) BE OPERATED BY THE SAME ASSOCIATION." Immediately following this statement, the location in the prospectus or offering circular and its exhibits where the multicondominium aspects of the offering are described must be stated.

(b) A summary of the provisions in the declaration, articles of incorporation, and bylaws which establish and

provide for the operation of the multicondominium, including a statement as to whether unit owners in the condominium will have the right to use recreational or other facilities located or planned to be located in other condominiums operated by the same association, and the manner of sharing the common expenses related to such facilities.

(c) A statement of the minimum and maximum number of condominiums, and the minimum and maximum number of units in each of those condominiums, which will or may be operated by the association, and the latest date by which the exact number will be finally determined.

(d) A statement as to whether any of the condominiums in the multicondominium may include units intended to be used for nonresidential purposes and the purpose or purposes permitted for such use.

(e) A general description of the location and approximate acreage of any land on which any additional condominiums to be operated by the association may be located.

(16) If the condominium is created by conversion of existing improvements, the following information shall be stated:

(a) The information required by s. 718.616.

(b) A caveat that there are no express warranties unless they are stated in writing by the developer.

(17) A summary of the restrictions, if any, to be imposed on units concerning the use of any of the condominium property, including statements as to whether there are restrictions upon children and pets, and reference to the volumes and pages of the condominium documents where such restrictions are found, or if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit.

(18) If there is any land that is offered by the developer for use by the unit owners and that is neither owned by them nor leased to them, the association, or any entity controlled by unit owners and other persons having the use rights to such land, a statement shall be made as to how such land will serve the condominium. If any part of such land will serve the condominium, the statement shall describe the land and the nature and term of service, and the declaration or other instrument creating such servitude shall be included as an exhibit.

(19) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, water supply, and storm drainage, will be provided and the person or entity furnishing them.

(20) An explanation of the manner in which the apportionment of common expenses and ownership of the common elements has been determined.

(21) An estimated operating budget for the condominium and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(a) The estimated monthly and annual expenses of the condominium and the association that are collected from unit owners by assessments.

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than common expenses paid by all unit owners, payable by the unit owner to persons or entities other than the association, as well as to the association, including fees assessed pursuant to s. 718.113(1) for maintenance of limited common elements where such costs are shared only by those entitled to use the limited common element, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses which are not provided for or contemplated by the condominium documents, including, but not limited to, the costs of private telephone; maintenance of the interior of condominium units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his or her unit; insurance premiums other than those incurred for policies obtained by the condominium; and similar personal expenses of the unit owner. A unit owner's estimated payments for

assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expenses of the condominium and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated as an association expense collectible by assessments or as unit owners' expenses payable to persons other than the association:

1. Expenses for the association and condominium:

a. Administration of the association.

b. Management fees.

c. Maintenance.

d. Rent for recreational and other commonly used facilities.

e. Taxes upon association property.

f. Taxes upon leased areas.

g. Insurance.

h. Security provisions.

i. Other expenses.

j. Operating capital.

k. Reserves for all applicable items referenced in s. 718.112(2)(g).

l. Fees payable to the division.

2. Expenses for a unit owner:

a. Rent for the unit, if subject to a lease.

b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The following statement in conspicuous type:

THE BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT AND IS A GOOD FAITH ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

(e) Each budget for an association prepared by a developer consistent with this subsection shall be prepared in good faith and shall reflect accurate estimated amounts for the required items in paragraph (c) at the time of the filing of the offering circular with the division, and subsequent increased amounts of any item included in the association's estimated budget that are beyond the control of the developer shall not be considered an amendment that would give rise to rescission rights set forth in

s. 718.503(1)(a) or (b), nor shall such increases modify, void, or otherwise affect any guarantee of the developer contained in the offering circular or any purchase contract. It is the intent of this paragraph to clarify existing law.

(f) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.

(22) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.

(23) The identity of the developer and the chief operating officer or principal directing the creation and sale of the condominium and a statement of its and his or her experience in this field.

(24) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(a) The declaration of condominium, or the proposed declaration if the declaration has not been recorded.

(b) The articles of incorporation creating the association.

(c) The bylaws of the association.

(d) The ground lease or other underlying lease of the condominium.

(e) The management agreement and all maintenance and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year.

(f) The estimated operating budget for the condominium, the required schedule of unit owners' expenses, and the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

(g) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(h) The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

(i) The lease of facilities used by owners and others.

(j) The form of unit lease, if the offer is of a leasehold.

(k) A declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

(l) The statement of condition of the existing building or buildings, if the offering is of units in an operation being converted to condominium ownership.

(m) The statement of inspection for termite damage and treatment of the existing improvements, if the condominium is a conversion.

(n) The form of agreement for sale or lease of units.

(o) A copy of the agreement for escrow of payments made to the developer prior to closing.

(p) A copy of the documents containing any restrictions on use of the property required by subsection (17).

(q) A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 718.301(4)(p), as applicable.

(25) Any prospectus or offering circular complying, prior to the effective date of this act, with the provisions of former ss. 711.69 and 711.802 may continue to be used without amendment or may be amended to comply with this chapter.

(26) A brief narrative description of the location and effect of all existing and intended easements located or to be located on the condominium property other than those described in the declaration.

(27) If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1) or a statement that such acceptance or approval has not been acquired or received.

(28) Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

Section 18. Subsection (3) of section 718.503, Florida Statutes, is amended to read:

718.5011 Ombudsman; appointment; administration.—

(2) The secretary of the Department of Business and Professional Regulation ~~Governor~~ shall appoint the ombudsman. The ombudsman ~~must be an attorney admitted to practice before the Florida Supreme Court and~~ shall serve at the pleasure of the Governor. A vacancy in the office shall be filled in the same manner as the original appointment. An officer or full-time employee of the ombudsman's office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office; serve as the representative of any political party, executive committee, or other governing body of a political party; serve as an executive, officer, or employee of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office. The ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

Section 19. Paragraph (k) of subsection (1) of section 719.106, Florida Statutes, is amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(k) *Structural integrity reserve study.*—

1. A residential cooperative association must have a structural integrity reserve study completed at least every 10 years for each building on the cooperative property that is three stories or higher in height, as determined by the Florida Building Code, that includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. Fireproofing and fire protection systems.

d. Plumbing.

e. Electrical systems.

f. Waterproofing and exterior painting.

g. Windows and exterior doors.

h. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to

replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the cooperative property. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the cooperative property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item of the cooperative property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of cooperative property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and

an estimate of replacement cost cannot be determined, or the study may recommend a deferred maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a deferred maintenance expense amount for such item.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the association.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report in compliance with s. 719.301(4)(p) and (q) for each building on the cooperative property that is three stories or higher in height.

6. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the cooperative property that is three stories or higher in height. An association that is required to complete a milestone inspection on or before

December 31, 2026, in accordance with s. 553.899 may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 719.104(9).

9. Within 45 days after receiving the structural integrity reserve study, the association must distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request. Distribution of a copy of the study or notice must be made by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter, or by electronic transmission to the e-mail address or facsimile number provided to fulfill

the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission.

10. Within 45 days after receiving the structural integrity reserve study, the association must provide the division with a statement indicating that such study was completed and that the association provided or made available such study to each unit owner in accordance with this section. Such statement shall be provided to the division in the manner provided by the division using a form posted on the division's website.

Section 20. Paragraph (p) of subsection (4) of section 719.301, Florida Statutes, is amended to read:

719.301 Transfer of association control.—

(4) When unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, consisting of a structural integrity reserve study attesting to required maintenance, condition, useful life, and replacement costs of the following applicable cooperative property:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing.

5. Electrical systems.

6. Waterproofing and exterior painting.

7. Windows and exterior doors.

Section 21. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall complete a review of the website or application requirements for official records under s. 718.111(12)(g), Florida Statutes, and make recommendations regarding any additional official records of a condominium

association that should be included in the record maintenance requirements in the statute. The division shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives the findings of its review by January 1, 2025.

Section 22. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall create a database on its website of the associations that have reported the completion of their structural integrity reserve study under section 718.112(2)(g), and under section 719.106(1)(k), by January 1, 2025.

Section 23. For the 2024-2025 fiscal year, the sums of $6,122,390 in recurring and $1,293,879 in nonrecurring funds from the General Revenue Fund are appropriated to the Department of Business and Professional Regulation, and 65 full-time equivalent positions with associated salary rate of 3,180,319 are authorized, for the purpose of implementing this act.

Section 24. The amendments made to ss. 718.103(14) and 718.202(3), Florida Statutes, and the provisions of s. 718.407(1), (2), and (6), Florida Statutes, are intended to clarify existing law and shall apply retroactively; however, such amendments do not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before October 1, 2024.

Section 25. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2024.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to community associations; amending s. 468.4334, F.S.; requiring community association managers and community association management firms to return official records of an association within a specified time after termination of a contract; requiring notices of termination of certain contractual agreements to be sent in a specified manner; authorizing community association managers and community association management firms to retain, for a specified timeframe, records necessary to complete an ending financial statement or report; relieving community association managers and community association management firms from certain responsibilities and liability under certain circumstances; providing a rebuttable presumption regarding noncompliance; providing penalties for the failure to timely return official records; creating s. 468.4335, F.S.; requiring community association managers and community association management firms to disclose certain conflicts of interest to the association's board; providing a rebuttable presumption as to the existence of

a conflict; requiring an association to solicit and consider multiple bids for goods or services under certain circumstances; providing requirements for an association to approve any activity that is a conflict of interest; authorizing certain contracts to be canceled, subject to certain requirements; specifying liability and nonliability of the association upon cancellation of such a contract; authorizing an association to cancel a contract if certain conflicts were not disclosed; specifying liability and nonliability of the association upon cancellation of a contract; defining the term "relative"; reenacting and amending s. 468.436, F.S.; revising the list of grounds for which the Department of Business and Professional Regulation may take disciplinary actions against community association managers or community association firms; amending s. 553.899; providing that the milestone inspection report does not apply to certain four-family dwellings; amending s. 718.103, F.S.; defining the term "hurricane protection"; amending s. 718.104, F.S.; requiring declarations to specify the entity responsible for the installation, maintenance, repair, or replacement of hurricane protection; amending s. 718.111, F.S.; providing criminal penalties for any officer, director, or manager of an association who unlawfully solicits, offers to accept, or accepts any thing or service of value or kickback; requiring such officers, directors, or managers to be removed from office and a vacancy declared; revising the list of records

that constitute the official records of an association; revising maintenance requirements for official records; revising requirements regarding requests to inspect or copy association records; requiring an association to provide a checklist in response to certain records requests; providing a rebuttable presumption and criminal penalties; requiring certain persons to be removed from office and a vacancy declared under certain circumstances; defining the term "repeatedly"; requiring copies of certain building permits be posted on an association's website or application; modifying the method of delivery of certain financial reports to unit owners; revising circumstances under which an association may prepare certain reports; revising criminal penalties for persons who unlawfully use a debit card issued in the name of an association; requiring certain persons to be removed from office and a vacancy declared under certain circumstances; defining the term "lawful obligation of the association"; revising the threshold for associations that must post certain documents on its website or through an application; amending s. 718.112, F.S.; requiring the boards of certain associations to meet at least once every quarter; revising requirements regarding notice of such meetings; requiring a director to complete an educational requirement within a specified time period before or after election or appointment to the board; providing requirements for the educational curriculum; providing transitional provisions; requiring a

director to complete a certain amount of continuing education each year relating to changes in the law; requiring the secretary of the association to maintain certain information for inspection for a specified number of years; authorizing members of an association to pause the contribution to reserves or reduce reserves under certain circumstances and for a limited time; authorizing the board to expend reserve account funds to make the condominium building and structures habitable; requiring an association to distribute or deliver copies of a structural integrity reserve study to unit owners within a specified timeframe; specifying the manner of distribution or delivery; revising the circumstances under which a director or an officer must be removed from office after being charged by information or indictment of certain crimes; prohibiting such officers and directors with pending criminal charges from accessing the official records of any association; providing an exception; providing criminal penalties for certain fraudulent voting activities relating to association elections; amending s. 718.113, F.S.; providing applicability; specifying that certain actions are not material alterations or substantial additions; authorizing the boards of residential and mixed-use condominiums to install or require unit owners to install hurricane protection; requiring a vote of the unit owners for the installation of hurricane protection; requiring that such vote be attested to in a certificate and recorded in certain public

records; requiring the board to provide, in various manners, to the unit owners a copy of the recorded certificate; providing that the validity or enforceability of a vote is not affected if the board fails to take certain actions; providing that a vote of the unit owners is not required under certain circumstances; prohibiting installation of the same type of hurricane protection previously installed; providing exceptions; prohibiting the boards of residential and mixed-use condominiums from refusing to approve certain hurricane protections; authorizing the board to require owners to adhere to certain guidelines regarding the external appearance of a condominium; revising responsibility for the cost of the removal or reinstallation of hurricane protection, including exterior windows, doors, or apertures; prohibiting the association from charging certain expenses to unit owners; requiring reimbursement or a credit toward future assessments to the unit owner in certain circumstances; authorizing the association to collect certain charges and specifying that such charges are enforceable as assessments under certain circumstances; amending s. 718.115, F.S.; specifying when the cost of installation of hurricane protection is not a common expense; authorizing certain expenses to be enforceable as assessments; requiring certain unit owners to be excused from certain assessments or to receive a credit for hurricane protection that has been installed; providing credit applicability under certain

circumstances; providing for the amount of credit that a unit owner must receive; specifying that certain expenses are common expenses; amending s. 718.121, F.S.; conforming a cross-reference; amending s. 718.1224, F.S.; revising legislative findings and intent; revising the definition of the term "governmental entity"; prohibiting an association from filing strategic lawsuits, taking certain actions against unit owners, and expending funds to support certain actions; amending s. 718.128, F.S.; providing that a request for electronic voting may be made electronically; amending s. 718.301, F.S.; requiring developers to deliver a structural integrity reserve report to an association upon relinquishing control of the association; amending s. 718.3027, F.S.; revising requirements regarding attendance at a board meeting in the event of a conflict of interest; modifying circumstances under which a contract may be voided; amending s. 718.303, F.S.; requiring an association to provide certain notice to a unit owner by a specified time before an election; amending s. 718.501, F.S.; revising circumstances under which the Division of Florida Condominiums, Timeshares, and Mobile Homes has jurisdiction to investigate and enforce complaints relating to certain matters; requiring that the division provide official records, without charge, to a unit owner denied access; requiring the division to provide an educational curriculum free of charge and issue a certificate to directors of a board of administration; requiring that the

division refer suspected criminal acts to the appropriate law enforcement authority; authorizing certain division officials to attend association meetings; requiring that the division conduct random audits of associations for specified purposes; requiring an association's annual fee be filed concurrently with the annual certification; specifying requirements for the annual certification; amending 718.503, F.S.; providing a certain disclosure for condominium units in a portion of a building; amending s. 718.5011, F.S.; providing that the secretary of the Department of Business and Professional Regulation, rather than the Governor, appoints the condominium ombudsman; amending s. 719.106, F.S.; requiring an association to distribute or deliver copies of a structural integrity reserve study to unit owners within a specified timeframe; specifying the manner of distribution or delivery; amending s. 719.301, F.S.; requiring developers to deliver a structural integrity reserve study to a cooperative association upon relinquishing control of association property; requiring the division to conduct a review of statutory requirements regarding posting of official records on a condominium association's website or application; requiring the division to submit its findings, including any recommendations, to the Governor and the Legislature by a specified date; requiring the division to include in its annual report associations that have completed their structural

integrity reserve study; providing appropriations; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1029 My Safe Florida Condominium Pilot Program
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, Lopez, V., Hunschofsky and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Fortenberry	Lloyd
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N, As CS	Perez	Topp
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The My Safe Florida Home (MSFH) Program was created in 2006 within the Department of Financial Services (DFS) to perform mitigation inspections of site-built, single-family, residential properties (inspections), and mitigation grants (grants) to eligible applicants to make their homes less vulnerable to hurricane damage. The MSFH Program received $250 million in appropriations for the Fiscal Year 2006-2007, but was not funded again until 2022. Since then, the Legislature has provided approximately $433 million in subsequent additional funding to the MSFH Program.

Mitigation inspections are limited to homesteaded properties. Funds may be used to inspect townhouses to determine if opening protection mitigation would help decrease the risk of hurricane damage and grant funds may be used to pay for such opening protection mitigation if warranted. The value of the mitigation grant-eligible homes is currently $700,000. While initially limited to homes within the wind-borne debris region, the MSFH Program is currently a statewide program.

The bill establishes within DFS the My Safe Florida Condominium Pilot Program (MSFCP Program), with the intent that the Program provide licensed inspectors to perform inspections for and grants to eligible associations, as funding allows. Under the MSFCP Program, DFS must provide fiscal accountability, contract management, and strategic leadership for the MSFCP Program, consistent with the bill's provisions. The MSFCP Program must be implemented pursuant to appropriations, and is subject to annual legislative appropriations thereafter.

Essentially, the bill provides to condominium associations a program similar to that of the MSFH Program in regards to requirements for participation, hurricane mitigation inspectors and inspections, eligibility for mitigation grants, contract management by DFS, and required annual reports.

The bill has no impact on state or local government revenues and expenditures. The implementation of the MSFCP Program is subject to funding in the General Appropriations Act (GAA). The bill may have a positive direct economic 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:

Background

In 2006, the Legislature created the My Safe Florida Home (MSFH) Program within the Department of Financial Services (DFS) with the intent that the Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties (mitigation inspections) and grants to eligible applicants, subject to funding availability.[1] The purpose of the MSFH Program was to "develop and implement a comprehensive and coordinated approach for hurricane damage mitigation."[2] The MSFH program allowed DFS to undertake a public outreach and advertising campaign to inform consumers of the availability, and benefits, of the mitigation inspections and grants.[3] It required the development of brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates to explain the benefits of residential hurricane damage mitigation to homeowners.[4]

Hurricane Mitigation Inspections

The purpose of the mitigation inspections was to determine:

- What mitigation measures were needed;
- What insurance premium discounts might have been available; and
- What improvements to existing residential properties were needed to reduce the properties' susceptibility to hurricane damage.[5]

The mitigation inspections had to include, at a minimum:

- A report that summarized the results and identified recommended improvements the homeowner could take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Insurer-specific information regarding premium discounts correlated to current and recommended hurricane mitigation improvements.[6]

DFS was required to maintain a list of hurricane mitigation inspectors who were authorized to conduct the mitigation inspections for the MSFH Program.[7] DFS entered contracts with wind certification entities to provide mitigation inspections. In order to be eligible for the contracts, the entities had to use hurricane mitigation inspectors who, at a minimum:

- Were certified building inspectors;
- Were licensed as general or residential contractors;
- Were licensed and professional engineers and had passed the appropriate equivalency test of the building code training program;
- Were licensed professional architects; or
- Had at least two years of experience in residential construction or residential building inspection and had received specialized training in hurricane mitigation procedures.[8]

Mitigation Grants

The purpose of the mitigation grants component of the MSFH Program was to retrofit single-family

[1] S. 215.5586, F.S.
[2] *Id.*
[3] S. 215.5586(3), F.S.
[4] S. 215.5586(7), F.S.
[5] S. 215.5586(1)(a), F.S.
[6] *Id.*
[7] S. 215.55186(6), F.S.
[8] S. 215.5586(1)(b), F.S.

homes to make them less vulnerable to hurricane damage.[9] To be eligible for a grant, the following criteria must have been met:

- The homeowner must have had a homestead exemption on the home to be retrofitted;
- The home must have had an insured value of $300,000 or less, unless the homeowner was classified as a low-income person;
- The home must have undergone an acceptable hurricane mitigation inspection after May 1, 2007;
- The home must have been located in the "wind-borne debris region" as defined in the International Building Code; and
- The building permit application for initial construction of the home must have been made before March 1, 2002.[10]

In addition, the homeowner had to match the grant award on a dollar-for-dollar basis up to $10,000, for the actual cost of the mitigation project, and the state's contribution could not exceed $5,000.[11] Low-income homeowners were eligible for grants of up to $5,000, and were not required to provide a matching amount to receive a grant.[12] Matching fund grants were also available to local governments and nonprofit entities for projects to reduce hurricane damages to single-family homes.[13]

Grants could be used on previously-inspected existing structures or on rebuilds.[14] If recommended by a hurricane mitigation inspection, grants could be used for the following improvements:

- Opening protection.
- Upgrading exterior doors, including garage doors.
- Bracing gable ends.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Upgrading roof coverings from code to code plus.
- Installing secondary water barrier for roofs.[15]

DFS was required to issue an annual report on the activities of the MSFH Program that accounted for the use of any appropriated state funds, the number of inspections requested and performed, the number of grant applications received, and the number and value of grants approved.[16]

The MSFH Program was appropriated $250 million in Fiscal Year 2006-07.[17] As of May 2009, approximately $93 million in MSFH grants were allocated to 32,000 homes, and approximately 400,000 homes received a MSFH home inspection.[18] DFS requested that Risk Management Solutions (RMS), conduct an impact analysis of the MSFH program, and RMS released a report of the impact analysis on May 14, 2009 (report).[19] In the report, RMS concluded that the MSFH grants were beneficial to the State of Florida, individual homeowners, and the insurance industry.[20] RMS indicated that the predicted reduction in loss as a result of the grant projects completed far exceeded the grant money spent.[21] While the MSFH Program was never repealed from law, additional funding was not provided until May 2022.

2022 Renewal of the MSFH Program

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[9] S. 215.5586(2), F.S.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Rebuilds were defined as site-built, single-family dwellings under construction to replace homes that were destroyed or significantly damaged by hurricanes and deemed unlivable by a regulatory authority. S. 215.5586(2)(e), F.S.
[15] S. 215.5586(2)(e), F.S.
[16] S. 215.5586(10), F.S.
[17] Risk Management Solutions, *Analyzing the Effects of the My Safe Florida Home Program on Florida Insurance Risk*, May 14, 2009, https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=5036 (last visited Jan. 26, 2024).
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

During the 2022D Special Session, the Legislature passed a property insurance bill (SB 2-D), in which it renewed the funding for the MSFH Program by appropriating $150 million in nonrecurring funds from General Revenue (GR) to DFS for the Program for the 2022-2023 fiscal year. The funds appropriated were allocated as follows:

- $115 million for mitigation grants.
- $25 million for hurricane mitigation inspections.
- $4 million for education and consumer awareness.
- $1 million for public outreach for contractors and estate brokers and sales associates.
- $5 million for administrative costs.

SB 2-D reappropriated any unexpended balance of funds from the appropriation remaining on June 30, 2023, to DFS for the 2023-2024 fiscal year to be used for the MSFH Program. The appropriation will expire on October 1, 2024. SB 2-D gave DFS the authority to adopt emergency rules to implement the MSFH Program.

SB 2-D made additional modifications to the MSFH Program. It required that an application for a mitigation grant include a provision that requires an applicant to make his or her home available for inspection once a mitigation project is completed. The bill changed the monetary limits for eligibility for mitigation grants so that homes with an insured value of $500,000, or less, qualify for the program.

SB 2-D required that homes that receive mitigation grants have undergone home mitigation inspections after July 1, 2008, and have received permits for initial construction before January 1, 2008. The homeowner must also match grant funds on the basis of $1 from the homeowner for every $2 provided by the state up to a maximum state contribution of $10,000 towards the actual cost of the mitigation project undertaken on the eligible home.

The bill enhanced the reporting requirements for DFS under the MSFH Program by requiring that the report include the following received by homeowners from insurers as a result of the mitigation funded by the program:

- The average annual amount of insurance premium discounts; and
- The total annual amount of insurance premium discounts.

2022 MSFH Program Implementation

Following the passage of SB 2-D, DFS procured a vendor to administer the MSFH Program, qualified inspectors to conduct mitigation inspections, and qualified contractors who agreed to provide mitigation repairs and retrofitting under the grant portion of the Program.[22] DFS compiled a list of approved vendors that homeowners participating in the MSFH Program may choose for inspections and mitigation work.[23]

On November 18, 2022, a web-based application for homeowners to request mitigation inspections and grant funds went live.[24] Between May 26, 2022 and February 28, 2023, 16,724 mitigation inspections were completed and 2,979 grant applications were approved.[25]

Inspectors completing mitigation inspections under the MSFH Program must complete the Uniform Mitigation Verification Inspection Form (Inspection Form), as revised by the Office of Insurance Regulation on January 12, 2023.[26] The mitigation inspection report provided to the homeowner includes the completed Inspection Form, as well as the information already required by statute,[27] including:

- A summary of the results of the mitigation inspection identifying recommended improvements a homeowner may undertake;

[22] Florida Department of Financial Services, Agency Analysis of 2023 House Bill 881, p. 1 (Mar. 1, 2023).
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] S. 215.5586(1)(a), F.S.

- A range of cost estimates regarding the recommended improvements; and
- Estimated property insurance premium discounts based on the mitigation measures the homeowner has completed.[28]

2023 Developments to the MSFH Program

Following the significant interest in the program in 2022 and early 2023, the Legislature made additional changes to the statutory framework for the MSFH Program during the 2023 Regular Session. These changes included changes to the inspection and grant eligibility requirements, and program management changes.

Single-family home eligibility for mitigation inspections was limited only to homesteaded properties.[29] Funds from the MSFH Program may now be used to inspect townhouses to determine if opening protection mitigation would help decrease the risk of hurricane damage.[30] If an inspection determines that opening protection mitigation would decrease such risk, grant funds from the MSFH Program may be used to pay for the mitigation.[31] The value of the mitigation grant-eligible homes was also increased from $500,000 to $700,000.[32]

The designation of a specific portion of the grant funds for low-income recipients was removed, but increases the overall grant award for low-income recipients from $5,000 to $10,000.[33] The program's geographic eligibility area was broadened to include otherwise in eligible homes outside the wind-borne debris region, in effect making it a statewide program.

Among the project management changes implemented, home inspectors must be licensed, in addition to certified.[34] This requirement conforms with other statutory chapters that address home inspectors.

Funding for the MSFH Program

As of December 2023, the Legislature has appropriated a total of $433 million for the MSFH Program since May 2022.[35] In addition to the $150 million appropriated during the 2022D Special Session, this includes $100 million in grant funding appropriated during the 2023 Regular Session and an additional $176 million in grant funding appropriated during the 2023C Special Session.[36]

Results of the MSFH Program

Between November 2022, and December 2023, the MSFH Program has provided more than 94,000 homeowners with hurricane mitigation inspections and approved more than 23,000 grant applications.[37] Over 73 percent of those homeowners who have completed participation in the grant component of the MSFH Program have seen their homeowners insurance premiums drop or stabilize, and many are paying premiums at or below the state average.[38] According to DFS, upon applying to the MSFH Program, the average premium of the applicants was 55.1 percent higher than the average Florida homeowner's premium.[39] Based upon the decrease in premium following participation, DFS has concluded that the MSFH Program participation is comprised of higher-than-average risk homeowners,

[28] Department of Financial Services, *supra* note 22, at 2.
[29] The homestead requirement was already in place for the grant portion of the MSFH Program under s. 215.5586(2), F.S., prior to the 2023 Regular Session.
[30] S. 215.5586(1)(a), F.S.
[31] S. 215.5586(2)(f), F.S.
[32] S. 215.5586(2)(e)2., F.S.
[33] S. 215.5586(2)(h), F.S.
[34] S. 215.5586, F.S.
[35] Department of Financial Services, *2023 Annual Report of My Safe Florida Home*, p. 1.
[36] *Id.* at p. 6. The mitigation grant funding is by far the largest component of the MSFH Program.
[37] *Id.* at p. 1. Because the grant portion of the MSFH Program is fulfilled based on reimbursement to homeowners after proof of completion of mitigation projects, the money to fulfill these grants has been reserved, but not all of it has been paid to the homeowners yet.
[38] *Id.*
[39] *Id.* at p. 2.

which is consistent with the goal of helping those with homes at greatest risk.[40]

Condominiums

While the current MSFH Program provides for the inspections of, and some mitigation projects to, townhouses, Florida law does not currently provide a program for condominium owners similar to the MSFH Program.

Effect of the Bill

The bill establishes within DFS the My Safe Florida Condominium Pilot Program (MSFCP Program), with the intent that the Program provide licensed inspectors to perform inspections for and grants to eligible associations, as funding allows. Under the MSFCP Program, DFS must provide fiscal accountability, contract management, and strategic leadership for the MSFCP Program, consistent with the bill's provisions.

The MSFCP Program must be implemented pursuant to appropriations, and is subject to annual legislative appropriations thereafter. The bill provides that its provisions do not create an entitlement for associations or unit owner or obligate the state in any way to fund the inspection or retrofitting of condominiums in Florida.

Essentially, the bill provides to condominium owners a program similar to that of the MSFH Program.

Definitions

The bill creates definitions for the following terms:

- "Association" means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.[41]
- "Association property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members and is located in the service area.
- "Board of administration" means the board of directors or other representative body which is responsible for administration of the association.[42]
- "Condominium" means that form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.[43]
- "Condominium property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium and are located in the service area.
- "Property" means association property and condominium property, as applicable, located in the service area.
- "Rebuild" means property under construction to replace a structure that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority.
- "Service area" means the area of the state 15 miles inward of the coastline.[44]
- "Unit" means a part of the condominium property which is subject to exclusive ownership. A unit

[40] *Id.*
[41] *See* s. 718.103(3), F.S.
[42] *See* s. 718.103(5), F.S.
[43] *See* s. 718.103(12), F.S.
[44] S. 376.031, F.S., defines coastline as the line of mean low water along the portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters, as determined under the Convention on Territorial Seas and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606.

may be in improvements, land, or land and improvements together, as specified in an association's declaration.[45]
- "Unit owner" means a record owner of legal title to a condominium parcel.[46]

Participation

The bill provides that, to apply for an inspection or grant for association property or condominium property, an association must receive approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in the pilot program.

Additionally, to apply for a grant which improves one or more units within a condominium, an association must receive both of the following:
- Approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in a mitigation inspection.
- A unanimous vote of all unit owners within the structure or building that is the subject of the mitigation grant.

The votes required by this section of the bill may take place at the annual budget meeting of the association or at a unit owner meeting called for the purpose of taking such vote. However, before a vote of the unit owners can be taken, the association must provide to the unit owners a clear disclosure of the MSFCP Program on form created by DFS. The bill further provides that:
- The president and the treasurer of the board of administration must sign the disclosure form indicating that a copy of the form was provided to each unit owner of the association;
- The signed disclosure form and the minutes from the meeting at which the unit owners voted to participate in the MSFCP Program must be maintained as part of the official records of the association;
- Within 14 days after an affirmative vote to participate in the MSFCP Program, the association must provide written notice in the same manner as required under s. 718.112(2)(d), F.S.,[47] to all unit owners of the decision to participation in the MSFCP Program.

The bill provides that a unit owner may participate in the MSFCP Program through a mitigation grant awarded to the association, but a unit owner may not participate individually in the MSFCP Program.

Hurricane Mitigation Inspectors

Licensed inspectors under the MSFCP Program are to provide inspections of the property to determine the mitigation measures that are needed, the insurance premium discounts that may be available to the association, and the improvements to existing properties of the association that are needed to reduce a property's vulnerability to hurricane damage.

The bill requires DFS to contract with wind certification entities to provide hurricane mitigation inspections. To qualify for selection by DFS as a wind certification entity to provide hurricane mitigation inspections, the entity must, at a minimum, meet all of the following requirements:
- Use hurricane mitigation inspectors who are licensed or certified as a:
  - Building inspector,
  - General, building, or residential contractor,
  - A professional engineer,
  - A professional architect, or
  - A home inspector who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam;
- Use hurricane mitigation inspectors who have undergone drug testing and a background

[45] *See* s. 718.103(29), F.S.
[46] *See* s. 718.103(30), F.S.
[47] Section 718.112(2)(d), F.S., are Florida's laws relating to unit owner meetings of condominium associations.

screening;[48] and
- Provide a quality assurance program including a reinspection component.

Hurricane Mitigation Inspections

The bill provides that the inspections provided to an association under the MSFCP Program must, at a minimum, include all of the following:
- An inspection of the property, and a report that summarizes the results and identifies recommended improvements the association may take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Information regarding estimated insurance premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains. Additionally, an association may apply for an deceive an inspection without also applying for a grant.

Mitigation Grants

Financial grants under the MSFCP Program may be used to encourage associations to retrofit the property the association operates and maintains in order to make such property less vulnerable to hurricane damage. The bill provides that an application for a mitigation grant must:
- Contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains;
- Include a notarized statement from the president of the board of administration containing the name and license number of the contractor the association intends to use for the mitigation project; and
- Include a notarized statement from the president of the board of administration which commits to DFS that the association will complete the mitigation improvements.[49]

An association may select its own contractor for the mitigation project, provided such contractor meets all qualification, certification, or licensing requirements in general law. A mitigation project must be performed by a properly licensed contractor who has secured all required local permits necessary for the project. DFS must electronically verify that the contractor's state license number is accurate and up to date before approving a grant application.

An association awarded a grant must complete the entire mitigation project to receive the final grant award and must agree to make the property available for a final inspection once the mitigation project is finished to ensure the mitigation improvements are completed in a matter consistent with the intent of the MSFCP Program and meet or exceed the applicable Florida Building Code requirements.

Construction must be completed and the association must submit a request to DFS for a final inspection, or request an extension of time, within 1 year after receiving grant approval. If the association fails to comply with these provisions, the application is deemed abandoned and the grant money reverts back to DFS.

All grants must be matched on the basis of $1 provided by the association for $2 provided by the state,

[48] The bill provides that DFS may conduct criminal record checks of inspectors used by wind certification entities. Under the bill, inspectors must submit a set of fingerprints to DFS for state and national criminal history checks and must pay a fingerprint processing fee. The fingerprints must be sent by DFS to the Florida Department of Law Enforcement (FDLE) and forwarded to the Federal Bureau of Investigation for processing. The results must be returned to DFS for screening. The fingerprints must be taken by a law enforcement agency, designated examination center, or other DFS-approved entity. The bill includes the FDLE preferred language regarding fingerprinting.

[49] If the grant will be used to improve units, the application must also include an acknowledged statement from each unit owner who is required to provide approval for a grant under the other applicable provision of the bill.

up to a maximum contribution as provided in the General Appropriations Act. When recommended by a hurricane mitigation inspection report, grants for eligible associations may be used for the following improvements:

- Opening protection.
- Exterior doors, including garage doors.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Secondary water barrier for roof.

Roof-related projects will be funded at $11 per square foot times the square feet of the replacement roof, not to exceed $1,000 per unit, and a maximum grant contribution of 50 percent of the project. Opening protection-related projects have a maximum contribution of $750 per window or door replacement, not to exceed $1,500, and a maximum contribution of 50 percent of the project. An association may receive grants for both roof and opening protection projects, but the maximum overall grant is limited to $175,000 per association.

On the other hand, the association may not use a mitigation grant to install the same type of improvements that were previously installed or pay a deductible for a pending insurance claim for damage that is part of the property for which grant funds are being received. However, grants may be used for a previously inspected existing structure on the property or for a rebuild.

If improvements to protect the property which complied with the current applicable building code at the time have been previously installed, the association must use a mitigation grant to install improvements that do both of the following:

- Comply with or exceed the applicable building code in effect at the time the association applied for the grant.
- Provide more hurricane protection than the improvements that the association previously installed.

The bill requires DFS to develop a process that ensures the most efficient means to collect and verify grant applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the internet or other electronic means to collect information and determine eligibility.

Further, the bill specifies the department is unable to accept grant applications or maintain a waiting list after the appropriation has been fully obligated, unless the Legislature provides the authority to do so.

Contract Management

The bill allows DFS to contract with third parties for grants management, inspection services, contractor services, information technology, educational outreach, and auditing services. Such contracts are considered direct costs of the MSFCP Program and are not subject to administrative cost limits. DFS must contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and must ensure the highest accountability for use of state funds, consistent with the bill's provisions.

Further, the bill requires DFS to implement a quality assurance and reinspection program that determines whether initial inspections and mitigation improvements are completed in a manner consistent with the intent of the MSFCP Program. DFS may use a valid random sampling in order to perform the quality assurance portion of the MSFCP Program.

Reports

By February 1 of each year, DFS must submit a report to the President of the Senate and the Speaker of the House of Representatives on the activities of the MSFCP Program and the use of state funds. The report must include all of the following information:

- The number of inspections requested;

- The number of inspections performed;
- The number of grant applications received;
- The number of grants approved and the monetary value of each grant;
- The estimated average annual amount of insurance premium discounts each association received and the total estimated annual amount of insurance premium discounts received by all associations participating in the MSFCP Program; and
- The estimated average annual amount of insurance premium discounts each unit owner received as a result of the improvements to the building or structure.

B. SECTION DIRECTORY:

Section 1. Creates s. 215.5587, F.S., relating to My Safe Florida Condominium Pilot Program.

Section 2. 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:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that homes that participate in the MSFCP Program receive mitigation credits or premium discounts under their property insurance policies and are less exposed to risk as a result of mitigation retrofitting using grant funds, the MSFCP Program may have a positive direct economic impact on homeowners. Hurricane mitigation inspectors and contractors may also see an increase in activity.

D. FISCAL COMMENTS:

The bill has no direct impact on state government expenditures. Instead, the bill establishes that the MSFCP Program will be implemented subject to funding in the General Appropriations Act (GAA). Currently HB 5001 appropriates $25 million for grants, $1.4 million for administrative costs, and $600,000 for inspections.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize DFS to adopt rules to administer the MSFCP Program. However, rulemaking authority should be considered to align this program with the rulemaking authority for the MSFH Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

See Rule-making Authority.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Defined a "service area" for the program that is the area of the state 15 miles inward of the coastline; making the pilot project statewide in this coastal zone.
- Clarified the fingerprinting requirement to comport with a recommendation by FDLE.

On February 13, 2024, the State Administration & Technology Appropriations Subcommittee considered the bill, adopted an amendment, and reported the bill as favorably as a committee substitute. The amendment made the following changes:

- Roof-related projects is set at $11 per square foot times the square feet of the replacement roof, limited to $1,000 per unit, and maximum grant contribution is limited to 50 percent of the project.
- Opening protection-related projects grant contribution is a maximum of $750 per replacement window, limited to $1,500 per unit, and a maximum grant contribution of 50 percent of the project.
- Allows an association to receive grant funds for both roof-related and opening protection-related projects, but the maximum grant contribution is limited to $175,000.
- The department may not accept grant applications or maintain a waiting list after cumulative value of grants have been fully obligated. Unless the Legislature provides expressed authority.

The analysis is drafted to the committee substitute as passed by the State Administration & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to the My Safe Florida Condominium Pilot Program; creating s. 215.5587, F.S.; establishing the My Safe Florida Condominium Pilot Program within the Department of Financial Services; providing legislative intent; providing definitions; providing requirements for associations and unit owners to participate in the pilot program; providing voting requirements; requiring the department to contract with specified entities for certain inspections; providing requirements for such entities; authorizing the department to conduct criminal record checks of certain inspectors; requiring inspectors to submit a full set of fingerprints to the department or other authorized entities; providing requirements for state and federal fingerprint processing; providing requirements for hurricane mitigation inspectors and inspections; requiring applications for inspections and grants to include specified statements; authorizing an association to receive an inspection without applying for a mitigation grant; providing mitigation grants for a specified purpose; providing requirements for an association receiving a mitigation grant; authorizing an association to select is own contractor if such contractor meets certain

requirements; requiring the department to electronically verify a contractor's state license; requiring construction to be completed and the association to submit a request for a final inspection within a specified time period; providing requirements for funding grant projects; requiring mitigation grants to be matched by the association; providing maximum state contributions; authorizing associations to receive grant funds for multiple projects; prohibiting the department from accepting grant applications or maintaining a waiting list under certain circumstances, unless otherwise expressly authorized by the Legislature; providing requirements for mitigation projects; providing how mitigation grants may be used; requiring the department to develop a specified process to ensure efficiency; authorizing the department to contract for certain services; providing requirements for such contracts; requiring the department to implement a quality assurance and reinspection program; requiring the department to submit to the Legislature an annual report with specified information; providing an effective date.

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

Section 1. Section 215.5587, Florida Statutes, is created to read:

215.5587 My Safe Florida Condominium Pilot Program.—There is established within the Department of Financial Services the My Safe Florida Condominium Pilot Program to be implemented pursuant to appropriations. The department shall provide fiscal accountability, contract management, and strategic leadership for the pilot program, consistent with this section. This section does not create an entitlement for associations or unit owners or obligate the state in any way to fund the inspection or retrofitting of condominiums in the state. Implementation of this pilot program is subject to annual legislative appropriations. It is the intent of the Legislature that the My Safe Florida Condominium Pilot Program provide licensed inspectors to perform inspections for and grants to eligible associations as funding allows.

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

(a) "Association" has the same meaning as in s. 718.103.

(b) "Association property" means property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, an association for the use and benefit of its members and is located in the service area.

(c) "Board of administration" has the same meaning as in s. 718.103.

(d) "Condominium" has the same meaning as in s. 718.103.

(e) "Condominium property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium and are located in the service area.

(f) "Department" means the Department of Financial Services.

(g) "Property" means association property and condominium property, as applicable, located in the service area.

(h) "Rebuild" means property under construction to replace a structure that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority.

(i) "Service area" means the area of the state which is 15 miles inward of a coastline, as that term is defined in s. 376.031.

(j) "Unit" has the same meaning as in s. 718.103.

(k) "Unit owner" has the same meaning as in s. 718.103.

(2) PARTICIPATION.—

(a) In order to apply for an inspection under subsection (4) or a grant under subsection (5) for association property or condominium property, an association must receive approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate

in the pilot program.

(b) In order to apply for a grant under subsection (5) which improves one or more units within a condominium, an association must receive both of the following:

1. Approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in a mitigation inspection.

2. A unanimous vote of all unit owners within the structure or building that is the subject of the mitigation grant.

(c) A unit owner may participate in the pilot program through a mitigation grant awarded to the association but may not participate individually in the pilot program.

(d) The votes required under this subsection may take place at the annual budget meeting of the association or at a unit owner meeting called for the purpose of taking such vote. Before a vote of the unit owners may be taken, the association must provide to the unit owners a clear disclosure of the pilot program on a form created by the department. The president and the treasurer of the board of administration must sign the disclosure form indicating that a copy of the form was provided to each unit owner of the association. The signed disclosure form and the minutes from the meeting at which the unit owners voted to participate in the pilot program must be maintained as part of the official records of the association. Within 14 days

after an affirmative vote to participate in the pilot program, the association must provide written notice in the same manner as required under s. 718.112(2)(d) to all unit owners of the decision to participate in the pilot program.

(3) HURRICANE MITIGATION INSPECTORS.—

(a) Licensed inspectors are to provide inspections of the property to determine the mitigation measures that are needed, the insurance premium discounts that may be available to the association, and the improvements to existing properties of the association that are needed to reduce a property's vulnerability to hurricane damage.

(b) The department shall contract with wind certification entities to provide hurricane mitigation inspections. To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity must, at a minimum, meet all of the following requirements:

1. Use hurricane mitigation inspectors who are licensed or certified as:

a. A building inspector under s. 468.607;

b. A general, building, or residential contractor under s. 489.111;

c. A professional engineer under s. 471.015;

d. A professional architect under s. 481.213; or

e. A home inspector under s. 468.8314 who has completed at least 3 hours of hurricane mitigation training approved by the

Construction Industry Licensing Board, which must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam.

2. Use hurricane mitigation inspectors who have undergone drug testing and a background screening. The department may conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a full set of fingerprints to the department or to a vendor, an entity, or an agency authorized under s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Fees for state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e). The results must be returned to the department for screening. The fingerprints must be taken by a law enforcement agency, designated examination center, or other department-approved entity.

3. Provide a quality assurance program including a reinspection component.

(4) HURRICANE MITIGATION INSPECTIONS.—

(a) The inspections provided to an association under this section must, at a minimum, include all of the following:

1. An inspection of the property, and a report that summarizes the results and identifies recommended improvements the association may take to mitigate hurricane damage.

2. A range of cost estimates regarding the recommended mitigation improvements.

3. Information regarding estimated insurance premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

(b) An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains.

(c) An association may apply for and receive an inspection without also applying for a grant under subsection (5).

(5) MITIGATION GRANTS.—Financial grants may be used to encourage associations to retrofit the property the association operates and maintains in order to make such property less vulnerable to hurricane damage.

(a) An application for a mitigation grant must:

1. Contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or

maintains.

2. Include a notarized statement from the president of the board of administration containing the name and license number of the contractor the association intends to use for the mitigation project.

3. Include a notarized statement from the president of the board of administration which commits to the department that the association will complete the mitigation improvements. If the grant will be used to improve units, the application must also include an acknowledged statement from each unit owner who is required to provide approval for a grant under paragraph (2)(b).

(b) An association may select its own contractor for the mitigation project as long as such contractor meets all qualification, certification, or licensing requirements in general law. A mitigation project must be performed by a properly licensed contractor who has secured all required local permits necessary for the project. The department must electronically verify that the contractor's state license number is accurate and up to date before approving a grant application.

(c) An association awarded a grant must complete the entire mitigation project in order to receive the final grant award and must agree to make the property available for a final inspection once the mitigation project is finished to ensure the mitigation improvements are completed in a matter consistent with the intent of the pilot program and meet or exceed the

applicable Florida Building Code requirements. Construction must be completed and the association must submit a request to the department for a final inspection, or request an extension of time, within 1 year after receiving grant approval. If the association fails to comply with this paragraph, the application is deemed abandoned and the grant money reverts back to the department.

(d) Grant projects shall be funded as follows:

1. All grants must be matched on the basis of $1 provided by the association for $2 provided by the state.

2. For roof-related projects, the grant contribution is $11 per square foot multiplied by the square footage of the replacement roof, not to exceed $1,000 per unit, with a maximum grant award of 50 percent of the cost of the project.

3. For opening protection-related projects, the grant contribution is a maximum of $750 per replacement window or door, not to exceed $1,500 per unit, with a maximum grant award of 50 percent of the cost of the project.

4. An association may receive grant funds for both roof-related and opening protection-related projects, but the maximum total grant award may not exceed $175,000 per association.

5. The department may not accept grant applications or maintain a waiting list for grants after the cumulative value of the grants awarded have fully obligated the appropriation, unless otherwise expressly authorized by the Legislature.

(e) When recommended by a hurricane mitigation inspection report, grants for eligible associations may be used for the following improvements:

1. Opening protection.

2. Exterior doors, including garage doors.

3. Reinforcing roof-to-wall connections.

4. Improving the strength of roof-deck attachments.

5. Secondary water barrier for roof.

(f) Grants may be used for a previously inspected existing structure on the property or for a rebuild.

(g)1. If improvements to protect the property which complied with the current applicable building code at the time have been previously installed, the association must use a mitigation grant to install improvements that do both of the following:

a. Comply with or exceed the applicable building code in effect at the time the association applied for the grant.

b. Provide more hurricane protection than the improvements that the association previously installed.

2. The association may not use a mitigation grant to:

a. Install the same type of improvements that were previously installed; or

b. Pay a deductible for a pending insurance claim for damage that is part of the property for which grant funds are being received.

(h) The department shall develop a process that ensures the most efficient means to collect and verify grant applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the Internet or other electronic means to collect information and determine eligibility.

(6) CONTRACT MANAGEMENT.—

(a) The department may contract with third parties for grants management, inspection services, contractor services, information technology, educational outreach, and auditing services. Such contracts are considered direct costs of the pilot program and are not subject to administrative cost limits. The department shall contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and shall ensure the highest accountability for use of state funds, consistent with this section.

(b) The department shall implement a quality assurance and reinspection program that determines whether initial inspections and mitigation improvements are completed in a manner consistent with the intent of the pilot program. The department may use a valid random sampling in order to perform the quality assurance portion of the pilot program.

(7) REPORTS.—By February 1 of each year, the department shall submit a report to the President of the Senate and the

Speaker of the House of Representatives on the activities of the pilot program and the use of state funds. The report must include all of the following information:

(a) The number of inspections requested.

(b) The number of inspections performed.

(c) The number of grant applications received.

(d) The number of grants approved and the monetary value of each grant.

(e) The estimated average annual amount of insurance premium discounts each association received and the total estimated annual amount of insurance premium discounts received by all associations participating in the pilot program.

(f) The estimated average annual amount of insurance premium discounts each unit owner received as a result of the improvements to the building or structure.

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

COMMERCE COMMITTEE

CS/CS/HB 1029 by Lopez, V.; Hunschofsky
My Safe Florida Condominium Pilot Program

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Lopez, V. (Line 87): The Amendment:

- changes the term secondary water barrier to secondary water resistance to conform with proper roofing terminology.
- limits the My Safe Florida Condominium Pilot Program (Program) participants to those condominiums that are three stories or less.
- removes the allowance for Program grant funds to be used for the complete rebuild of a condominium.
- provides the Department of Financial Services (DFS) with the authority to ask Program applicants for additional information related to inspection and grant applications.
- Provides DFS with rulemaking authority for the Program.
- makes technical changes to assist the DFS with administering the Program.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee
Representative Lopez, V. offered the following:

Amendment

Remove lines 87-315 and insert:

(h) "Service area" means the area of the state which is 15 miles inward of a coastline, as that term is defined in s. 376.031.

(i) "Unit" has the same meaning as in s. 718.103.

(j) "Unit owner" has the same meaning as in s. 718.103.

(2) PARTICIPATION.—

(a) In order to apply for an inspection under subsection (4) or a grant under subsection (5) for association property or condominium property, an association must receive approval by a majority vote of the board of administration or a majority vote

of the total voting interests of the association to participate in the pilot program.

(b) In order to apply for a grant under subsection (5) which improves one or more units within a condominium, an association must receive both of the following:

1. Approval by a majority vote of the board of administration or a majority vote of the total voting interests of the association to participate in a mitigation inspection.

2. A unanimous vote of all unit owners within the structure or building that is the subject of the mitigation grant.

(c) A unit owner may participate in the pilot program through a mitigation grant awarded to the association but may not participate individually in the pilot program.

(d) The votes required under this subsection may take place at the annual budget meeting of the association or at a unit owner meeting called for the purpose of taking such vote. Before a vote of the unit owners may be taken, the association must provide to the unit owners a clear disclosure of the pilot program on a form created by the department. The president and the treasurer of the board of administration must sign the disclosure form indicating that a copy of the form was provided to each unit owner of the association. The signed disclosure form and the minutes from the meeting at which the unit owners voted to participate in the pilot program must be maintained as

part of the official records of the association. Within 14 days after an affirmative vote to participate in the pilot program, the association must provide written notice in the same manner as required under s. 718.112(2)(d) to all unit owners of the decision to participate in the pilot program.

(e) Only condominiums of three stories or less are eligible to participate in the program.

(3) HURRICANE MITIGATION INSPECTORS.—

(a) Licensed inspectors are to provide inspections of the property to determine the mitigation measures that are needed, the insurance premium discounts that may be available to the association, and the improvements to existing properties of the association that are needed to reduce a property's vulnerability to hurricane damage.

(b) The department shall contract with wind certification entities to provide hurricane mitigation inspections. To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity must, at a minimum, meet all of the following requirements:

1. Use hurricane mitigation inspectors who are licensed or certified as:

a. A building inspector under s. 468.607;

b. A general, building, or residential contractor under s. 489.111;

c. A professional engineer under s. 471.015;

d. A professional architect under s. 481.213; or

e. A home inspector under s. 468.8314 who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam.

2. Use hurricane mitigation inspectors who have undergone drug testing and a background screening. The department may conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a full set of fingerprints to the department or to a vendor, an entity, or an agency authorized under s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Fees for state and federal fingerprint processing shall be borne by the inspector. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e). The results must be returned to the department for screening. The fingerprints must be taken by a law enforcement agency, designated examination center, or other department-approved entity.

3. Provide a quality assurance program including a reinspection component.

(4) HURRICANE MITIGATION INSPECTIONS.—

(a) The inspections provided to an association under this section must, at a minimum, include all of the following:

1. An inspection of the property, and a report that summarizes the results and identifies recommended improvements the association may take to mitigate hurricane damage.

2. A range of cost estimates regarding the recommended mitigation improvements.

3. Information regarding estimated insurance premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

(b) An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains.

(c) An association may apply for and receive an inspection without also applying for a grant under subsection (5).

(5) MITIGATION GRANTS.—Financial grants may be used by associations to make improvements recommended by an inspection which increases the condominium's resistance to hurricane damage.

(a) An application for a mitigation grant must:

1. Contain a signed or electronically verified statement made under penalty of perjury by the president of the board of administration that the association has submitted only a single application for each property that the association operates or maintains.

2. Include a notarized statement from the president of the board of administration containing the name and license number of each contractor the association intends to use for the mitigation project.

3. Include a notarized statement from the president of the board of administration which commits to the department that the association will complete the mitigation improvements. If the grant will be used to improve units, the application must also include an acknowledged statement from each unit owner who is required to provide approval for a grant under paragraph (2)(b).

(b) An association may select its own contractors for the mitigation project as long as each contractor meets all qualification, certification, or licensing requirements in general law. A mitigation project must be performed by a properly licensed contractor who has secured all required local permits necessary for the project. The department must electronically verify that the contractor's state license number is accurate and up to date before approving a grant application.

(c) An association awarded a grant must complete the entire mitigation project in order to receive the final grant

award and must agree to make the property available for a final inspection once the mitigation project is finished to ensure the mitigation improvements are completed in a matter consistent with the intent of the pilot program and meet or exceed the applicable Florida Building Code requirements. Construction must be completed and the association must submit a request to the department for a final inspection, or request an extension of time, within 1 year after receiving grant approval. If the association fails to comply with this paragraph, the application is deemed abandoned and the grant money reverts back to the department.

(d) Grant projects shall be funded as follows:

1. All grants must be matched on the basis of $1 provided by the association for $2 provided by the state.

2. For roof-related projects, the grant contribution is $11 per square foot multiplied by the square footage of the replacement roof, not to exceed $1,000 per unit, with a maximum grant award of 50 percent of the cost of the project.

3. For opening protection-related projects, the grant contribution is a maximum of $750 per replacement window or door, not to exceed $1,500 per unit, with a maximum grant award of 50 percent of the cost of the project.

4. An association may receive grant funds for both roof-related and opening protection-related projects, but the maximum total grant award may not exceed $175,000 per association.

5. The department may not accept grant applications or maintain a waiting list for grants after the cumulative value of the grants awarded have fully obligated the appropriation, unless otherwise expressly authorized by the Legislature.

(e) When recommended by a hurricane mitigation inspection report, grants for eligible associations may be used for the following improvements:

1. Opening protection, including exterior doors, garage doors, windows, and skylights.

2. Reinforcing roof-to-wall connections.

3. Improving the strength of roof-deck attachments.

4. Secondary water resistance for roof.

(f) Grants may be used for a previously inspected existing structure on the property.

(g)1. If improvements to protect the property which complied with the current applicable building code at the time have been previously installed, the association must use a mitigation grant to install improvements that do both of the following:

a. Comply with or exceed the applicable building code in effect at the time the association applied for the grant.

b. Provide more hurricane protection than the improvements that the association previously installed.

2. The association may not use a mitigation grant to:

a. Install the same type of improvements that were previously installed; or

b. Pay a deductible for a pending insurance claim for damage that is part of the property for which grant funds are being received.

(h) The department shall develop a process that ensures the most efficient means to collect and verify inspection and grant applications to determine eligibility. The department may direct hurricane mitigation inspectors to collect and verify inspection and grant application information or use the Internet or other electronic means to collect information and determine eligibility.

(6) CONTRACT MANAGEMENT.—

(a) The department may contract with third parties for grants management, inspection services, contractor services, information technology, educational outreach, and auditing services. Such contracts are considered direct costs of the pilot program and are not subject to administrative cost limits. The department shall contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and shall ensure the highest accountability for use of state funds, consistent with this section.

(b) The department shall implement a quality assurance and reinspection program that determines whether initial inspections

and mitigation improvements are completed in a manner consistent with the intent of the pilot program. The department may use a valid random sampling in order to perform the quality assurance portion of the pilot program.

(7) REPORTS.—By February 1 of each year, the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives on the activities of the pilot program and the use of state funds. The report must include all of the following information:

(a) The number of inspections requested.

(b) The number of inspections performed.

(c) The number of grant applications received.

(d) The number of grants approved and the monetary value of each grant.

(e) The estimated average annual amount of insurance premium discounts each association received and the total estimated annual amount of insurance premium discounts received by all associations participating in the pilot program.

(f) The estimated average annual amount of insurance premium discounts each unit owner received as a result of the improvements to the building or structure.

(8) REQUESTS FOR INFORMATION.—The department may request that an applicant provide additional information. An application is deemed withdrawn by the applicant if the department does not receive a response to its request for additional information

within 60 days after the notification of any apparent error or omission in the application.

(9) RULES.—The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to govern the program; implement the provisions of this section; including rules governing hurricane mitigation inspections and grants, mitigation contractors, and training of inspectors and contractors; and carry out the duties of the department under this section.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1099 Food Delivery Platforms
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Melo and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 0 N, As CS	Fletcher	Anstead
2) Commerce Committee		Fletcher	Hamon

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 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

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[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).
[7] Id.

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.
- "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:

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[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).

- 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

On February 6, 2024, the Regulatory Reform and Economic Development Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute made the following changes:

- Removed provisions relating to requiring:
  - Express consent from a restaurant for the food delivery platform to deliver or pick up orders for a consumer.
  - Certain customer disclosures, communication, and mechanisms.
  - The food delivery platform to remove the restaurant's listing from the platform upon request of the restaurant.
- Allowed the Division to investigate complaints, adopt rules, issue cease and desist orders, and collect civil penalties.

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

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 and provide certain notice to the consumer; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to issue to a food delivery platform a notice to cease and desist for specified violations; providing that such notice does not constitute agency action; requiring the division to provide a food delivery platform the ability to cure any violation within a specified timeframe before enforcing such notice or imposing a civil penalty; authorizing the division to enforce such notice through specified legal proceedings; authorizing the division to collect attorney fees and costs under certain circumstances; authorizing the division to impose a specified civil penalty; providing construction; authorizing the division to receive and investigate complaints of specified violations; preempting regulation of food service platforms to the state; requiring the division to adopt rules; providing an effective date.

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

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 price exceeds 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 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 of a division rule.

(6) The division may receive and investigate any complaint which alleges that a food delivery platform has violated this section or any rule adopted pursuant to 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.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1149 Policy Cancellations and Nonrenewals by Property Insurers
SPONSOR(S): Insurance & Banking Subcommittee, Botana and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1104

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

SUMMARY ANALYSIS

An authorized insurer may not cancel or nonrenew any personal residential or commercial residential property insurance policy: for 90 days after the dwelling or residential property has been repaired, if the property has been damaged as a result of a hurricane or wind loss; until the earlier of when the dwelling or residential property has been repaired or one year after the final claim payment, if the property was damaged by a covered peril, but not a hurricane or wind loss.

However, an authorized insurer or agent may cancel or nonrenew a policy before the dwelling or residential property has been repaired: upon 10 days' notice (for nonpayment of premium); or upon 45 days' notice (for: 1. a material misstatement or fraud related to the claim, 2. if the insurer determines that the insured has unreasonably caused a delay in the repair, or 3. if the insurer has paid policy limits).

If an insurer elects to nonrenew a policy covering a damaged property, the insurer must provide at least 90 days' notice that it intends to nonrenew the policy 90 days after the property has been repaired. A structure is considered repaired when substantially completed and restored such that it is insurable by another authorized insurer writing policies in Florida.

Section 626.9201, F.S., governs a surplus lines insurer's cancellation or nonrenewal of personal residential and commercial residential property insurance policies. However, current law contains no specific language regarding cancellation or nonrenewal of surplus lines policies issued on properties with unrepaired damage.

The bill changes when an authorized insurer may cancel or nonrenew personal residential or commercial residential property insurance policies on properties with unrepaired damage. As a result, the standards for cancellation apply to personal residential and commercial residential property insurance policies issued by **both authorized insurers and surplus lines insurers**. An insurer **may not** cancel or nonrenew a personal residential or commercial residential property policy covering a dwelling or residential property in Florida damaged by a covered peril until the earlier of: the completion of repairs; or, the expiration of one subsequent renewal of the policy that was in force at the time of the loss.

"Damage" includes flood damage related to a hurricane if flood is a covered peril under the personal residential or commercial residential property insurance, or under a separate flood insurance policy, in effect at the time of the loss for which the damage remains unrepaired. Additionally, if flood is not a covered peril under the policy or under a separate flood insurance policy, and the property has been damaged as a result of flood related to a hurricane, an insurer **may not** cancel or nonrenew the policy until the earlier of: the completion of repairs; or, the expiration of one subsequent renewal of the policy that was in force at the time of the loss.

The bill specifies exceptions which will allow an insurer to cancel a policy when unrepaired damage remains. These include failure to pay premium, a lack of insurable interest in the property, fraud, and failure to timely respond to written inquiries by the insurer.

The bill has no impact on state or local revenues or expenditures. It may have indeterminate positive and negative economic impacts on the private sector.

The bill is effective July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In general, with respect to any personal residential or commercial residential property insurance policy covering a dwelling or residential property in Florida, including but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents, an authorized insurer must give the first-named insured:

- At least 45 days' advance written notice of the renewal premium.[1]
- Written notice of nonrenewal, cancellation, or termination at least 120 days before the effective date of the nonrenewal, cancellation, or termination. Such notice must contain the reason for the nonrenewal, cancellation, or termination.[2]

However, an authorized insurer may not cancel or nonrenew any personal residential or commercial residential property insurance policy:

- For 90 days after the dwelling or residential property has been repaired, if the property has been damaged as a result of a hurricane or wind loss that is the subject of a declaration of emergency and the filing of an order by the Insurance Commissioner.[3]
- Until the earlier of when the dwelling or residential property has been repaired or one year after the insurer issues the final claim payment, if the property was damaged by a covered peril, but not a hurricane or wind loss.[4]

Additionally, an authorized insurer or agent may cancel or nonrenew a policy before the dwelling or residential property has been repaired:

- Upon 10 days' notice for nonpayment of premium; or
- Upon 45 days' notice for:
  - A material misstatement or fraud related to the claim;
  - If the insurer determines that the insured has unreasonably caused a delay in the repair; or
  - If the insurer has paid policy limits.[5]

If an insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90 days' notice that the insurer intends to nonrenew the policy 90 days after the property has been repaired.[6] A structure is considered repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer writing policies in Florida.[7]

Section 626.9201, F.S., governs the cancellation or nonrenewal of personal residential and commercial residential property insurance policies issued by surplus lines insurers. Currently, a surplus lines insurer issuing a policy for property insurance must give the first named insured at least 45 days' advance written notice as to why the policy is not to be renewed.[8] A surplus lines insurer issuing a policy providing covering property must give the named insured written notice of cancellation or termination, including the reasons for the cancellation or termination, with certain exceptions.[9] However, current law contains no specific language regarding cancellation or nonrenewal of surplus lines policies issued on properties with unrepaired damage.

[1] S. 627.4133(2)(a), F.S.
[2] S. 627.4133(2)(b), F.S.
[3] S. 627.4133(2)(e)1.a., F.S.
[4] S. 627.4133(2)(e)1.b., F.S.
[5] S. 627.4133(2)(e)2., F.S.
[6] S. 627.4133(2)(e)3., F.S.
[7] S. 627.4133(2)(e)5., F.S.
[8] S. 626.9201(1), F.S.
[9] S. 626.9201(2), F.S

Effect of the Bill

The bill changes when an authorized insurer may cancel or nonrenew personal residential or commercial residential property insurance policies on properties with unrepaired damage. It eliminates the separate timeframes for authorized insurers to cancel or nonrenew personal residential or commercial residential policies following losses due to hurricane and wind and all other covered perils.

The bill also establishes standards for cancellation and nonrenewal of such policies issued by surplus lines insurers.

As a result, the following standards for cancellation apply to personal residential and commercial residential property insurance policies issued by **both authorized insurers and surplus lines insurers**. An insurer **may not** cancel or nonrenew a personal residential or commercial residential property policy covering a dwelling or residential property in Florida which has been damaged by a covered peril until the earlier of:

- The completion of repairs; or
- The expiration of one subsequent renewal of the policy that was in force at the time of the loss.

The bill states that the term "damage" includes flood damage related to a hurricane if flood is a covered peril under the personal residential or commercial residential property insurance, or under a separate flood insurance policy, in effect at the time of the loss for which the damage remains unrepaired.

Additionally, if flood is not a covered peril under the policy or under a separate flood insurance policy, and the property has been damaged as a result of flood related to a hurricane, an insurer **may not** cancel or nonrenew the policy until the earlier of:

- The completion of repairs; or
- The expiration of one subsequent renewal of the policy that was in force at the time of the loss.

An insurer or agent **may** cancel or nonrenew a personal residential and commercial residential policy prior to the repair of the dwelling or residential property:

- Upon 10 days' notice:
  - For nonpayment of premium; or
  - If the named insured no longer has an insurable interest in the property; or
- Upon 45 days' notice:
  - For a material misstatement or fraud related to the claim;
  - If the insurer or its agent has made a reasonable written inquiry of the insured as to the status of the repair and the insured fails to respond within 30 calendar days; or
  - If the insurer has paid policy limits under a personal residential property insurance policy for a loss to the insured dwelling that was damaged, or policy limits under a commercial residential property insurance policy for a loss to each structure that was damaged.

If the insurer elects to nonrenew a policy after the expiration of one subsequent renewal of the policy in force at the time of the loss, the insurer must comply with normal notice requirements in the statutes for authorized and surplus lines insurers.[10] Additionally, the provisions prohibiting cancellation or nonrenewal of policies on properties with unrepaired damage do not prevent the insurers from canceling or nonrenewing the policies after the repair is completed for the same reasons they would have canceled if the unrepaired damage did not exist.

The bill provides that a structure is deemed to be repaired when substantially completed and restored to the extent that it is insurable by:

- Another authorized insurer writing policies in Florida if the structure is currently insured by an authorized insurer; or
- Another authorized or eligible surplus lines insurer writing policies in Florida if the structure is currently insured by an eligible surplus lines insurer.

B. SECTION DIRECTORY:

[10] Ss. 627.4133(2) and 626.9201, F.S., respectively.

Section 1. Amends s. 626.9201, F.S., relating to notice of cancellation or nonrenewal.

Section 2. Amends s. 627.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Personal residential and commercial residential policyholders may experience an indeterminate economic impact as a result of the bill. Those policyholders who might have had to pay higher premiums for force-placed insurance when their existing insurers canceled or nonrenewed them due to unrepaired damage will remain insured by their current insurers for at least one subsequent renewal period. Admitted and surplus lines insurers may experience a negative economic impact by being forced to renew policies on properties with unrepaired damage that they otherwise would have nonrenewed or canceled.

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 Financial Services Commission is provided sufficient authority to, and may adopt rules necessary to, implement the provisions within the bill.[11]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 6, 2024, the Insurance & Banking Subcommittee considered the bill as a Proposed Committee Substitute (PCS), adopted one amendment to the PCS, and reported the bill favorably as a committee substitute.

The PCS made the following changes from the bill as filed:

- Establishes that the standards for cancellation apply to personal residential and commercial residential property insurance policies issued by **both authorized insurers and surplus lines insurers** such that an insurer **may not** cancel or nonrenew a personal residential or commercial residential property policy covering a dwelling or residential property in Florida which has been damaged by a covered peril until the earlier of:
  - the completion of repairs; or
  - the expiration of one subsequent renewal of the policy that was in force at the time of the loss.
- Eliminates the section of the bill prohibiting cancellation or nonrenewal of a commercial property insurance policy.
- Eliminates the provision of the bill requiring policies that are extended or renewed to contain the same policy terms as the policies being extended or renewed.

The amendment to the PCS corrected a cross-reference.

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

[11] The Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of the Office of Insurance Regulation for the purposes of rulemaking.

A bill to be entitled

An act relating to policy cancellations and nonrenewals by property insurers; amending s. 626.9201, F.S.; prohibiting eligible surplus lines insurers from canceling and nonrenewing policies covering dwellings and residential properties damaged by hurricanes and wind losses within certain timeframes; providing exceptions to prohibitions against insurers' policy cancellations and nonrenewals within certain timeframes; providing definitions; authorizing the Financial Services Commission to adopt rules and the Commissioner of Insurance Regulation to issue orders; amending s. 627.4133, F.S.; prohibiting insurers from canceling and nonrenewing policies covering dwellings and residential properties damaged by covered perils within certain timeframes; revising exceptions to prohibitions against insurers' policy cancellations and nonrenewals within certain timeframes; revising conditions under which a structure is deemed to be repaired; revising the definition of the term "insurer" to include eligible surplus lines insurers; defining the term "damage"; providing an effective date.

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

Section 1. Subsection (2) of section 626.9201, Florida Statutes, is amended to read:

626.9201 Notice of cancellation or nonrenewal.—

(2) An insurer issuing a policy providing coverage for property, casualty, surety, or marine insurance must give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days before the effective date of the cancellation or termination, including in the written notice the reasons for the cancellation or termination, except that:

(a) If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason for cancellation must be given. As used in this paragraph, the term "nonpayment of premium" means the failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy or an installment of such a premium, whether the premium or installment is payable directly to the insurer or its agent or indirectly under any plan for financing premiums or extension of credit or the failure of the named insured to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also includes the failure of a financial institution to honor the check of an applicant for insurance which was delivered to a licensed agent

for payment of a premium, even if the agent previously delivered or transferred the premium to the insurer. If a correctly dishonored check represents payment of the initial premium, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and, if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full; ~~and~~

(b) If cancellation or termination occurs during the first 90 days during which the insurance is in force and if the insurance is canceled or terminated for reasons other than nonpayment, at least 20 days' written notice of cancellation or termination accompanied by the reason for cancellation or termination must be given, except if there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer; and~~.~~

(c)1. Notwithstanding subparagraph 2., an insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged by a covered peril until the earlier of the completion of repairs or the expiration of one subsequent renewal of the policy that was in force at the time of the loss. If flood is

not a covered peril under the personal residential or commercial residential property insurance policy or under a separate flood insurance policy and the property has been damaged as a result of flood related to a hurricane, an insurer may not cancel or nonrenew the personal residential or commercial residential property insurance policy until the earlier of the completion of repairs or the expiration of one subsequent renewal of the policy that was in force at the time of the loss.

2. An insurer or agent may cancel or nonrenew such a policy prior to the repair of the dwelling or residential property:

a. Upon 10 days' notice:

(I) For nonpayment of premium; or

(II) If the named insured no longer has an insurable interest in the property; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the claim;

(II) If the insurer or its agent has made a reasonable written inquiry to the insured as to the status of the repair and the insured has failed within 30 calendar days to provide information that is responsive to the inquiry to the address or e-mail account designated by the insurer or its agent; or

(III) If the insurer has paid policy limits under a personal residential property insurance policy for a loss to the

insured dwelling that was damaged, or policy limits under a commercial residential property insurance policy for a loss to each insured structure that was damaged.

3. If the insurer elects to nonrenew a policy after the expiration of the time in subparagraph 1., the insurer must provide notice in accordance with subsection (1).

4. This paragraph does not prevent the insurer from canceling or nonrenewing the policy after the repair is completed for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for subparagraph 1.

5. For purposes of this paragraph:

a. A structure is deemed to be repaired when substantially completed and restored to the extent that it is insurable by:

(I) Another authorized insurer writing policies in this state if the structure is currently insured by an authorized insurer; or

(II) Another authorized or eligible surplus lines insurer writing policies in this state if the structure is currently insured by an eligible surplus lines insurer.

b. The term "insurer" means an authorized insurer or an eligible surplus lines insurer.

c. The term "damage" includes flood damage related to a hurricane if flood is a covered peril under the personal residential or commercial residential property insurance policy or under a separate flood insurance policy.

6. The commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

Section 2. Paragraph (e) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents:

(e)1. Notwithstanding subparagraph 2., an insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged by a covered peril until the earlier of the completion of repairs or the expiration of one subsequent renewal of the policy that was in force at the time of the loss. If flood is not a covered peril under the personal residential or commercial residential property insurance policy or under a separate flood insurance policy and the property has been damaged as a result of flood related to a hurricane, an insurer may not cancel or nonrenew the personal residential or commercial residential

property insurance policy until the earlier of the completion of repairs or the expiration of one subsequent renewal of the policy that was in force at the time of the loss. ~~An authorized insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state:~~

~~a. For a period of 90 days after the dwelling or residential property has been repaired, if such property has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation.~~

~~b. Until the earlier of when the dwelling or residential property has been repaired or 1 year after the insurer issues the final claim payment, if such property was damaged by any covered peril and sub-subparagraph a. does not apply.~~

2. ~~However,~~ An insurer or agent may cancel or nonrenew such a policy prior to the repair of the dwelling or residential property:

a. Upon 10 days' notice:

(I) For nonpayment of premium; or

(II) If the named insured no longer has an insurable interest in the property; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the

claim;

(II) If the insurer or its agent has made a reasonable written inquiry to the insured as to the status of the repair and the insured has failed within 30 calendar days to provide information that is responsive to the inquiry to the address or e-mail account designated by the insurer or its agent ~~If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling~~; or

(III) If the insurer has paid policy limits under a personal residential property insurance policy for a loss to the insured dwelling that was damaged, or policy limits under a commercial residential property insurance policy for a loss to each insured structure that was damaged.

3. If the insurer elects to nonrenew a policy after the expiration of the time in subparagraph 1., the insurer must provide notice in accordance with subsection (2) ~~covering a property that has been damaged, the insurer shall provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired~~.

4. ~~Nothing in~~ This paragraph does not ~~shall~~ prevent the insurer from canceling or nonrenewing the policy after the repair is completed ~~90 days after the repairs are complete~~ for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for ~~the limitations of~~ subparagraph 1.

~~The Financial Services Commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.~~

5.~~4.~~ This paragraph shall also apply to personal residential and commercial residential policies covering property that was damaged as the result of Hurricane Ian or Hurricane Nicole.

6. ~~5.~~ For purposes of this paragraph:

a. A structure is deemed to be repaired when substantially completed and restored to the extent that it is insurable by:

(I) Another authorized insurer writing policies in this state if the structure is currently insured by an authorized insurer; or

(II) Another authorized or eligible surplus lines insurer writing policies in this state if the structure is currently insured by an eligible surplus lines insurer.

b. The term "insurer" means an authorized insurer or an eligible surplus lines insurer.

c. Except for subparagraph 5., the term "damage" includes flood damage related to a hurricane if flood is a covered peril under the personal residential or commercial residential property insurance policy or under a separate flood insurance policy.

7. The commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement

this paragraph.

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

COMMERCE COMMITTEE

CS/HB 1149 by Botana
Policy Cancellations and Nonrenewals by Property Insurers

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Botana (Line 75): The amendment allows the Insurance Commissioner discretion in the event of wide-spread significant flooding, caused by a hurricane or other natural event, to issue an order preventing admitted and surplus lines insurers from canceling or nonrenewing personal residential or commercial residential property insurance policies covering dwellings or residential properties within certain zip codes for a specific period of time.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 75-223 and insert:

policy that was in force at the time of the loss.

2. An insurer or agent may cancel or nonrenew such a policy prior to the repair of the dwelling or residential property:

a. Upon 10 days' notice:

(I) For nonpayment of premium; or

(II) If the named insured no longer has an insurable interest in the property; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the claim;

(II) If the insurer or its agent has made a reasonable written inquiry to the insured as to the status of the repair and the insured has failed within 30 calendar days to provide information that is responsive to the inquiry to the address or e-mail account designated by the insurer or its agent; or

(III) If the insurer has paid policy limits under a personal residential property insurance policy for a loss to the insured dwelling that was damaged, or policy limits under a commercial residential property insurance policy for a loss to each insured structure that was damaged.

3. If the insurer elects to nonrenew a policy after the expiration of the time in subparagraph 1., the insurer must provide notice in accordance with subsection (1).

4. This paragraph does not prevent the insurer from canceling or nonrenewing the policy after the repair is completed for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for subparagraph 1.

5. For purposes of this paragraph:

a. A structure is deemed to be repaired when substantially completed and restored to the extent that it is insurable by:

(I) Another authorized insurer writing policies in this state if the structure is currently insured by an authorized insurer; or

(II) Another authorized or eligible surplus lines insurer writing policies in this state if the structure is currently insured by an eligible surplus lines insurer.

b. The term "insurer" means an authorized insurer or an eligible surplus lines insurer.

c. The term "damage" includes, but is not limited to, flood damage related to a hurricane if flood is a covered peril under the personal residential or commercial residential property insurance policy.

6. The commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

7. In the event of wide-spread significant flooding, as determined by the Commissioner of Insurance Regulation, caused by a hurricane or other natural event, the Commissioner of Insurance Regulation may issue an order preventing insurers from canceling or nonrenewing personal residential or commercial residential property insurance policies covering dwellings or residential properties located within zip codes, as determined by the Commissioner of Insurance Regulation, directly affected by such flooding. If a claim is made while such an order is in effect, the insurer may not cancel or nonrenew personal residential or commercial residential property insurance policies covering dwellings or residential properties until the earlier of the completion of repairs or the expiration of one

subsequent renewal of the policy that was in force at the time of the loss, even if the personal residential or commercial residential property insurance policies do not cover the peril of flood. An order issued pursuant to this subparagraph may remain in effect for an initial period of 90 days and may be renewed for subsequent 90-day periods, not to exceed a total of 270 days. The subparagraph only applies to coverage periods and does not alter coverage otherwise provided by any insurance policy.

Section 2. Paragraph (e) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents:

(e)1. Notwithstanding subparagraph 2., an insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged by a covered peril until the earlier of the completion of repairs or the expiration of one subsequent renewal of the

policy that was in force at the time of the loss. ~~An authorized insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state:~~

~~a. For a period of 90 days after the dwelling or residential property has been repaired, if such property has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation.~~

~~b. Until the earlier of when the dwelling or residential property has been repaired or 1 year after the insurer issues the final claim payment, if such property was damaged by any covered peril and sub-subparagraph a. does not apply.~~

2. ~~However,~~ An insurer or agent may cancel or nonrenew such a policy prior to the repair of the dwelling or residential property:

a. Upon 10 days' notice:

(I) For nonpayment of premium; or

(II) If the named insured no longer has an insurable interest in the property; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the claim;

(II) If the insurer or its agent has made a reasonable written inquiry to the insured as to the status of the repair and the insured has failed within 30 calendar days to provide information that is responsive to the inquiry to the address or e-mail account designated by the insurer or its agent ~~If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling~~; or

(III) If the insurer has paid policy limits under a personal residential property insurance policy for a loss to the insured dwelling that was damaged, or policy limits under a commercial residential property insurance policy for a loss to each insured structure that was damaged.

3. If the insurer elects to nonrenew a policy after the expiration of the time in subparagraph 1., the insurer must provide notice in accordance with subsection (2) ~~covering a property that has been damaged, the insurer shall provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired~~.

4. ~~Nothing in~~ This paragraph does not ~~shall~~ prevent the insurer from canceling or nonrenewing the policy after the repair is completed ~~90 days after the repairs are complete~~ for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for ~~the limitations of~~ subparagraph 1. ~~The Financial Services Commission may adopt rules, and the~~

~~Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.~~

5.~~4.~~ This paragraph shall also apply to personal residential and commercial residential policies covering property that was damaged as the result of Hurricane Ian or Hurricane Nicole.

6. ~~5.~~ For purposes of this paragraph:

a. A structure is deemed to be repaired when substantially completed and restored to the extent that it is insurable by:

(I) Another authorized insurer writing policies in this state if the structure is currently insured by an authorized insurer; or

(II) Another authorized or eligible surplus lines insurer writing policies in this state if the structure is currently insured by an eligible surplus lines insurer.

b. The term "insurer" means an authorized insurer or an eligible surplus lines insurer.

c. Except for subparagraph 5., the term "damage" includes, but is not limited to, flood damage related to a hurricane if flood is a covered peril under the personal residential or commercial residential property insurance policy.

7. In the event of wide-spread significant flooding, as determined by the Commissioner of Insurance Regulation, caused by a hurricane or other natural event, the Commissioner of Insurance Regulation may issue an order preventing insurers from

canceling or nonrenewing personal residential or commercial residential property insurance policies covering dwellings or residential properties located within zip codes, as determined by the Commissioner of Insurance Regulation, directly affected by such flooding. If a claim is made while such an order is in effect, the insurer may not cancel or nonrenew personal residential or commercial residential property insurance policies covering dwellings or residential properties until the earlier of the completion of repairs or the expiration of one subsequent renewal of the policy that was in force at the time of the loss, even if the personal residential or commercial residential property insurance policies do not cover the peril of flood. An order issued pursuant to this subparagraph may remain in effect for an initial period of 90 days and may be renewed for subsequent 90-day periods, not to exceed a total of 270 days. The subparagraph only applies to coverage periods and does not alter coverage otherwise provided by any insurance policy.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1189 Corporate Actions
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Abbott
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1198

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Fletcher	Anstead
2) Judiciary Committee	21 Y, 0 N	Mawn	Kramer
3) Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

Corporations and other business entities that do business in Florida are generally 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, or by related provisions in Florida law.

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, limited liability company (LLC), or other business/commercial entity in Florida.

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 statutory ratification process provided by the bill 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 mechanism for a registered agent to resign from more than one business entity at a time, if the specified entity has been dissolved for ten continuous years or longer, by filing a consolidated resignation statement with DOS. This mechanism applies to the following business entity types:

- Domestic and foreign LLCs;
- Domestic corporations; and
- Domestic corporations not for profit.

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 using the consolidated resignation statement.

The bill does not appear to have a fiscal impact on local government expenses and revenues. However, the bill does appear to have an indeterminable negative fiscal 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:

Background

Corporations and other business entities that do business within Florida are governed generally 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, or by related provisions in Florida law.[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 by and regulated under chapter 607, F.S. In order for a for profit corporation to organize, the entity must file articles of incorporation with the Department of State (DOS), which articles must include specifics such as a corporate name, address, and number of shares, and, must designate 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 Florida Not For Profit Corporation Act. The structure of corporations not for profit is similar to that of for profit corporations, and the filing of articles of incorporation is required.

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]

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[1] *See generally* Chapter 607, F.S.
[2] Florida Department of State, *Division of Corporations Yearly Statistics*, https://dos.fl.gov/sunbiz/about-us/yearly-statistics/ (last visited Feb. 14, 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), https://www.sec.gov/Archives/edgar/data/0000886136/000110465921050534/tm2111304-1_def14a.htm, (last visited Feb. 14, 2024).

In 2013, the Legislature passed a law to make fees more uniform across the various business law chapters. The relevant fees, of which each respective business entity must be aware, 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 and properly authorized corporation. 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 required information in the articles of incorporation, it 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 and their agents, whether they be the incorporator, the board of directors, an officer, or the shareholders, can take corporate actions even though the corporation is technically defective, unauthorized, or invalid.

When an unauthorized or defective corporation takes a corporate action, such as improperly issuing shares, legal issues can arise. For example, a corporation that is trying to make a business deal with another entity or raise capital usually has to provide certain corporate records for the other parties' due diligence, and discovering a defective corporate action can immediately halt a transaction or potential transaction. This is problematic where a business deal has already been agreed upon prior to the discovery of the defective corporate action.

[5] The Florida Department of State, Division of Corporations, *Fees*, https://dos.fl.gov/sunbiz/forms/fees/, (last visited Feb. 14, 2024).
[6] Section 607.0120(1), F.S.

Currently, disputed acts or defective share issuances that are carried out by a corporation are governed by common law in the court system.[7] 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 to 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.[8] 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, which method may be undertaken by shareholder action, or, where such action is not required, by either the incorporators or board of directors.[9]

Such an amendment can be made with one single amendment form, for a fee of $35.00.[10] This form, called the articles of amendment form, must be signed and delivered to the DOS, among other specific requirements laid out in statute.[11]

Active vs Dissolved Business Entities

The division annually assigns an accompanying status (that is, "active" or "inactive") to a business entity based on whether or not the business entity properly completed all of its filings and paid all applicable 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 satisfactory, the business entity will be assigned an "active" status.

After the initial filings, a business entity remains "active" if it files the statutorily-required annual report and pays 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, it will assign the business entity an "inactive" status and the business entity will be administratively dissolved or it authority to operate will be administratively revoked.[12]

A business entity can determine its status by logging in to the online portal operated by the DOS, or it can file and pay a fee to have the DOS send them a certificate of status. Such fee is $5 for an LLC and $8.75 for a corporation.[13]

A business entity that is no longer "active" may file a reinstatement application, accompanied by the associated fee, to reactivate their business status and become an "active" business entity again.

Registered Agents

Generally, Florida law requires a business entity to designate a registered agent.[14] A registered agent must be an individual who resides in Florida and whose business address is identical to the address of the registered office.[15] 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.

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[7] Florida Bar Business Law Section, *Chapter 607 White Paper: Summary of Ratification of Defective Corporate Actions and Resignation of Registered Agent Proposed Legislation* (2024).
[8] Section 607.1001, F.S.
[9] Section 607.1003(1-9), F.S., provides various methods for amending the articles of incorporation.
[10] Florida Department of State, Division of Corporations, *Articles of Amendment form*, https://form.sunbiz.org/pdf/cr2e011.pdf, (last visited on Feb. 14, 2024).
[11] Section 607.1006, F.S.
[12] Note that a general partnership is not required to file an annual report or pay an annual report fee.
[13] For LLCs *see* section 605.0213(12), F.S., and for Corporations *see* section 607.0122(19), F.S.
[14] S. 607.0501, F.S.
[15] *Id.*

Registered agents are required to serve as the contact for the business and receive service of process, legal notifications, and other official state documents for the business.

The DOS is required to maintain an accurate record of each business's registered agent and registered office for service of process, and must promptly furnish any such information upon request and payment of the required fee.[16] 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. Further, where a business entity does not appoint and maintain a registered agent, the DOS may administratively dissolve that business entity.[17]

In Florida, a registered agent is required for the following business entities:

- LLCs;
- Corporation/Foreign Corporation (for profit);
- Corporation/Foreign Corporation (not for profit);
- Limited Partnerships (domestic and foreign); and
- Limited Liability Partnerships (domestic and foreign).[18]

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 required fee, and mail it in to the division. Currently, a registered agent serving as such for more than one business entity who wishes to resign from all such positions must pay a separate fee to resign as the registered agent of each individual business entity.

Effect of the Bill

Ratification of Defective Corporate Actions

The bill creates statutory procedures for ratifying a defective corporate action and provides a judicial process for contesting the validity of certain corporate actions or putative shares. Under the bill, a defective corporate action is not void or voidable if the defective corporate action was ratified in accordance with the ratification or validation requirements proposed by the bill. The bill also emphasizes that:

- The ratification or validation process is not the exclusive means of ratifying or validating any defective corporate action;
- The absence or failure of ratification will not, in and of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise; and
- The ratification or validation process does not create a presumption that any such corporate action is or was a defective corporate action or is or was void or voidable.

DEFINITIONS

The bill defines certain terms, including:

[16] *Id.*

[17] For limited partnerships, s. 620.1809, F.S. governs.

[18] *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.)

- "Corporate action," meaning any action taken by or on behalf of a corporation, including any action taken by the incorporator or the corporation's board of directors, committee, officer or agent, or shareholders.
- "Date of the defective corporate action," meaning the date, or, of the exact date is unknown, the approximate date, on which the defective corporate action was purported to have been taken.
- "Defective corporate action," meaning 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.
- "Failure of authorization," meaning the failure to authorize, approve, or otherwise effect a corporate action in compliance with chapter 607, F.s., 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.
- "Overissue," meaning the purported issuance of shares or a class or series of shares in excess of the number of shares of the class or series the corporation has the power to issue at the time of issuance or shares of any class or series that is not then authorized for issuance by the corporation's articles of incorporation.
- "Putative shares," meaning the shares of any class or series that were created or issued due to a defective corporate action and that would constitute valid shares but for any failure of authorization or cannot be determined by the board of directors to be valid shares.
- "Valid shares," meaning the shares of any class or series that have been duly authorized and validly issued in accordance with chapter 607, F.S.
- "Validation effective time," meaning:
    - The later of the date and time at which the ratification is approved by the shareholders, or if such approval is not required, the date and time the notice required by s. 607.0149, F.S., becomes effective;
    - If no articles of incorporation are required to be filed, the date and time at which the notice required by s. 607.0149, F.S., becomes effective; or
    - If articles of validation are required to be filed, the date and time at which the filed articles of validation become effective.[19]

PROCEDURE FOR REMEDYING AN OVERISSUE

The bill provides that an overissue can be remedied by the adoption of an amendment to the articles of incorporation or other corporate action that authorizes, designates, or creates the putative shares that resulted in the overissue. Under the bill, putative shares will be valid and effective as of the date originally issued or purportedly issued upon such amendment or action. 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 sets forth specific procedural requirements for the ratification of defective corporate actions. Specifically, the bill provides that, to ratify a defective corporate action, the corporation must act in accordance with s. 607.0148, F.S., and state all of the following:

- 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.

Where the defective corporate action to be ratified relates to the election of the initial board of directors of the corporation, the bill provides that 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:

[19] Under the bill, the validation effective time will not be affected by the filing or pendency of a judicial proceeding under s. 607.0152, F.S., or any other law unless otherwise ordered by the court.

- The name of the person or persons who first took action in the corporation's name as the initial board of directors.
- 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.
- That the ratification of the election of such person or persons as the initial board of directors is approved.

Further, under the bill:

- If any provision of chapter 607, F.S., the corporation's articles of incorporation or bylaws, any corporate resolution, or any plan or agreement requires shareholder approval, or would have required such approval, at the date of the occurrence of the defective corporate action, the ratification approved in the action taken by the directors as specified above must be submitted to the shareholders for approval.
- Unless otherwise provided in the action taken by the board of directions, after such action has been taken and, if required, approved by the shareholders, the board may abandon the ratification at any time before the validation effective time without further shareholder action.

ACTION ON RATIFICATION

Under the bill, if the shareholders are meeting to ratify the election of a director, or if such ratification is to be made through written consent, the bill requires that it must be approved 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.

Under the bill, the quorum and voting requirements applicable to a ratifying action by the board of directors are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time such ratifying action is taken. Further, 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 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.

NOTICE REQUIREMENTS – SHAREHOLDER APPROVAL REQUIRED

The bill creates notice requirements where the ratification of the defective corporate action requires shareholder approval. Specifically, if shareholder approval is to be given at a meeting, the corporation must give notice of the meeting, which notice must state that the purpose of the meeting is to consider ratification of a defective corporate action, 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, the bill clarifies that such notice is not required to be given to holders of valid or putative shares whose identifies or addresses for notice cannot be determined from the corporation's records.

Further, if shareholder approval is instead to be given by written consent, the corporation must give notice of the action taken by such written consent, which notice must state that the purpose of the written consent was to ratify the defective corporate action, 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 corporation's records.

In either case, the notice must be accompanied by both of the following:

- Either:
    - A copy of the action taken by the board of directors under s. 607.0147(1); or

    - The information required by chapter 607, F.S.; and
- A statement that any claim asserting that the ratification of such defective corporate action, and any putative shares, 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.

NOTICE REQUIREMENTS – SHAREHOLDER APPROVAL NOT REQUIRED

The bill creates notice requirements where shareholder action to approve the ratification of a defective corporate action is not required. Specifically, the bill requires "prompt" notice to persons holding either valid or putative shares, regardless of whether entitled to vote, following the ratification of a corporate action by the board of directors. Under the bill, such notice must contain both of the following:

- Either:
    - A copy of the action taken by the board of directors under s. 607.0147(1); or
    - The information required by chapter 607, F.S.; and
- A statement that any claim asserting that the ratification of such defective corporate action, and any putative shares, 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.

The bill also:

- Provides that such notice is not required to be submitted to the holders of valid or putative shares if notice is given pursuant to other applicable law.
- Makes a disclaimer that such notice may be given in any manner authorized under s. 607.0141, F.S.
- Provides that, in the case of a public company, such notice may be given by the filing or furnishing of the notice with 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 under s. 607.0152, F.S.:

- Each defective corporate action ratified is not void or voidable as a result of the failure of authorization set forth and identified in the action taken, 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.

FILING REQUIREMENTS

The bill establishes a new filing requirement (known as "articles of validation") for ratified defective corporate actions 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 provides 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 provides that a corporation or a director, shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner thereof, or any other person claiming to be substantially and adversely affected by the ratification of a defective corporate action, may, within 120 days after the validation effective time, apply to the court for a determination of the:

- Validity of any corporate action or ratified defective corporate action.
- Validity of any ratification of any defective corporate action.
- Validity of any putative shares.

The bill also confers jurisdiction on the circuit court in the applicable county to hear and determine such claims and authorizes the court, upon such application, to:

- Modify or waive any of the ratification procedures; and
- Make such findings or issue such orders, and take into account a specified, non-exclusive list of factors or considerations, as it deems proper under the circumstances.

Further, the bill provides that service of process for any such proceedings should follow the same rules as set forth in ch. 48, F.S.,[20] for service on a corporation, and no other party need be joined in order for the court to adjudicate the matter. However, under the bill, 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.

Resignation of a Registered Agent

RESIGNATION STATEMENTS

The bill creates a mechanism for a registered agent to resign as the registered agent from multiple dissolved business entities, if the entities in question are of a specified type and have each been dissolved for at least a continuous ten-year period, by filing a single composite resignation statement with DOS. Under the bill:

- Any such composite statement must contain, for each entity covered therein, the name of the respective entity and the date such entity's dissolution became effective.
- Such a mechanism may only be utilized where the entities from which the registered agent wishes to resign are:
    - Domestic or foreign LLCs;
    - Domestic corporations; or
    - Domestic corporations not for profit.

Further, the bill clarifies that any resignation statement must be delivered to the subject entity at its mailing address as it then appears in DOS records. However, under the bill, if a composite resignation statement is filed, the registered agent must promptly mail a copy of either the composite resignation statement or a separate resignation notice to each entity from which he or she is resigning, in each case using the respective mailing address of each such entity that then appears in DOS records.

FEES

The bill specifies that the fee charged to resign as a registered agent of a dissolved LLC, domestic corporation, or domestic corporation not for profit is the same as it under current law, regardless of whether the registered agent is resigning from one such business entity or multiple such entities using a composite resignation statement.

Effective Date

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

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.

[20] Chapter 48, F.S., codifies Florida's Rules of Civil Procedure relating to process and service of process.

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 regarding validity of corporate actions.
Section 9: Amends s. 605.0115, F.S.; relating to resignation of registered agent.
Section 10: Amends s. 607.0503, F.S.; relating to resignation of registered agent.
Section 11: Amends s. 617.0502, F.S.; relating to resignation of corporation not for profit registered agents.
Section 12: Amends s. 605.0213, F.S.; relating to fees of the department.
Section 13: Amends s. 607.0122, F.S.; relating to fees for filing documents and issuing certificates.
Section 14: Amends s. 617.0122, F.S.; relating to fees for filing documents and issuing certificates.
Section 15: Reenacts s. 605.0207, F.S.; relating to effective date and time.
Section 16: Reenacts s. 605.0113, F.S.; relating to registered agent.
Section 17: Reenacts s. 658.23, F.S.; relating to submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.
Section 18: Reenacts s. 607.0501, F.S.; relating to registered office and registered agent.
Section 19: Reenacts s. 607.193, F.S.; relating to supplemental corporate fee.
Section 20: Reenacts s. 39.8298, F.S.; relating to authority.
Section 21: Reenacts s. 252.71, F.S.; relating to Florida Emergency Management Assistance Foundation.
Section 22: Reenacts s. 288.012, F.S.; relating to State of Florida international offices; direct-support organization.
Section 23: Reenacts s. 617.1807, F.S.; relating to conversion to corporation not for profit; authority of circuit judge.
Section 24: Reenacts s. 617.2006, F.S.; relating to incorporation of labor unions or bodies.
Section 25: Reenacts s. 617.0501, F.S.; relating to registered office and registered agent.
Section 26: Reenacts s. 617.0503, F.S.; relating to registered agent; duties; confidentiality of investigation records.
Section 27: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate negative fiscal impact on state government because the DOS may see a reduced amount in collected fees if a registered agent resigns 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 may have an indeterminate positive economic 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 in specified circumstances, 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

On February 6, 2024, the Regulatory Reform & Economic Development Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment conformed the bill to the Senate bill, which is substantively identical to the House bill, with a few clarifying and technical changes.

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

A bill to be entitled

An act relating to 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 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 by 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. 607.015, 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, 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, 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 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 to 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, 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 may 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:

a. A copy of the action taken by the board of directors in

accordance with s. 607.0147(1); or

b. 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 not be entitled to vote or 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:

1. A copy of the action taken by the board of directors pursuant to s. 607.0147(1); or

2. 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 607.015, Florida Statutes, is created to read:

607.015 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 as it 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 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. 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 dissolved ~~an inactive~~ 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 dissolved ~~inactive~~ 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.

Section 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 26. 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 27. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1219 Dental Insurance Claims
SPONSOR(S): Health & Human Services Committee, Insurance & Banking Subcommittee, Black
TIED BILLS: **IDEN./SIM. BILLS:** SB 892

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N, As CS	Herrera	Lloyd
2) Health & Human Services Committee	19 Y, 0 N, As CS	Lloyd	Calamas
3) Commerce Committee		Herrera	Hamon

SUMMARY ANALYSIS

Health insurance serves a vital role in protecting individuals from financial hardships caused by accidents, illnesses, or disabilities. Health insurers and health care providers often interact with one another prior to the delivery of care. An initial interaction often involves a provider seeking verification from an insurer that a patient has active insurance coverage.

Dental insurance is subject to regulation by the Office of Insurance Regulation (OIR) and the Department of Financial Services (DFS) for adherence to insurance laws and fair practices and by the Agency for Health Care Administration (AHCA) for quality of care issues.

The federal Patient Protection and Affordable Care Act (Act) also provides consumer protections to those individuals who purchase qualified health plans, and receive a federal premium tax credit towards that coverage. These individuals also are eligible for extended grace periods for non-payment of premiums. Federal regulations require coverage of services during a portion of that grace period.

If patients seek services for which they are not currently covered, the claim may be denied. For example, a patient may seek services prior to that patient's coverage effective date, after coverage terminates, or during grace period when a patient has not yet paid the premium. A provider may have also verified that the patient had coverage, provided services based on that verification, and in some cases, already received payment from the insurer. Retroactive denials can result in the provider or the patient covering the financial costs, despite a verification of eligibility.

The bill regulates dental services claims payment contract terms for insurers, including prepaid limited health service organizations (PLHSOs), preferred provider organizations (PPOs), exclusive provider organizations (EPOs), and health maintenance organizations (HMOs). The bill will:

- Prohibit mandating credit card payments as the sole means of reimbursement for dental services.
- Require written notice by insurers to dental providers of the initiation or change in payment methods or fees for electronic fund transfers.
- Allow the insurer to deny claims if the services were provided during the premium non-payment grace period and the insurer informed the provider of such in response to an eligibility inquiry.
- Establishes criteria for other claims denial under prior authorizations under specific circumstances.
- Mandates OIR enforcement of claims payment provisions.
- Establishes an application date for all contractual changes required by the bill as the date of the next issuance, delivery, or renewal date of the impacted contract.

The bill may have a positive impact on state government revenue and local governments. It has an indeterminate economic impact on the private sector and state government expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Health Insurance

Health insurance is the insurance of human beings against bodily injury or disablement by accident or sickness, including the expenses associated with such injury, disablement, or sickness.[1] Individuals purchase health insurance coverage with the purpose of managing anticipated expenses related to health and protecting themselves from unexpected medical bills or large health care costs. Many individuals access health care coverage as a benefit of employment where the employer may contribute towards the cost of the employee's coverage while others may purchase coverage directly from an insurance company or from places like the Act's marketplace.[2] Health insurance may be purchased on an individual basis or for an entire family.

Managed Care

Managed care is the most common delivery system for medical care today by health insurers.[3] Managed care systems combine the delivery and financing of health care services by limiting the choice of doctors and hospitals.[4] In return for this limited choice, however, medical care is usually less costly to the patient due to lower out of pocket costs and the managed care network's ability to control the cost and utilization of health care services. Some common forms of managed care are preferred provider organizations[5] (PPOs), exclusive provider organizations (EPOs),[6] and health maintenance organizations[7] (HMOs). For services to be covered at the lowest out of pocket cost to the insured, the insured must utilize the managed care plan's network of providers, except in cases of an emergency. Different managed care companies have a variety of network and out of pocket cost arrangements based on an individual's or family's needs.

Office of Insurance Regulation

The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers and other risk bearing entities in Florida, as well as licensing, rates, policy forms, market conduct, claims, issuances of certificates of authority, solvency, viatical statements, premium financing, and administrative supervision, as provided under the Florida Insurance Code.[8] .The OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.[9] For managed care entities to receive a license from OIR, the entity must meet financial guidelines, benefits, and policy standards as established under ch. 690.154, F.A.C.

The Agency for Health Care Administration

[1] S. 624.603, F.S.
[2] *See* Healthcare.gov, *How to apply and enroll, Apply for Health Insurance | HealthCare.gov* (last visited Feb. 12, 2024).
[3] Florida Department of Financial Services, *Health Insurance and Health Maintenance Organizations, A Guide for Consumers,* available at: https://www.myfloridacfo.com/docs-sf/consumer-services-libraries/ (last visited Jan. 26, 2024).
[4] *Id*.
[5] S. 627.6471, F.S.
[6] S. 627.6472, F.S.
[7] Part I of ch. 641, F.S.
[8] S. 20.121(3)(a), F.S.
[9] The Code is comprised of chs. 624-632, 634-636, 641, 642, 648, and 651, F.S. *See* S. 624.3161, F.S.

The Agency for Health Care Administration (AHCA) is the chief health policy and planning entity for the state,[10] and regulates the quality of care provided by managed care organizations under ch. 408, F.S.

Health Maintenance Organizations

Health Maintenance Organizations (HMOs) operate within a regulatory framework dually overseen by the OIR and AHCA. To offer a commercial health insurance plan in Florida, an HMO must obtain a license from the OIR[11] and a Certificate of Authority from AHCA. An HMO is also required to become accredited by one of the state's approved organizations: National Committee for Quality Assurance, National Association for Ambulatory Health Care, and American Accreditation HealthCare Commission.[12] Certificates of authority are granted by AHCA, if found to be compliant with the certification process, on a county by county basis or for a portion of a county.[13]

Most managed care enrollment in Florida is through an HMO. For the last quarterly submission to AHCA in September 2023, Florida HMOs reported over 8.2 million enrollees as shown in the table below.[14]

HMO Enrollment	
Group Type	**Third Qtr 2023**
Small Group	203,821
Large Group	476,358
Individual	1,909,616
Other	8,559
Healthy Kids	109,385
Medicaid	3,763,314
Medicare	1,763,708
Federal Employees	6,207
GRAND TOTAL:	**8,240,968**

These plans provide comprehensive healthcare services to members for a fixed monthly premium.[15] Members typically select a primary care physician from within the HMO's network, who serves as the main point of contact for all healthcare needs and referrals to specialists.[16] HMOs maintain networks of healthcare providers, including primary care physicians, specialists, hospitals, and other healthcare facilities.[17] Members are generally required to receive care from within the HMO's network, with exceptions for emergencies or authorized out-of-network care, for services to be covered.[18]

[10] AHCA, *About the Agency for Health Care Administration*, https://ahca.myflorida.com/about-the-agency-for-health-care-administration (last visited Jan. 26, 2024).
[11] S. 641.21(1), F.S.
[12] Agency for Health Care Administration, *Health Care Provider Certificate Process,* *Health Care Provider Certificate Process (myflorida.com)* (last visited Feb. 13, 2024).
[13] Id.
[14] Florida Office of Insurance Regulation, *Managed Care Report: Quarterly Data Summary as of September 30, 2023,* *managed-care-report-2023-q3-15dec2023.pdf (floir.com)* (last visited Feb. 13, 2024).
[15] Medicare, What's an HMO? https://www.medicare.gov/health-drug-plans/health-plans/. (last visited Jan. 26, 2024).
[16] *Id*.
[17] S. 641.19(12), F.S.
[18] Medicare, *What's an HMO?*, https://www.medicare.gov/health-drug-plans/health-plans/. (last visited Jan. 26, 2024).

Florida law, under ch. 641, F.S., provides various consumer protections, including guaranteed access to emergency services, coverage for essential health benefits[19] mandated by the Act,[20] and the right to appeal coverage decisions made by the HMO.[21]

Prepaid Limited Health Service Organizations

Prepaid limited health service organizations (PLHSOs) provide limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment authorized under ch. 636, F.S. Limited health services include:

- Ambulance;
- Dental;
- Vision;
- Mental health;
- Substance abuse;
- Chiropractic;
- Podiatric; and
- Pharmaceutical.

Provider arrangements for PLHSOs are authorized in s. 636.035, F.S., and must comply with the requirements in that section.

Preferred Provider Organizations

Authorized under ch. 627, F.S., a preferred provider organization (PPO) includes those licensed health insurers who have contracted with providers or a group of providers, directly or indirectly for an alternative or reduced rate of payment to provide a list of covered services to policyholders under the insurer's plan.[22] A PPO provider must distribute to its policyholders a list of preferred providers and make the list available on its website. Insureds have a choice of who may provide their services, but usually pay a lower deductible and less other out of pockets costs if they choose a preferred provider.[23]

Exclusive Provider Organizations

Exclusive provider organizations (EPOs) are another form of managed care that is also dually regulated by the OIR and the AHCA. Regulated under chapter 627, F.S., an EPO is a group of providers who have signed written contracts with an insurer to provide services to the insured's subscribers. Before the EPO can issue a policy; however, the AHCA must issue a Certificate of Authority which specifically includes approval of the EPO's plan of operation. In addition to a plan of operation, an EPO must maintain a quality assurance program and the ability to resolve complaints and grievances from its subscribers.[24]

Dental Insurance Plans

[19] Under the Patient Protection and Affordable Care Act, all non-grandfathered plans in the non-group and small group private health insurance markets must offer a core package of health insurance services known as the essential health benefits (EHBs). While not specifying the details of these benefits and services, there are ten general categories including coverage for pediatric dental services. Adult dental benefits are not an essential health benefit. *See Essential Health Benefits,* Healthcare.gov, *Find out what Marketplace health insurance plans cover | HealthCare.gov* (last visited Feb. 13, 2024).
[20] Patient Protection and Affordable Care Act, (March 23, 2010), P.L. 111-141, as amended.
[21] Consumer Services, *Health Insurance & HMO Overview*, https://www.myfloridacfo.com/division/consumers/understanding-insurance/health-insurance-and-hmo-overview (last visited Feb. 12, 2024).
[22] S. 627.6471, F.S.
[23] *Supra,* note 30.
[24] Agency for Health Care Administration, *Exclusive Provider Organizations (EPOs), Exclusive Provider Organizations (EPOs) (myflorida.com)* (last visited Feb. 12, 2024).

Dental insurance is a contract with an insurance company which provides benefits that can help lower the costs of dental treatment.[25] In exchange for a premium paid, dental insurance typically covers the cost of preventive care, such as routine cleanings and check-ups, but other care such as restorative treatments like fillings and extractions is usually covered at lower percentage rates, such as 80 percent, requiring higher out of pocket costs by the patient.[26] Some plans may also offer coverage for more extensive procedures like root canals, crowns, and orthodontic treatment, although coverage levels and limitations can vary widely depending on the specific plan.[27] Many dental plans may also impose an annual benefit maximum (dollar amount).

Consumers in Florida have the option to purchase dental insurance plans on the individual market or through group plans offered by employers, other organizations, or on the Act's marketplace.[28] An Act's dental plan cannot be purchased separately; it can only be purchased if a health plan is bought at the same time.[29] Some of the marketplace plans offer health plans which include dental benefits under a single premium amount. For children aged 18 or younger, dental coverage is an essential health benefit and therefore, dental coverage must be available either as part of the health plan or offered as a separate plan. While dental coverage must be available to children, it is not required that it be purchased.[30]

The availability and cost of dental insurance coverage can vary depending on factors such as age, location, and the extent of coverage desired.[31] In addition to traditional dental insurance plans, some employees may also have access to dental discount plans, health reimbursement accounts, flexible spending accounts, or health savings accounts (HSAs) that can help employees save for major and minor dental expenses and offset the cost of dental care.[32] Some of these options allow employees to deposit funds pre-tax through pay-roll deductions to potentially receive a tax break on predictable out of pocket costs.

Insurer Contracts with Dentists

A contract between an insurer and dentist licensed under ch. 466, F.S., for the provision of services to a subscriber of the HMO, PPO, PLHSO, or other insurer may not require the dentist to provide services to the subscriber of the HMO at a fee set by the HMO unless such services are covered services under the applicable contract.[33] The term "covered services" means dental care services for which a reimbursement is available under the subscriber's contract, or for which a reimbursement would be available but for the application of contractual limitations, such as deductibles, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments, or any other limitation.[34] Currently, if an insured patient exhausts his benefits or reaches a limitation, but the contract is still active, the dental patient is entitled to pay the price negotiated between the plan and the dental provider for that covered service, not a fee unilaterally set by the dental provider.

Health Insurance Contracts

All health insurance policies issued in the state of Florida, with the exception of certain self-insured policies,[35] must meet certain requirements that are detailed throughout the Florida Insurance Code. At a minimum, insurance policies must specify premium rates, services covered, and effective dates.

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[25] Humana, *What is dental insurance?"* *How Does Dental Insurance Work? | Humana* (last visited Feb. 12, 2024).
[26] HealthPartners, *What Does Dental Insurance Cover?*, https://www.healthpartners.com/blog/what-does-dental-insurance-cover/ (last visited Jan. 26, 2024).
[27] *Id*.
[28] Health Care, *Dental Coverage in the Marketplace*, https://www.healthcare.gov/coverage/dental-coverage/ (last visited Feb. 12, 2024).
[29] *Id.*
[30] *Id.*
[31] *Id*.
[32] MyBenefits, *Health Savings Account*, https://www.mybenefits.myflorida.com/health/savings_and_spending_accounts (last visited Jan. 26, 2024).
[33] S. 641.315(11), F.S.
[34] S. 641.315(11), F.S.
[35] The Employment Retirement Security Act of 1974 (ERISA). 29 U.S.C. ch 18 § 1001 et seq. ERISA regulates certain self-insured plans, which represent approximately 50 percent of the insureds in Florida.

Insurers must document the time when a policy takes effect and the period during which the policy remains in effect.[36]

Non-Payment of Premiums

Responsibilities of insured patients are also reflected in insurance contracts. Contracts set premium payment schedules and require that payments must be made in a timely fashion. In cases where this requirement is not met, any health insurer or HMO may cancel coverage for nonpayment of premiums after a statutory grace period.[37]

Before cancellation can occur, however, covered patients are protected by grace periods that extend the time frame in which premium payments may be submitted. A grace period is a period of time following the due date of a premium payment in which the insurance policy remains in force, even if the premium payment has not been made. The grace periods for policies or contracts issued in Florida are set in the Insurance Code,[38] and vary based on the premium payment schedule.

Pursuant to ss. 627.608 and 641.31, F.S., insurance policies and health maintenance contracts stay in force during grace periods. If the insurer or HMO does not receive the full payment of the premium by the end of the grace period, coverage terminates as of the grace period start date and the insurer or HMO may deny any medical claims incurred during the grace period. When a claim is denied at a later date, it is referred to as a retroactive denial.

The Insurance Code is silent on whether the insurer or HMO may advise a health care provider that a patient has not paid the applicable premium, and that the policy or health maintenance contract may be terminated in the future, possibly resulting in a retroactive claim denial.

Prompt Payment

Current law governs prompt payment of provider claims submitted to insurers and HMOs, including Medicaid managed care plans, under ss. 627.6131 and 641.3155, F.S., respectively.[39] These provisions detail the rights and responsibilities of insurers, HMOs, and providers for the payment of medical claims. The statutes provide a process and timeline for providers to pay, deny, or contest the claim, and also prohibit an insurer or HMO from retroactively denying a claim because of the ineligibility of an insured or subscriber more than one year after the date the claim is paid.[40]

Federal Patient Protection and Affordable Care Act

The Act introduced a set of claims-related requirements for insurers offering plans through the federally-facilitated and state-based insurance exchanges. The Act guarantees access to coverage and mandates certain essential health benefits, among other directives.[41] To address affordability issues, federal premium tax credits and cost-sharing subsidies are available to assist eligible low and moderate-income individuals to purchase qualified health plans on a state or federal exchange.[42]

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[36] S. 627.413(1)(d), F.S.
[37] SS. 627.6043(1) and 641.3108(2), F.S.
[38] SS. 627.608 and 641.31(15), F.S.; The grace period of an individual policy must be a minimum of 7 days for weekly premium; 10 days for a monthly premium; and 31 days for all other periods. The grace period of a HMO contract must be at least 10 days. For group policies, if cancellation is due to nonpayment of premium, the insurer may not retroactively cancel the policy to a date prior to the date that notice of cancellation was provided to the policyholder unless the insurer mails notice of cancellation to the policyholder prior to 45 days after the date the premium was due. Such notice must be mailed to the policyholder's last address as shown by the records of the insurer and may provide for a retroactive date of cancellation no earlier than midnight of the date that the premium was due.
[39] The prompt pay provisions apply to HMO contracts and major medical policies offered by individual and group insurers licensed under ch. 624, F.S., including preferred provider policies and an exclusive provider organization, and individual and group contracts that only provide direct payments to dentists.
[40] SS. 627.6131(11) and 641.3155(10), F.S.
[41] The Patient Protection and Affordable Care Act (Pub. Law No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. Law No. 111–152), which amended several provisions of the PPACA, was enacted on March 30, 2010. Together these two Acts are known as PPACA.
[42] In general, individuals and families may be eligible for the premium tax credit if their household income for the year is at least 100 percent but no more than 400 percent of the federal poverty line (FPL) for their family size. For residents of one of the 48 contiguous

According to the 2023 Market Report by the Florida Health Insurance Advisory Board, total enrollment in Florida's commercial health insurance market is 4,671,680 individuals which represents an increase of over eight percent from the prior year.[43] The largest group in this market has individual coverage, over 2.9 million Floridians, an increase of 16 percent over 2022, and the vast majority of this coverage has been purchased through the ACA marketplace.[44] For the 2024 Open Enrollment period, Florida's total number of ACA marketplace plan selections from new and continuing consumers was 4,211,902 plan selections, the highest number of selection among all states, federal or state based exchanges.[45]

Non-Payment of Premiums – Federal Law

All qualified health plans (QHPs)[46] in the ACA marketplace are required to establish standard policies for the termination of enrollees due to the non-payment of premiums. The policy must be applied uniformly to enrollees in similar situations.[47] If an enrollee is delinquent with a premium payment, the QHP must notify the enrollee of the delinquency promptly and without undue delay, within 10 business days of the date from which the insurer should have discovered the delinquency.[48]

Individual health insurance plans purchased via the exchanges with a federal premium tax credit are not subject to the grace periods in Florida law. Instead, the Act requires insurers and HMOs to provide subscribers in these plans, a grace period of at least three consecutive months before cancelling the policy or contract if the enrollee previously paid at least a binder payment or the first month's premium payment.[49] The binder payment is due no earlier than the coverage effective date and no later than 30 calendar days from the coverage effective date.[50]

During the first month of the grace period, the insurer must pay all appropriate claims for services provided.[51] During the grace period, the insurer must also notify the Department of Health and Human Services (HHS) of the non-payment and notify providers of the possibility for denied claims when an enrollee is in the second and third months of a grace period.[52] For the second and third months, an insurer may pend claims and then must notify affected providers that an enrollee has lapsed in his or her payment of premiums and there is a possibility the insurer may deny the payment of claims incurred during the second and third months.[53]

Payment Methods for Health Care Claims

In March 2022, HHS issued guidance for covered entities[54] on the payment of health care claims by health plans through the use of virtual credit cards (VCC) and whether these transactions met the federal regulatory standards for electronic transactions. In model legislation, the National Council of

states or Washington, D.C., 100 percent of the FPL for a family of 4 is $31,200; at 400 percent of the FPL for a family of 4 is $124,800. *See* U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *HHS Poverty Guidelines for 2024*, available at: detailed-guidelines-2024.pdf (hhs.gov) (last visited Feb. 12, 2024).

[43] Florida Health Insurance Advisory Board, *2023 Market Report, fhiab-2023-market-report---adopted-(12-15-23).pdf (floir.com)* (last visited Feb. 13, 2024).

[44] *Id.*

[45] Centers for Medicare and Medicaid Services, *Marketplace 2024 Open Enrollment Period Report: Final National Snapshot (January 24, 2024)*, available at Marketplace 2024 Open Enrollment Period Report: Final National Snapshot | CMS (last visited Feb. 13, 2024).

[46] A "qualified health plan" is a plan that has been certified to meet the minimum standards of participation under 45 CFR §156.200 and is recognized as a QHP by the exchanges through which the plan is offered. Those standards include compliance with Exchange process and procedures, benefit design standards, licensure compliance in state where products are sold, in good standing in states where licensed products are sold, implementation of a quality improvement strategy or strategies consistent with the Act's goals, payment of applicable user fees, and compliance with reinsurance, risk corridors, and risk adjustment requirements.

[47] 45 CFR §156.270(c).

[48] 45 CFR §156.270 (f).

[49] 45 CFR §156.270(d).

[50] Centers for Medicare and Medicaid Services, *Health Plan Coverage Effectuation Webinar Training: Payment, Grace Periods, and Termination (Navigator Training materials – January 2024),* available at Health Plan Coverage Effectuation_Webinar_Jan_2024 (cms.gov) (last visited Feb. 12, 2024).

[51] 45 CFR §156.270(d)(1).

[52] 45 CFR §156.270(d).

[53] 45 CFR §156.270(d)(3).

[54] A "covered entity" is defined at 45 CFR §160.103, as a health plan, a health plan clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction.

Insurance Legislators has defined VCCs as an online credit card payment where no physical card is present and the number expires upon use at a credit card terminal or internet portal.[55] Instead of sending a paper check or an electronic payment transmission, some health plans have paid providers by sending these single use credit cards requiring the provider to then manually enter VCC numbers in order to receive payment. A transaction fee is incurred for each payment processed. For ACH transaction, the fee per item is based on volume, and can average in 2024 around $0.35.[56] For transactions by VCC, fees have been quoted as high as five percent.[57] HHS guidance concluded that payment by VCC was permitted; however, to meet the standards, the health plans must maintain certain privacy and confidentiality and transaction standards, including a one-to-one relationship between each electronic remittance advice (ERA) and electronic funds transfer (EFT).[58] Once a plan submits a payment using the required standard with the specifications, any intermediaries acting on behalf of the health plan, including health care clearinghouses, financial institutions, and payment vendors, cannot alter, amend, or omit any information.[59]

Federal regulations also require that if a health plan pays providers via a VCC, the provider must be able to continue to request payments via EFT through the Automated Clearinghouse (ACH) Network using regulatory and ERA transaction standards, and the health plan is required to comply with those requests.[60] When a provider makes this request, the health plan must comply, regardless of whether the provider is in the plan's network or not or otherwise not affiliated with the plan.[61]

Many VCC vendors offer additional or value added services directly or through business associates to dental providers for additional fees above the transaction fees. These additional items may include services such as assistance with re-associating the EFT file with the ERA file for reconciliation or other purposes, customer service functions, hotline numbers, special reporting or output files, billing services, and eligibility verification processes. Federal regulations prohibit a health plan from requiring a provider to agree to any value added services as a condition of payment or inclusion of the required reassociation services using the HHS adopted EFT and ERA standards.[62]

If the provider has made a request to a health plan to conduct transactions via EFT and ERA using the adopted standards, and the provider believes that the health plan has not used or complied with those standards or operating rules, or the insurer has required the provider to pay for additional services declined by the provider as a condition of claims payment, the provider may file a complaint against the health plan with the federal Centers for Medicare and Medicaid Services.[63]

Regulation of Dentists

Dentists are licensed by the Board of Dentistry within the Department of Health under ch. 466, F.S. A dentist is licensed to examine, diagnose, treat, and care for conditions within the human oral cavity and its adjacent tissues and structures.[64] Dentists may delegate certain tasks[65] to dental hygienists and dental assistants, but a patient's "dentist of record" retains primary responsibility for all dental treatment on the patient.[66]

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[55] National Council of Insurance Legislators, *NCOIL Adopts Transparency in Dental Benefits Contracting Model Act (December 27, 2020)*, available at Transparency-in-Dental-Benefits-2020_final.pdf (ncoil.org) (last visited Feb. 15, 2024).
[56] The Federal Reserve, *FedACH Services 2024 Fee Schedule*, available at https://www.frbservices.org/resources/fees/ach-2024 (last visited Feb. 15. 2024).
[57] Cezary Podkul, *The Hidden Fee Costing Doctors Millions Every Year,* ProPublica (August 14, 2023), available at https://www.propublica.org/article/the-hidden-fee-costing-doctors-millions-every-year (last visited Feb. 15, 2024).
[58] Department of Health and Human Services, *Go to Guidance: Guidance on health plans' payment of health care claims using Virtual Credit Cards (VCCs) and adopted HIPAA standards for Health Care Electronic Funds Transfer (EFT) and Remittance Advice (ERA) transactions; 45 CFR §§162.1601 and 162.1602(d),* available at Virtual Credit Cards (VCCs) and Electronic Funds Transfers (EFT) Guidance Letter (cms.gov) (last visited Feb. 12, 2024).
[59] *Id.*
[60] *Id.* and 45 CFR §162.925(a)(1).
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] S. 466.003(2)-(3), F.S.
[65] S. 466.024, F.S.
[66] S. 466.018, F.S.

Any person wishing to practice dentistry must meet specified requirements and apply to the Department of Health (DOH) for licensure. Applicants must sit for and pass three examinations prior to licensure:[67]

- The National Board of Dental Examiners dental examination (NBDE);
- A practical examination, which is the American Dental Licensing Examination developed by the American Board of Dental Examiners, Inc.;[68] and
- A written examination on Florida laws and rules regulating the practice of dentistry and dental hygiene.

To qualify to take the Florida dental licensure examination, an applicant must be 18 years of age or older, be a graduate of a dental school accredited by the American Dental Association or be a student in the final year of a program at an accredited institution, and have successfully completed the NBDE dental examination.[69]

Once licensed, dentists must maintain professional liability insurance or provide proof of financial responsibility of an equal amount. If the dentist obtains professional liability insurance, the coverage must be at least $100,000 per claim, with a minimum annual aggregate of at least $300,000.[70] Alternatively, a dentist may maintain an unexpired, irrevocable letter of credit in the amount of $100,000 per claim, with a minimum aggregate availability of credit of at least $300,000.[71] The professional liability insurance must provide coverage for the actions of any dental hygienist supervised by the dentist.[72] However, a dentist may be exempt from maintaining professional liability insurance if he or she:[73]

- Practices exclusively for the federal government or the State of Florida or its agencies or subdivisions;
- Is not practicing in this state;
- Practices only in conjunction with his or her teaching duties at an accredited school of dentistry or in its main teaching hospitals; or
- Demonstrates to the Board that he or she has no malpractice exposure in this state.

There are currently 17,193 dentists with active licenses to practice in Florida,[74] and 41 out-of-state registered telehealth dentists.[75]

Effects of the Bill

The bill regulates contracts between dental providers and insurers, including HMOs, PPOs, EPOs, and PLHSOs.

Regulation of Payment Methods

The bill prohibits health insurers under chs. 627, 636, and 641, F.S., from requiring reimbursement of claims through credit card payments as the only acceptable method of payment in a contract with a dentist licensed under ch. 466, F.S. Currently, state law is silent on acceptable forms of payment between a health plan and a provider in a private contract; however federal law has established specific standards for covered entities, which includes both the plan and the provider, as to how such transaction must be carried out, and what privacy and security specifications apply to the information involved. Federal regulations have also prohibited covered entities from exclusively requiring payment

[67] S. 466.006, F.S.
[68] Rule 64B5-2.013, F.A.C.
[69] S. 466.006(2), F.S.
[70] Rule 64B5-17.011(1), F.A.C.
[71] Rule 64B5-17.011(2), F.A.C.
[72] Rule 64B5-17.011(4), F.A.C.
[73] Rule 64B5-17.011(3), F.A.C.
[74] *See*, Department of Health *License Verification* web search. Available at https://mqa-internet.doh.state.fl.us/MQASearchServices/HealthCareProviders (last visited Jan. 26, 2024).
[75] *Id*.

via VCCs, and require that a health plan honor a provider's request for payment via the ACH and EFT process.

If initiating or changing the payment method to the dental provider using the EFT process, including but not limited to VCCs, the bill establishes a requirement for these insurers to provide written notice to dentists outlining any associated fees, and presenting alternative payment methods with clear instructions for how to select an alternative method of payment, if any.

Claims Denial

Under the bill, an insurer may not deny any claim submitted by a dentist licensed under ch. 466, F.S., for procedures specifically included in a prior authorization, unless:

- Benefit limitations were reached subsequent to the issuance of the prior authorization;
- Inadequate documentation was submitted to support the originally authorized claim;
- Changes in the patient's condition or provision of new procedures post-authorization rendered the prior authorized procedure medically unnecessary;
- Changes in the patient's condition or provision of new procedures would have required disapproval under the terms and conditions of the patient's plan at the time of prior authorization;
- Services were provided during the grace period established under an applicable federal or state law or regulation, and the dental insurer notified the provider that the patient was in the grace period when the provider requested eligibility or enrollment verification from the dental insurer, if such a request was made; or
- Responsibility for the claim belonged to another payor for payment, prior payment was already made to the dentist for the procedures in question, request was a fraudulent claim submission, or patient shown as ineligible at the time of service.

Existing state law does not establish which party is responsible for claims incurred when verification of eligibility or prior authorization is received by a dental provider for a specific service from an insurer, the service is provided, and afterwards, the claim is denied because the patient was not covered at the time of service. The patient may not have been covered for a variety of reasons, such as a timing difference between when the dental provider's office called to verify eligibility and received a prior authorization for the service, or the patient may have been in the premium grace period.

The bill limits the circumstances in which a claim could be denied to situations when benefits were exhausted, the service was no longer medically necessary, there are clinical issues, suspicion of fraud, or the services were provided during a grace period and the insurer notified the provider when the provider sought verification of the patient's eligibility or enrollment. In cases where prior authorization was granted, the patient had not exceeded his or her benefits, and the covered services were still medically necessary, the claim could not be denied.

Compliance

The bill is applicable to contracts delivered, issued, or renewed on or after January 1, 2025.

The bill authorizes OIR to enforce its provisions, and authorizes the FSC to adopt rules for implementation.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 627.6131, F.S., relating to payment of claims.

Section 2: Amends s. 636.032, F.S., relating to acceptable payments.

Section 3: Amends s. 636.035, F.S., relating to provider arrangements.

Section 4: Amends s. 641.315, F.S., relating to provider contracts.

Section 5: 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. The Division of State Group Insurance within the Department of Management Services asserts that the bill will not increase costs for the state employee group health plan.[76]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may negatively impact local government expenditures through potential increases in premium costs, resulting from any additional payments for dental claims which would have been previously denied but for which denial is prohibited by the bill, and from increased administrative costs. The amount of impact, if any, depends on the level of coverage and the practices of each dental plan.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative economic impact on the insurance industry, depending on the amount and type of claims denial activity in which they engage, and also due to increased administrative costs. The bill may have a positive economic impact on dental care providers, which may experience increased revenue under the bill's claims payment regulations.

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:

[76] Email correspondence with Jake Holmgreen, Department of Management Services, Jan. 29, 2024, on file with the Health and Human Services Committee.

The bill provides sufficient rulemaking authority to the FSC to implement its provisions. OIR has sufficient rulemaking authority under current law to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Insurance & Banking Subcommittee considered the bill, adopted an amendment, reported the bill favorably as a committee substitute. The amendment removed a proposed authorization for health insurers to charge a fee for value-added services related to ACH transfers.

On February 15, 2024, the Health and Human Services Committee considered the bill, adopted an amendment, and reported the bill favorably as a committee substitute. The amendment:

- Removed a provision allowing dental providers to establish alternative fee schedules for covered services once an insured individual reaches certain contractual limitations.
- Permitted the charging of reasonable fees for value added services related to ACH transactions if the dental provider has consented to those fees.
- Modified the application date for contractual changes required by the bill to the date of the next issuance, delivery, or renewal and removes current contract nullification language.
- Removed the bill's insurer knowledge and reasonable care requirement related to the authority to deny a claim due to patient's ineligibility on the procedure date.
- Allows for a claim denial if the services were provided during the premium non-payment grace period and the insurer informed the provider of such in response to an eligibility inquiry.

The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.

A bill to be entitled

An act relating to dental insurance claims; amending s. 627.6131, F.S.; prohibiting a contract between a health insurer and a dentist from containing certain restrictions on payment methods; requiring a health insurer to notify a dentist if initiating or changing electronic funds transfer payment methods for dental claims; prohibiting a health insurer from charging a fee to transmit a payment to a dentist through an automated clearinghouse transfer unless the dentist has consented to such fee; authorizing a health insurer to charge certain fees; providing applicability; authorizing the Office of Insurance Regulation of the Financial Services Commission to enforce certain provisions; authorizing the commission to adopt rules; prohibiting a health insurer from denying claims for procedures included in a prior authorization; providing exceptions; providing applicability; authorizing the office to enforce certain provisions; authorizing the commission to adopt rules; amending s. 636.032, F.S.; prohibiting a contract between a prepaid limited health service organization and a dentist from containing certain restrictions on payment methods; requiring a prepaid limited health service organization to notify a

dentist if initiating or changing electronic funds transfer payment methods for dental claims; prohibiting a prepaid limited health service organization from charging a fee to transmit a payment to a dentist through an automated clearinghouse transfer unless the dentist has consented to such fee; authorizing a prepaid limited health service organization to charge certain fees; providing applicability; authorizing the office to enforce certain provisions; authorizing the commission to adopt rules; amending s. 636.035, F.S.; prohibiting a prepaid limited health service organization from denying claims for procedures included in a prior authorization; providing exceptions; providing applicability; amending s. 641.315, F.S.; prohibiting a contract between a health maintenance organization and a dentist from containing certain restrictions on payment methods; requiring a health maintenance organization to notify a dentist if initiating or changing electronic funds transfer payment methods for dental claims; prohibiting a health maintenance organization from charging a fee to transmit a payment to a dentist through an automated clearinghouse transfer unless the dentist has consented to such fee; authorizing a health maintenance organization to

charge certain fees; providing applicability; authorizing the office to enforce certain provisions; authorizing the commission to adopt rules; prohibiting a health maintenance organization from denying claims for procedures included in a prior authorization; providing exceptions; providing applicability; authorizing the office to enforce certain provisions; authorizing the commission to adopt rules; providing an effective date.

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

Section 1. Subsections (20) and (21) are added to section 627.6131, Florida Statutes, to read:

627.6131 Payment of claims.—

(20)(a) A contract between a health insurer and a dentist licensed under chapter 466 for the provision of services to an insured may not require credit card payment as the only acceptable method for payments from the health insurer to the dentist.

(b) If initiating or changing payments to a dentist using electronic funds transfer payments, including, but not limited to, virtual credit card payments, a health insurer shall notify the dentist in writing of all of the following:

1. The fees, if any, associated with the electronic funds

transfer.

2. The available methods of payment of claims by the health insurer, with clear instructions to the dentist on how to select an alternative payment method, if any.

(c) A health insurer that pays a claim to a dentist through an automated clearinghouse transfer may not charge a fee solely to transmit the payment to the dentist unless the dentist has consented to the fee. A health insurer may charge reasonable fees for value-added services related to the transfer, including, but not limited to, transaction management, data management, and portal services.

(d) This subsection applies to contracts delivered, issued, or renewed on or after January 1, 2025.

(e) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(f) The commission may adopt rules to implement this subsection.

(21)(a) A health insurer may not deny any claim subsequently submitted by a dentist licensed under chapter 466 for procedures specifically included in a prior authorization unless at least one of the following circumstances applies for each procedure denied:

1. Benefit limitations, such as annual maximums and frequency limitations not applicable at the time of the prior authorization, are reached subsequent to issuance of the prior

authorization.

2. The documentation provided by the person submitting the claim fails to support the claim as originally authorized.

3. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the patient's condition occurs such that the prior authorized procedure would no longer be considered medically necessary, based on the prevailing standard of care.

4. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the patient's condition occurs such that the prior authorized procedure would at that time have required disapproval pursuant to the terms and conditions for coverage under the patient's plan in effect at the time the prior authorization was issued.

5. The denial of the claim was due to one of the following:

a. Another payor is responsible for payment.

b. The dentist has already been paid for the procedures identified in the claim.

c. The claim was submitted fraudulently, or the prior authorization was based in whole or material part on erroneous information provided to the health insurer by the dentist, patient, or other person not related to the insurer.

d. The person receiving the procedure was not eligible to receive the procedure on the date of service.

e. The services were provided during the grace period established under s. 627.608 or applicable federal regulations, and the health insurer notified the dentist that the patient was in the grace period when the dentist requested eligibility or enrollment verification from the health insurer, if such request was made.

(b) This subsection applies to contracts delivered, issued, or renewed on or after January 1, 2025.

(c) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(d) The commission may adopt rules to implement this subsection.

Section 2. Section 636.032, Florida Statutes, is amended to read:

636.032 Acceptable payments.—

(1) Each prepaid limited health service organization may accept from government agencies, corporations, groups, or individuals payments covering all or part of the cost of contracts entered into between the prepaid limited health service organization and its subscribers.

(2)(a) A contract between a prepaid limited health service organization and a dentist licensed under chapter 466 for the provision of services to a subscriber may not require credit card payment as the only acceptable method for payments from the prepaid limited health service organization to the dentist.

(b) If initiating or changing payments to a dentist using electronic funds transfer payments, including, but not limited to, virtual credit card payments, a prepaid limited health service organization shall notify the dentist in writing of all of the following:

1. The fees, if any, associated with the electronic funds transfer.

2. The available methods of payment of claims by the prepaid limited health service organization, with clear instructions to the dentist on how to select an alternative payment method, if any.

(c) A prepaid limited health service organization that pays a claim to a dentist through an automated clearinghouse transfer may not charge a fee solely to transmit the payment to the dentist unless the dentist has consented to the fee. A prepaid limited health service organization may charge reasonable fees for value-added services related to the transfer, including, but not limited to, transaction management, data management, and portal services.

(d) This subsection applies to contracts delivered, issued, or renewed on or after January 1, 2025.

(e) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(f) The commission may adopt rules to implement this subsection.

Section 3. Subsection (15) is added to section 636.035, Florida Statutes, to read:

636.035 Provider arrangements.—

(15)(a) A prepaid limited health service organization may not deny any claim subsequently submitted by a dentist licensed under chapter 466 for procedures specifically included in a prior authorization unless at least one of the following circumstances applies for each procedure denied:

1. Benefit limitations, such as annual maximums and frequency limitations not applicable at the time of the prior authorization, are reached subsequent to issuance of the prior authorization.

2. The documentation provided by the person submitting the claim fails to support the claim as originally authorized.

3. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the patient's condition occurs such that the prior authorized procedure would no longer be considered medically necessary, based on the prevailing standard of care.

4. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the patient's condition occurs such that the prior authorized procedure would at that time have required disapproval pursuant to the terms and conditions for coverage under the patient's plan in effect at the time the prior authorization was issued.

5. The denial of the dental service claim was due to one of the following:

a. Another payor is responsible for payment.

b. The dentist has already been paid for the procedures identified in the claim.

c. The claim was submitted fraudulently, or the prior authorization was based in whole or material part on erroneous information provided to the prepaid limited health service organization by the dentist, patient, or other person not related to the organization.

d. The person receiving the procedure was not eligible to receive the procedure on the date of service.

e. The services were provided during the grace period established under s. 636.016 or applicable federal regulations, and the prepaid limited health service organization notified the dentist that the patient was in the grace period when the dentist requested eligibility or enrollment verification from the prepaid limited health service organization, if such request was made.

(b) This subsection applies to contracts delivered, issued, or renewed on or after January 1, 2025.

Section 4. Subsections (13) and (14) are added to section 641.315, Florida Statutes, to read:

641.315 Provider contracts.—

(13)(a) A contract between a health maintenance

organization and a dentist licensed under chapter 466 for the provision of services to a subscriber of the health maintenance organization may not require credit card payment as the only acceptable method for payments from the health maintenance organization to the dentist.

(b) If initiating or changing payments to a dentist using electronic funds transfer payments, including, but not limited to, virtual credit card payments, a health maintenance organization shall notify the dentist in writing of all of the following:

1. The fees, if any, associated with the electronic funds transfer.

2. The available methods of payment of claims by the health maintenance organization, with clear instructions to the dentist on how to select an alternative payment method, if any.

(c) A health maintenance organization that pays a claim to a dentist through an automated clearinghouse transfer may not charge a fee solely to transmit the payment to the dentist unless the dentist has consented to the fee. A health maintenance organization may charge reasonable fees for value-added services related to the transfer, including, but not limited to, transaction management, data management, and portal services.

(d) This subsection applies to contracts delivered, issued, or renewed on or after January 1, 2025.

(e) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(f) The commission may adopt rules to implement this subsection.

(14)(a) A health maintenance organization may not deny any claim subsequently submitted by a dentist licensed under chapter 466 for procedures specifically included in a prior authorization unless at least one of the following circumstances applies for each procedure denied:

1. Benefit limitations, such as annual maximums and frequency limitations not applicable at the time of the prior authorization, are reached subsequent to issuance of the prior authorization.

2. The documentation provided by the person submitting the claim fails to support the claim as originally authorized.

3. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the patient's condition occurs such that the prior authorized procedure would no longer be considered medically necessary, based on the prevailing standard of care.

4. Subsequent to the issuance of the prior authorization, new procedures are provided to the patient or a change in the patient's condition occurs such that the prior authorized procedure would at that time have required disapproval pursuant to the terms and conditions for coverage under the patient's

plan in effect at the time the prior authorization was issued.

5. The denial of the claim was due to one of the following:

a. Another payor is responsible for payment.

b. The dentist has already been paid for the procedures identified in the claim.

c. The claim was submitted fraudulently, or the prior authorization was based in whole or material part on erroneous information provided to the health maintenance organization by the dentist, patient, or other person not related to the organization.

d. The person receiving the procedure was not eligible to receive the procedure on the date of service.

e. The services were provided during the grace period established under s. 641.31 or applicable federal regulations, and the health maintenance organization notified the dentist that the patient was in the grace period when the dentist requested eligibility or enrollment verification from the health maintenance organization, if such request was made.

(b) This subsection applies to contracts delivered, issued, or renewed on or after January 1, 2025.

(c) The office has all rights and powers to enforce this subsection as provided by s. 624.307.

(d) The commission may adopt rules to implement this subsection.

Section 5. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1263 My Safe Florida Home Program
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Insurance & Banking Subcommittee, LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 7028

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Fortenberry	Lloyd
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N, As CS	Perez	Topp
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The My Safe Florida Home (MSFH) Program was created in 2006 within the Department of Financial Services (DFS) to perform mitigation inspections of site-built, single-family, residential properties (inspections), and mitigation grants (grants) to eligible applicants to make their homes less vulnerable to hurricane damage. The MSFH Program received $250 million in appropriations for the Fiscal Year 2006-2007, but was not funded again until 2022. Since then, the Legislature has provided approximately $433 million in subsequent additional funding to the MSFH Program.

Mitigation inspections are limited to homesteaded properties. Funds may be used to inspect townhouses to determine if opening protection mitigation would decrease hurricane damage risk. Grant funds may be used to pay for opening protection mitigation if warranted. The value of the mitigation grant-eligible homes is currently capped at $700,000. While initially limited to homes within the wind-borne debris region, the MSFH Program is currently a statewide program.

The bill makes additional changes to the MSFH Program. Homeowners may submit subsequent mitigation inspection and grant applications for the same home if certain criteria are met. DFS may request that an applicant provide additional information if the application contains errors or omissions. An application is considered withdrawn if an applicant does not respond to a request for additional information within 60 days. The bill requires that, for the first 60 days DFS accepts inspection and grant applications following any legislative appropriation, DFS must prioritize the review and approval of applications by low- and moderate-income persons and those applicants who are at least 60 years old.

In order to receive grant funds, homeowners must agree to provide DFS with information from their homeowners' insurers that identifies premium discounts received as a result of improvements made with grant funds. Grant-funded projects must be completed within 1 year after grant approval, subject to a one-time six-month extension, or the grant is deemed abandoned and the grant funds revert to DFS.

The bill eliminates the requirement that DFS maintain a list of participating contractors for the grant portion of the MSFH Program. Participants in the program may choose any properly licensed contractor to perform the improvements and must include the name and state license number of that contractor on their grant applications.

The bill specifies that grant-funded opening protection improvements include exterior doors, garage doors, windows, and skylights. Current law allows DFS to require that improvements be made to all openings, including exterior doors, and garage doors as a condition of reimbursing a homeowner approved for a grant. The bill adds windows and skylights to the list of openings that must be improved in their entirety for a homeowner to be reimbursed.

The implementation of the MSFH Program is subject to funding in the General Appropriations Act. The bill may have a positive direct economic impact on the private sector. *See* Fiscal Analysis & Economic Impact Statement.

The bill is effective on July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2006, the Legislature created the My Safe Florida Home (MSFH) Program within the Department of Financial Services (DFS) with the intent that the Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties (mitigation inspections) and grants to eligible applicants, subject to funding availability.[1] The purpose of the MSFH Program was to "develop and implement a comprehensive and coordinated approach for hurricane damage mitigation."[2] The MSFH program allowed DFS to undertake a public outreach and advertising campaign to inform consumers of the availability, and benefits, of the mitigation inspections and grants.[3] It required the development of brochures for distribution to general contractors, roofing contractors, and real estate brokers and sales associates to explain the benefits of residential hurricane damage mitigation to homeowners.[4]

Hurricane Mitigation Inspections

The purpose of the mitigation inspections was to determine:

- What mitigation measures were needed;
- What insurance premium discounts might have been available; and
- What improvements to existing residential properties were needed to reduce the properties' susceptibility to hurricane damage.[5]

The mitigation inspections had to include, at a minimum:

- A report that summarized the results and identified recommended improvements the homeowner could take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Insurer-specific information regarding premium discounts correlated to current and recommended hurricane mitigation improvements.[6]

DFS was required to maintain a list of hurricane mitigation inspectors who were authorized to conduct the mitigation inspections for the MSFH Program.[7] DFS entered contracts with wind certification entities to provide mitigation inspections. In order to be eligible for the contracts, the entities had to use hurricane mitigation inspectors who, at a minimum:

- Were certified building inspectors;
- Were licensed as general or residential contractors;
- Were licensed and professional engineers and had passed the appropriate equivalency test of the building code training program;
- Were licensed professional architects; or
- Had at least two years of experience in residential construction or residential building inspection and had received specialized training in hurricane mitigation procedures.[8]

[1] S. 215.5586, F.S.
[2] *Id.*
[3] S. 215.5586(3), F.S.
[4] S. 215.5586(7), F.S.
[5] S. 215.5586(1)(a), F.S.
[6] *Id.*
[7] S. 215.55186(6), F.S.
[8] S. 215.5586(1)(b), F.S.

Mitigation Grants

The purpose of the mitigation grants component of the MSFH Program was to retrofit single-family homes to make them less vulnerable to hurricane damage.[9] To be eligible for a grant, the following criteria must have been met:

- The homeowner must have had a homestead exemption on the home to be retrofitted;
- The home must have had an insured value of $300,000 or less, unless the homeowner was classified as a low-income person;
- The home must have undergone an acceptable hurricane mitigation inspection after May 1, 2007;
- The home must have been located in the "wind-borne debris region" as defined in the International Building Code; and
- The building permit application for initial construction of the home must have been made before March 1, 2002.[10]

In addition, the homeowner had to match the grant award on a dollar-for-dollar basis up to $10,000, for the actual cost of the mitigation project, and the state's contribution could not exceed $5,000.[11] Low-income homeowners were eligible for grants of up to $5,000, and were not required to provide a matching amount to receive a grant.[12] Matching fund grants were also available to local governments and nonprofit entities for projects to reduce hurricane damages to single-family homes.[13]

Grants could be used on previously-inspected existing structures or on rebuilds.[14] If recommended by a hurricane mitigation inspection, grants could be used for the following improvements:

- Opening protection.
- Upgrading exterior doors, including garage doors.
- Bracing gable ends.
- Reinforcing roof-to-wall connections.
- Improving the strength of roof-deck attachments.
- Upgrading roof coverings from code to code plus.
- Installing secondary water barrier for roofs.[15]

DFS was required to issue an annual report on the activities of the MSFH Program that accounted for the use of any appropriated state funds, the number of inspections requested and performed, the number of grant applications received, and the number and value of grants approved.[16]

The MSFH Program was appropriated $250 million in Fiscal Year 2006-07.[17] As of May 2009, approximately $93 million in MSFH grants were allocated to 32,000 homes, and approximately 400,000 homes received a MSFH home inspection.[18] DFS requested that Risk Management Solutions (RMS), conduct an impact analysis of the MSFH program, and RMS released a report of the impact analysis on May 14, 2009 (report).[19] In the report, RMS concluded that the MSFH grants were beneficial to the State of Florida, individual homeowners, and the insurance industry.[20] RMS indicated that the predicted reduction in loss as a result of the grant projects completed far exceeded the grant money spent.[21]

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[9] S. 215.5586(2), F.S.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Rebuilds were defined as site-built, single-family dwellings under construction to replace homes that were destroyed or significantly damaged by hurricanes and deemed unlivable by a regulatory authority. S. 215.5586(2)(e), F.S.
[15] S. 215.5586(2)(e), F.S.
[16] S. 215.5586(10), F.S.
[17] Risk Management Solutions, *Analyzing the Effects of the My Safe Florida Home Program on Florida Insurance Risk*, May 14, 2009, https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=5036 (last visited Jan. 26, 2024).
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

While the MSFH Program was never repealed from law, additional funding was not provided until May 2022.

2022 Renewal of the MSFH Program

During the 2022D Special Session, the Legislature passed a property insurance bill (SB 2-D), in which it renewed the funding for the MSFH Program by appropriating $150 million in nonrecurring funds from the General Revenue Fund (GR) to DFS for the Program for the 2022-2023 fiscal year. The funds appropriated were allocated as follows:

- $115 million for mitigation grants.
- $25 million for hurricane mitigation inspections.
- $4 million for education and consumer awareness.
- $1 million for public outreach for contractors and estate brokers and sales associates.
- $5 million for administrative costs.

SB 2-D reappropriated any unexpended balance of funds from the appropriation remaining on June 30, 2023, to DFS for the 2023-2024 fiscal year to be used for the MSFH Program. The appropriation will expire on October 1, 2024. SB 2-D gave DFS the authority to adopt emergency rules to implement the MSFH Program.

SB 2-D made additional modifications to the MSFH Program. It required that an application for a mitigation grant include a provision that requires an applicant to make his or her home available for inspection once a mitigation project is completed. The bill changed the monetary limits for eligibility for mitigation grants so that homes with an insured value of $500,000, or less, qualify for the program.

SB 2-D required that homes that receive mitigation grants have undergone home mitigation inspections after July 1, 2008, and have received permits for initial construction before January 1, 2008. The homeowner must also match grant funds on the basis of $1 from the homeowner for every $2 provided by the state up to a maximum state contribution of $10,000 towards the actual cost of the mitigation project undertaken on the eligible home.

The bill enhanced the reporting requirements for DFS under the MSFH Program by requiring that the report include the following received by homeowners from insurers as a result of the mitigation funded by the program:

- The average annual amount of insurance premium discounts; and
- The total annual amount of insurance premium discounts.

2022 MSFH Program Implementation

Following the passage of SB 2-D, DFS procured a vendor to administer the MSFH Program, qualified inspectors to conduct mitigation inspections, and qualified contractors who agreed to provide mitigation repairs and retrofitting under the grant portion of the Program.[22] DFS compiled a list of approved vendors that homeowners participating in the MSFH Program may choose for inspections and mitigation work.[23]

On November 18, 2022, a web-based application for homeowners to request mitigation inspections and grant funds went live.[24] Between May 26, 2022 and February 28, 2023, 16,724 mitigation inspections were completed and 2,979 grant applications were approved.[25]

Inspectors completing mitigation inspections under the MSFH Program must complete the Uniform Mitigation Verification Inspection Form (Inspection Form), as revised by the Office of Insurance

[22] Florida Department of Financial Services, Agency Analysis of 2023 House Bill 881, p. 1 (Mar. 1, 2023).
[23] *Id.*
[24] *Id.*
[25] *Id.*

Regulation on January 12, 2023.[26] The mitigation inspection report provided to the homeowner includes the completed Inspection Form, as well as the information already required by statute,[27] including:

- A summary of the results of the mitigation inspection identifying recommended improvements a homeowner may undertake;
- A range of cost estimates regarding the recommended improvements; and
- Estimated property insurance premium discounts based on the mitigation measures the homeowner has completed.[28]

2023 Developments to the MSFH Program

Following the significant interest in the program in 2022 and early 2023, the Legislature made additional changes to the statutory framework for the MSFH Program during the 2023 Regular Session. These changes included changes to the inspection and grant eligibility requirements, and program management changes.

Single-family home eligibility for mitigation inspections was limited only to homesteaded properties.[29] Funds from the MSFH Program may now be used to inspect townhouses to determine if opening protection mitigation would help decrease the risk of hurricane damage.[30] If an inspection determines that opening protection mitigation would decrease such risk, grant funds from the MSFH Program may be used to pay for the mitigation.[31] The value of the mitigation grant-eligible homes was also increased from $500,000 to $700,000.[32]

The designation of a specific portion of the grant funds for low-income recipients was removed, but increases the overall grant award for low-income recipients from $5,000 to $10,000.[33] The program's geographic eligibility area was broadened to include otherwise in eligible homes outside the wind-borne debris region, in effect making it a statewide program.

Among the project management changes implemented, home inspectors must be licensed, in addition to certified.[34] This requirement conforms with other statutory chapters that address home inspectors.

Funding for the MSFH Program

As of December 2023, the Legislature has appropriated a total of $433 million for the MSFH Program since May 2022.[35] In addition to the $150 million appropriated during the 2022D Special Session, this includes $100 million in grant funding appropriated during the 2023 Regular Session and an additional $176 million in grant funding appropriated during the 2023C Special Session.[36]

[26] *Id.*
[27] S. 215.5586(1)(a), F.S.
[28] Department of Financial Services, *supra* note 22, at 2.
[29] The homestead requirement was already in place for the grant portion of the MSFH Program under s. 215.5586(2), F.S., prior to the 2023 Regular Session.
[30] S. 215.5586(1)(a), F.S.
[31] S. 215.5586(2)(f), F.S.
[32] S. 215.5586(2)(e)2., F.S.
[33] S. 215.5586(2)(h), F.S.
[34] S. 215.5586, F.S.
[35] Department of Financial Services, *2023 Annual Report of My Safe Florida Home*, p. 1.
[36] *Id.* at p. 6. The mitigation grant funding is by far the largest component of the MSFH Program.

Results of the MSFH Program

Between November 2022, and December 2023, the MSFH Program has provided more than 94,000 homeowners with hurricane mitigation inspections and approved more than 23,000 grant applications.[37] Over 73 percent of those homeowners who have completed participation in the grant component of the MSFH Program have seen their homeowners insurance premiums drop or stabilize, and many are paying premiums at or below the state average.[38] According to DFS, upon applying to the MSFH Program, the average premium of the applicants was 55.1 percent higher than the average Florida homeowner's premium.[39] Based upon the decrease in premium following participation, DFS has concluded that the MSFH Program participation is comprised of higher-than-average risk homeowners, which is consistent with the goal of helping those with homes at greatest risk.[40]

Effect of the Bill

The bill makes additional changes to improve the operation and effectiveness of the MSFH Program. It allows homeowners to submit subsequent mitigation inspection and grant applications for the same home if the following criteria are met:

- The original application was denied or withdrawn due to errors or omissions in the application;
- The original application was denied or withdrawn because the home did not meet the eligibility criteria at the time of application, and the homeowner reasonably believes the home is now eligible for an inspection or grant; or
- The MSFH Program's eligibility requirements have changed since the date of the original application, and the homeowner reasonably believes the home is now eligible for an inspection or grant.

Pursuant to the bill, DFS may request that an applicant provide additional information if the application contains errors or omissions. DFS may consider an application withdrawn if it does not receive a response to its request for additional information within 60 days of notifying the applicant of errors or omissions.

The bill provides additional criteria for homes to be eligible for mitigation grants. Homeowners must agree to provide DFS with information from their homeowners' insurers that identifies premium discounts received as a result of improvements made with grant funds. Grant-funded projects must be completed within 1 year after grant approval, subject to a one-time six-month extension, or the grant is deemed abandoned and the grant funds revert to DFS.

The bill eliminates the requirement that DFS maintain a list of participating contractors for the grant portion of the MSFH Program. Instead, participants in the program may choose any properly licensed contractor to perform the improvements. A grant application must include a statement from the homeowner which contains the name and state license number of the contractor that the homeowner intends to use for the mitigation work. Before approving the grant, DFS will verify that the contractor's state license number is accurate and up to date.

The bill specifies that opening protection that may be improved with grant funds from the MSFH Program includes exterior doors, garage doors, windows, and skylights. Current law allows DFS to require that improvements be made to all openings, including exterior doors, and garage doors as a condition of reimbursing a homeowner approved for a grant.[41] The bill adds windows and skylights to the list of openings that must be improved in their entirety for a homeowner to be reimbursed.

[37] *Id.* at p. 1. Because the grant portion of the MSFH Program is fulfilled based on reimbursement to homeowners after proof of completion of mitigation projects, the money to fulfill these grants has been reserved, but not all of it has been paid to the homeowners yet.
[38] *Id.*
[39] *Id.* at p. 2.
[40] *Id.*
[41] S. 215.5586(2)(f), F.S.

The bill requires that, for the first 60 days DFS accepts inspection and grant applications following any legislative appropriation, DFS must prioritize the review and approval of applications in the following order:

- Low-income persons who are at least 60 years old;
- All other low-income persons;
- Moderate-income persons who are at least 60 years old;
- All other moderate-income persons;[42] and
- All other applicants.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.5586, F.S., relating to the My Safe Florida Home Program.

Section 2. 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:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that homes that participate in the MSFH Program receive mitigation credits or premium discounts under their property insurance policies and are less exposed to risk as a result of mitigation retrofitting using grant funds, the MSFH Program will have a positive direct economic impact on homeowners. Hurricane mitigation contractors may also see an increase in project activity.

D. FISCAL COMMENTS:

The House's proposed General Appropriations Act (GAA) for Fiscal Year 2024-2025,[43] includes $200 million for mitigation grants, approximately $17 million for mitigation inspections, and approximately $7 million for administrative costs related to both components of the MSFH Program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[42] The relevant definitions of low- and moderate-income persons are found in s. 420.0004, F.S.
[43] *See* PCB APC 24-01 (2024).

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

B. RULE-MAKING AUTHORITY:

   The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- required a grant applicant to identify the project contractor by name and license number and the program to verify the status of the contractor's license.
- clarified the process for prioritization of low-income grant applicants.
- specified that a grant-funded project must be completed within 1 year, subject to a one-time six-month extension, or the grant is deemed abandoned and the funds revert to DFS.
- made other technical and grammatical changes.

On February 13, 2024, the State Administration & Technology Appropriations Subcommittee considered the bill, adopted an amendment, and reported the bill favorably as a committee substitute. The amendment removed the appropriation of $107 million nonrecurring general revenue.

The analysis is drafted to the committee substitute as passed by the State Administration & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to the My Safe Florida Home Program; amending s. 215.5586, F.S.; revising legislative intent; specifying eligibility requirements for hurricane mitigation inspections under the My Safe Florida Home Program; specifying requirements for a hurricane mitigation inspection application; authorizing an applicant to submit a subsequent hurricane mitigation inspection application under certain conditions; authorizing applicants who meet specified requirements to receive a home inspection under the program without being eligible for, or applying for, a grant; specifying eligibility requirements for hurricane mitigation grants; revising application requirements for hurricane mitigation grants; authorizing an applicant to submit a subsequent hurricane mitigation grant application under certain conditions; requiring that a grant application include certain information; deleting and revising provisions relating to the selection of hurricane mitigation inspectors and contractors; deleting the requirement that matching fund grants be made available to certain entities; revising improvements that grants for eligible homes may be used for; deleting the authorization to use grants on

rebuilds; requiring the Department of Financial Services to develop a process that ensures the most efficient means to collect and verify inspection applications; requiring the department to prioritize the review and approval of inspection and grant applications in a specified order; requiring the department to start accepting inspection and grant applications as specified in the act; requiring homeowners to finalize construction and make certain requests within a specified time; providing that an application is deemed abandoned under certain circumstances; authorizing the department to request certain information; providing that an application is considered withdrawn under certain circumstances; revising provisions relating to the development of brochures; requiring the Citizens Property Insurance Corporation to distribute such brochures to specified persons; providing an effective date.

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

Section 1. Section 215.5586, Florida Statutes, as amended by section 5 of chapter 2023-349, Laws of Florida, is amended to read:

215.5586 My Safe Florida Home Program.—There is

established within the Department of Financial Services the My Safe Florida Home Program. The department shall provide fiscal accountability, contract management, and strategic leadership for the program, consistent with this section. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of residential property in this state. Implementation of this program is subject to annual legislative appropriations. It is the intent of the Legislature that, subject to the availability of funds, the My Safe Florida Home Program provide licensed inspectors to perform hurricane mitigation inspections of eligible homes ~~for owners of site-built, single-family, residential properties~~ and grants to fund hurricane mitigation projects on those homes ~~eligible applicants~~. The department shall implement the program in such a manner that the total amount of funding requested by accepted applications, whether for inspections, grants, or other services or assistance, does not exceed the total amount of available funds. If, after applications are processed and approved, funds remain available, the department may accept applications up to the available amount. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation pursuant to ~~that may include~~ the requirements provided in this section. ~~following:~~

(1) HURRICANE MITIGATION INSPECTIONS.—

(a) To be eligible for a hurricane mitigation inspection under the program:

1. A home must be a single-family, detached residential property or a townhouse as defined in s. 481.203;

2. A home must be site-built and owner-occupied; and

3. The homeowner must have been granted a homestead exemption on the home under chapter 196.

(b)1. An application for a hurricane mitigation inspection must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only one inspection application on the home or that the application is allowed under subparagraph 2., and the application must have documents attached which demonstrate that the applicant meets the requirements of paragraph (a).

2. An applicant may submit a subsequent hurricane mitigation inspection application for the same home only if:

a. The original hurricane mitigation inspection application has been denied or withdrawn because of errors or omissions in the application;

b. The original hurricane mitigation inspection application was denied or withdrawn because the home did not meet the eligibility criteria for an inspection at the time of the previous application, and the homeowner reasonably believes the home now is eligible for an inspection; or

c. The program's eligibility requirements for an

inspection have changed since the original application date, and the applicant reasonably believes the home is eligible under the new requirements.

(c) An applicant meeting the requirements of paragraph (a) may receive an inspection of a home under the program without being eligible for a grant under subsection (2) or applying for such grant.

(d) Licensed inspectors are to provide home inspections of eligible homes ~~site-built, single-family, residential properties for which a homestead exemption has been granted,~~ to determine what mitigation measures are needed, what insurance premium discounts may be available, and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. An inspector may inspect a townhouse as defined in s. 481.203 to determine if opening protection mitigation as listed in subparagraph (2)(e)1. ~~paragraph (2)(e)~~ would provide improvements to mitigate hurricane damage.

(e)~~(b)~~ The department ~~of Financial Services~~ shall contract with wind certification entities to provide hurricane mitigation inspections. The inspections provided to homeowners, at a minimum, must include:

1. A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may take to mitigate hurricane damage.

2. A range of cost estimates regarding the recommended mitigation improvements.

3. Information regarding estimated premium discounts, correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.

(f) ~~(c)~~ To qualify for selection by the department as a wind certification entity to provide hurricane mitigation inspections, the entity must, at a minimum, meet the following requirements:

1. Use hurricane mitigation inspectors who are licensed or certified as:

a. A building inspector under s. 468.607;

b. A general, building, or residential contractor under s. 489.111;

c. A professional engineer under s. 471.015;

d. A professional architect under s. 481.213; or

e. A home inspector under s. 468.8314 and who have completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board, which training must include hurricane mitigation techniques, compliance with the uniform mitigation verification form, and completion of a proficiency exam.

2. Use hurricane mitigation inspectors who also have undergone drug testing and a background screening. The

department may conduct criminal record checks of inspectors used by wind certification entities. Inspectors must submit a set of fingerprints to the department for state and national criminal history checks and must pay the fingerprint processing fee set forth in s. 624.501. The fingerprints must be sent by the department to the Department of Law Enforcement and forwarded to the Federal Bureau of Investigation for processing. The results must be returned to the department for screening. The fingerprints must be taken by a law enforcement agency, designated examination center, or other department-approved entity.

3. Provide a quality assurance program including a reinspection component.

~~(d) An application for an inspection must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only a single application for that home.~~

~~(e) The owner of a site-built, single-family, residential property or townhouse as defined in s. 481.203, for which a homestead exemption has been granted, may apply for and receive an inspection without also applying for a grant pursuant to subsection (2) and without meeting the requirements of paragraph (2)(a).~~

(2) HURRICANE MITIGATION GRANTS.—Financial grants shall be used by homeowners to make improvements recommended by an

inspection which increase resistance ~~encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable~~ to hurricane damage.

(a) ~~For~~ A homeowner is ~~to be~~ eligible for a hurricane mitigation grant if all of~~,~~ the following criteria are ~~must be~~ met:

1. The home must be eligible for an inspection under subsection (1) ~~The homeowner must have been granted a homestead exemption on the home under chapter 196~~.

2. The home must be a dwelling with an insured value of $700,000 or less. Homeowners who are low-income persons, as defined in s. 420.0004(11), are exempt from this requirement.

3. The home must undergo an acceptable hurricane mitigation inspection as provided in subsection (1).

4. The building permit application for initial construction of the home must have been made before January 1, 2008.

5. The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.

6. The homeowner must agree to provide to the department information received from the homeowner's insurer identifying the discounts realized by the homeowner because of the mitigation improvements funded through the program.

(b)1. An application for a grant must contain a signed or

electronically verified statement made under penalty of perjury that the applicant has submitted only one grant ~~a single~~ application or that the application is allowed under subparagraph 2., and the application must have ~~attached~~ documents attached demonstrating that the applicant meets the requirements of ~~this~~ paragraph (a).

2. An applicant may submit a subsequent grant application if:

a. The original grant application was denied or withdrawn because the application contained errors or omissions;

b. The original grant application was denied or withdrawn because the home did not meet the eligibility criteria for a grant at the time of the previous application, and the homeowner reasonably believes that the home now is eligible for a grant; or

c. The program's eligibility requirements for a grant have changed since the original application date, and the applicant reasonably believes that he or she is an eligible homeowner under the new requirements.

3. A grant application must include a statement from the homeowner which contains the name and state license number of the contractor that the homeowner acknowledges as the intended contractor for the mitigation work. The program must electronically verify that the contractor's state license number is accurate and up to date before grant approval.

(c) ~~(b)~~ All grants must be matched on the basis of $1 provided by the applicant for $2 provided by the state up to a maximum state contribution of $10,000 toward the actual cost of the mitigation project, except as provided in paragraph (h).

(d) ~~(c) The program shall create a process in which contractors agree to participate and homeowners select from a list of participating contractors.~~ All hurricane mitigation performed under the program must be based upon the securing of all required local permits and inspections and must be performed by properly licensed contractors. ~~Hurricane mitigation inspectors qualifying for the program may also participate as mitigation contractors as long as the inspectors meet the department's qualifications and certification requirements for mitigation contractors.~~

~~(d) Matching fund grants shall also be made available to local governments and nonprofit entities for projects that will reduce hurricane damage to single-family, site-built, owner-occupied, residential property. The department shall liberally construe those requirements in favor of availing the state of the opportunity to leverage funding for the My Safe Florida Home Program with other sources of funding.~~

(e) When recommended by a hurricane mitigation inspection, grants for eligible homes may be used for the following improvements:

1. Opening protection, including exterior doors, garage

doors, windows, and skylights.

2. ~~Exterior doors, including garage doors.~~

~~3.~~ Reinforcing roof-to-wall connections.

3.~~4.~~ Improving the strength of roof-deck attachments.

4.~~5.~~ Secondary water resistance barrier for roof.

(f) When recommended by a hurricane mitigation inspection, grants for townhouses, as defined in s. 481.203, may only be used for opening protection.

(g) The department may require that improvements be made to all openings, including exterior doors, ~~and~~ garage doors, windows, and skylights, as a condition of reimbursing a homeowner approved for a grant. The department may adopt, by rule, the maximum grant allowances for any improvement allowable under paragraph (e) or paragraph (f) ~~this paragraph~~.

~~(g) Grants may be used on a previously inspected existing structure or on a rebuild. A rebuild is defined as a site-built, single-family dwelling under construction to replace a home that was destroyed or significantly damaged by a hurricane and deemed unlivable by a regulatory authority. The homeowner must be a low-income homeowner as defined in paragraph (h), must have had a homestead exemption for that home before the hurricane, and must be intending to rebuild the home as that homeowner's homestead.~~

(h) Low-income homeowners, as defined in s. 420.0004(11), who otherwise meet the applicable requirements of this

subsection ~~paragraphs (a), (c), (e), and (g)~~ are eligible for a grant of up to $10,000 and are not required to provide a matching amount to receive the grant. ~~The program may accept a certification directly from a low-income homeowner that the homeowner meets the requirements of s. 420.0004(11) if the homeowner provides such certification in a signed or electronically verified statement made under penalty of perjury.~~

(i)1. The department shall develop a process that ensures the most efficient means to collect and verify inspection applications and grant applications to determine eligibility. The department ~~and~~ may direct hurricane mitigation inspectors to collect and verify grant application information or use the Internet or other electronic means to collect information and determine eligibility.

2. The department shall prioritize the review and approval of such inspection applications and grant applications in the following order:

a. First, applications from low-income persons, as defined in s. 420.0004, who are at least 60 years old;

b. Second, applications from all other low-income persons, as defined in s. 420.0004;

c. Third, applications from moderate-income persons, as defined in s. 420.0004, who are at least 60 years old;

d. Fourth, applications from all other moderate-income persons, as defined in s. 420.0004; and

e. Last, all other applications.

3. The department shall start accepting inspection applications and grant applications no earlier than the effective date of a legislative appropriation funding inspections and grants, as follows:

a. Initially, from applicants prioritized under sub-subparagraph 2.a.;

b. From applicants prioritized under sub-subparagraph 2.b., beginning 15 days after the program initially starts accepting applications;

c. From applicants prioritized under sub-subparagraph 2.c., beginning 30 days after the program initially starts accepting applications;

d. From applicants described in sub-subparagraph 2.d., beginning 45 days after the program initially starts accepting applications; and

e. From all other applicants, beginning 60 days after the program initially starts accepting applications.

4. The program may accept a certification directly from a low-income homeowner or moderate-income homeowner who meets the requirements of s. 420.0004(11) or (12), respectively, if the homeowner provides such certification in a signed or electronically verified statement made under penalty of perjury.

(j) A homeowner who receives a grant shall finalize construction and request a final inspection, or request an

extension for an additional 6 months, within 1 year after grant approval. If a homeowner fails to comply with this paragraph, his or her application is deemed abandoned and the grant money reverts to the department.

(3) REQUESTS FOR INFORMATION.—The department may request that an applicant provide additional information. An application is deemed withdrawn by the applicant if the department does not receive a response to its request for additional information within 60 days after the notification of any apparent error or omission.

(4) EDUCATION, CONSUMER AWARENESS, AND OUTREACH.—

(a) The department may undertake a statewide multimedia public outreach and advertising campaign to inform consumers of the availability and benefits of hurricane inspections and of the safety and financial benefits of residential hurricane damage mitigation. The department may seek out and use local, state, federal, and private funds to support the campaign.

(b) The program may develop brochures for distribution to Citizens Property Insurance Corporation and other licensed entities or nonprofits that work with the department to educate the public on the benefits of the program~~, general contractors, roofing contractors, and real estate brokers and sales associates who are licensed under part I of chapter 475 which provide information on the benefits to homeowners of residential hurricane damage mitigation~~. Citizens Property Insurance

Corporation must ~~is encouraged to~~ distribute the brochure to policyholders of the corporation each year the program is funded. ~~Contractors are encouraged to distribute the brochures to homeowners at the first meeting with a homeowner who is considering contracting for home or roof repair or contracting for the construction of a new home. Real estate brokers and sales associates are encouraged to distribute the brochure to clients before the purchase of a home.~~ The brochures may be made available electronically.

(5) ~~(4)~~ FUNDING.—The department may seek out and leverage local, state, federal, or private funds to enhance the financial resources of the program.

(6) ~~(5)~~ RULES.—The department ~~of Financial Services~~ shall adopt rules pursuant to ss. 120.536(1) and 120.54 to govern the program; implement the provisions of this section; including rules governing hurricane mitigation inspections and grants, mitigation contractors, and training of inspectors and contractors; and carry out the duties of the department under this section.

(7) ~~(6)~~ HURRICANE MITIGATION INSPECTOR LIST.—The department shall develop and maintain as a public record a current list of hurricane mitigation inspectors authorized to conduct hurricane mitigation inspections pursuant to this section.

(8) ~~(7)~~ CONTRACT MANAGEMENT.—

(a) The department may contract with third parties for

grants management, inspection services, contractor services for low-income homeowners, information technology, educational outreach, and auditing services. Such contracts are considered direct costs of the program and are not subject to administrative cost limits. The department shall contract with providers that have a demonstrated record of successful business operations in areas directly related to the services to be provided and shall ensure the highest accountability for use of state funds, consistent with this section.

(b) The department shall implement a quality assurance and reinspection program that determines whether initial inspections and home improvements are completed in a manner consistent with the intent of the program. The department may use valid random sampling in order to perform the quality assurance portion of the program.

(9) ~~(8)~~ INTENT.—It is the intent of the Legislature that grants made to residential property owners under this section shall be considered disaster-relief assistance within the meaning of s. 139 of the Internal Revenue Code of 1986, as amended.

(10) ~~(9)~~ REPORTS.—The department shall make an annual report on the activities of the program that shall account for the use of state funds and indicate the number of inspections requested, the number of inspections performed, the number of grant applications received, the number and value of grants

approved, and the estimated average annual amount of insurance premium discounts and total estimated annual amount of insurance premium discounts homeowners received from insurers as a result of mitigation funded through the program. The report must be delivered to the President of the Senate and the Speaker of the House of Representatives by February 1 of each year.

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

COMMERCE COMMITTEE

CS/CS/HB 1263 by LaMarca
My Safe Florida Home Program

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. LaMarca (Line 255): changes the term secondary water barrier to secondary water resistance to conform with proper roofing terminology.

Amendment 2 by Rep. LaMarca (Line 406): adds an appropriation from the General Revenue Fund for the My Safe Florida Home Program and prohibits the Program from accepting applications or producing a waiting list in anticipation of future funding.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative LaMarca offered the following:

Amendment

Remove line 255 and insert:

4.~~5.~~ Secondary water resistance ~~barrier~~ for roof.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative LaMarca offered the following:

Amendment (with title amendment)

Between lines 406 and 407, insert:

Section 2. For the 2024-2025 fiscal year, the sum of $225 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Financial Services for the My Safe Florida Home Program. The funds shall be utilized for hurricane mitigation grants, hurricane mitigation inspections, outreach and administrative costs. The department may not continue to accept applications or create a waiting list in anticipation of additional funding unless the Legislature provides expressed authority to implement such actions.

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

Remove line 43 and insert:

persons; providing appropriations; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1289 Verification of Reemployment Assistance Benefit Eligibility
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Abbott
TIED BILLS: **IDEN./SIM. BILLS:** SB 1260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	8 Y, 5 N, As CS	Bauldree	Anstead
2) Infrastructure & Tourism Appropriations Subcommittee	8 Y, 4 N	McAuliffe	Davis
3) Commerce Committee		Bauldree	Hamon

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 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 revises reemployment assistance eligibility requirements. 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.

The bill requires the department to 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 have an indeterminate negative fiscal impact on 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]

The maximum available weeks is set at the beginning of the year and applies for the entire calendar

[1] U.S. Department of Labor, State Unemployment Insurance Benefits, *available at* https://oui.doleta.gov/unemploy/uifactsheet.asp (last visited Feb. 8, 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. 8, 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, Laws 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 the first three quarters of 2023 was: first quarter – $259; second quarter – $261; and third quarter – $260. 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. 8, 2024).

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 five percent, then the maximum weeks of benefits available is 12 weeks. For each 0.5 percent increase in the unemployment rate, an additional week of benefits is added to the maximum duration.

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.[14]

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:[15]

- Completing the department's online work registration;[16]
- Reporting to the One-Stop Career Center when directed to do so by the local CareerSource board;
- Being able to and available for work;[17]
- 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.[18] 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.[19] 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.[20]

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.[21]

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

[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] *See* S. 443.101, F.S.
[15] S. 443.091(1), F.S.,
[16] *See* S. 443.091(1)(b), F.S., and Employ Florida, *available at* https://www.employflorida.com/vosnet/Default.aspx, (last visited Feb. 8, 2024). Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and the Department of Commerce. It provides job-matching and workforce resources.
[17] "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.
[18] S. 449.091(1)(c)1., F.S.
[19] 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.
[20] R. 73B-11.021(2), F.A.C.
[21] 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.

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.[22] 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.[23] 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.[24]

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:[25]

- Voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work;[26]
- 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;[27]
- 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.[28]

Effect of the Bill

The bill provides that it may be cited as the "Promoting Work, Deterring Fraud Act of 2024."

The bill amends the disqualification for benefits provisions in current law to add the following conditions that can disqualify an individual from receiving benefits:

- Failing to contact at least five prospective employers per week, in accordance with s. 443.091, F.S., 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 requires the department to 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.

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[22] 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. 8, 2024). R. 73B-3.028, F.A.C., provides more information on reemployment services and requirements for participation.

[23] S. 443.091, F.S.

[24] *Id*.

[25] S. 443.101, F.S.

[26] 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.

[27] S. 443.101(2), F.S.

[28] S. 443.091, F.S.

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 specified databases for the department to utilize include:

- The National Association of State Workforce Agencies Integrity Data Hub;[29]
- The United States Department of Health and Human Services National Directory of New Hires;[30]
- The State Directory of New Hires;[31]
- The Department of Corrections inmate database;
- The Social Security Administration (SSA) Prisoner Update Processing System[32]
- The Centers for Disease Control and Prevention National Vital Statistics System death records database;[33]
- The Department of Health Bureau of Vital Statistics death records database;[34]
- The United States Citizenship and Immigration Services SAVE database[35] – which allows federal, state, and local benefit-granting agencies to verify a benefit applicant's immigration status or naturalized/derived citizenship.

The bill prohibits the department from paying any claim that has not been cross-checked against all the sources listed above, or similar sources of information.

The bill also requires the department to 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

[29] 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).

[30] 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. 8, 2024).

[31] 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.

[32] 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.

[33] 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. 8, 2024).

[34] This database collects all birth, marriage, and death certificates in Florida. *See* S. 20.43(1)(c), F.S.

[35] 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.

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 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. 443.101, F.S., relating to disqualification of benefits.

Section 3: Creates s. 443.1112, F.S., relating to verification of reemployment assistance benefit eligibility.

Section 4: Amends s. 445.003, F.S., relating to implementation of the federal Workforce Innovation and Opportunity Act.

Section 5: 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 indeterminate initial and recurring costs associated with creating and maintaining the online workforce search and match tool, maintaining a website and e-mail address for employers to report suspected violations that could disqualify the receipt of benefits, and checking the required databases before paying any benefits. Provisions in the bill may also function to decrease the amount of reemployment assistance benefits paid out. The department did not submit a fiscal impact statement for this bill, but the overall impact on state expenditures remains indeterminate and cannot be quantified.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 6, 2024, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the provision from the bill requiring non-Florida residents who seek reemployment assistance benefits from the Department of Commerce to report to workforce centers in their state of residence.
- Retained the provision in current law stating that the online skills assessment offered by the department is voluntary.
- Removed the provision from the bill requiring a claimant to complete weekly at least one job application in person with an employer that has an expected job opening, and certify and attest biweekly that they will appear for all scheduled interviews and actively seek work.

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

A bill to be entitled

An act relating to verification of reemployment assistance benefit eligibility; providing a short title; amending s. 443.101, F.S.; making a technical change; revising circumstances under which the Department of Commerce 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, 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,

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

Deterring Fraud Act of 2024."

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.

Section 4. 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 5. This act shall take effect July 1, 2024.

COMMERCE COMMITTEE

CS/HB 1289 by Rep. Abbott
Verification of Reemployment Assistance Benefit Eligibility

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Abbott (Strike-All): The amendment:

- Revises reemployment assistance eligibility requirements and adds more conditions that can disqualify an individual from receiving benefits;
- Requires the Department of Commerce (department) to:
    - Maintain a web page and e-mail address for employers to report violations of the disqualification for benefits provisions,
    - Verify the identity of each claimant who applies for reemployment assistance before paying any benefits to that individual, and
    - Cross-check the information contained in a claim with various specified national and state databases; and
- Prohibits the department from paying benefits to a claimant that has not been cross-checked against all the databases specified in the bill or similar sources of information.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. This act may be cited as the "Promoting Work, Deterring Fraud Act of 2024."

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, including contacting the required number of prospective employers per week for any week of unemployment claimed in the benefit year in accordance with s.

443.091, failed to appear on three or more occasions for a scheduled job interview, accept suitable work when offered to him or her, or return to the individual's customary self-employment when directed by the department or return to employment when recalled to work by the individual's employer after a temporary layoff, 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 to implement this subsection, including 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.

Section 3. Section 443.1112, Florida Statutes, is created to read:

<u>443.1112 Verification of reemployment assistance benefit eligibility; detection of fraud.—</u>

(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) For the initial claim for benefits made by a claimant and as necessary to verify a claimant's eligibility for benefits, the department shall cross-check the information contained in the claim with information in the United States Citizenship and Immigration Services SAVE database.

(3) For each week which a claimant makes a claim for benefits, including the initial claim for benefits, to verify a claimant's eligibility for benefits the department shall 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.

(4) The department may not pay any week claimed by a claimant that has not been cross-checked against all the sources specified in subsections (2) and (3), as appropriate, or similar sources of information. However, in any week in which any of the sources specified are unavailable, the claim may be paid provided the department cross-checks the claimant's information against the unavailable source upon its availability.

(5) The department shall do all of the following:

(a) Investigate any claim in this state associated with a mailing address, a bank account, an e-mail address, a telephone number, or an Internet protocol address that is also associated with another existing claim for reemployment assistance benefits in this state or another state and verify that the claim in this state is legitimate and not fraudulent before paying any benefits for the claim.

(b) Scrutinize any claim in this state filed from a foreign Internet protocol address before paying any benefits for the claim.

(c) Work with the United States Department of Labor, the United States Department of Justice, other state workforce agencies, the Department of Law Enforcement, the state attorneys, or the Office of the Statewide Prosecutor to share information related to fraudulent claims or attempted fraudulent

claims to the extent feasible for further investigation and proceedings brought under this chapter.

(d) Maintain a web page and an e-mail address through which an individual or an employer may report known or suspected violations of this chapter, including identity theft or fraud. Each year the department shall notify employers in the state of this web page and e-mail address for reporting violations.

(e) Each year 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 4. Paragraph (b) of subsection (1) of section 445.011, Florida Statutes, is amended to read:

445.011 Consumer-first workforce system.—

(1) The department, in consultation with the state board, the Department of Education, and the Department of Children and Families, shall implement, subject to legislative appropriation, an automated consumer-first workforce system that improves

coordination among required one-stop partners and is necessary for the efficient and effective operation and management of the workforce development system. This system shall include, but need not be limited to, the following:

(b)1. An automated job-matching information system that is accessible to employers, job seekers, and other users via the Internet, which is in alignment with the implementation of 20 C.F.R. s. 652.3, and that includes, at a minimum:

a.~~1.~~ Skill match information, including skill gap analysis; resume creation; job order creation; skill tests; job search by area, employer type, and employer name; and training provider linkage;

b.~~2.~~ Job market information based on surveys, including local, state, regional, national, and international occupational and job availability information; and

c.~~3.~~ Service provider information, including education and training providers, child care facilities and related information, health and social service agencies, and other providers of services that would be useful to job seekers.

2. The job-matching information system shall use artificial intelligence generation for the purpose of matching participants to jobs and training opportunities and include a knowledge, skills, and interests assessment for the purpose of guiding participants to jobs and training opportunities.

Section 5. This act shall take effect July 1, 2024.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to verification of reemployment assistance benefit eligibility; providing a short title; amending s. 443.101, F.S.; making a technical change; revising circumstances under which the department disqualifies claimants from benefits; creating s. 443.1112, F.S.; requiring the department to verify claimants' identities before paying benefits; requiring the department to 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 an exception; providing duties of the department; 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; providing annual reporting requirements; amending s. 445.011, F.S.; requiring the department's job-matching information system to contain certain elements; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1419 Department of Commerce
SPONSOR(S): Infrastructure & Tourism Appropriations Subcommittee, Tuck
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1420

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	15 Y, 0 N	Bauldree	Anstead
2) Infrastructure & Tourism Appropriations Subcommittee	12 Y, 0 N, As CS	McAuliffe	Davis
3) Commerce Committee		Bauldree	Hamon

SUMMARY ANALYSIS

The bill provides for the following changes that all impact the Department of Commerce (Commerce):

- Provides that if the local government doesn't hold a second public hearing and adopt a comprehensive plan amendment within 180 days after Commerce provides comments, the amendment is deemed withdrawn; and provides that comprehensive plan amendments are deemed withdrawn if the local government fails to transmit the comprehensive plan amendment to Commerce within 10 working days after the final adoption hearing.
- Deletes a requirement that the Florida Sports Foundation must continue amateur sports programs previously conducted by the Florida Governor's Council on Physical Fitness and Amateur Sports.
- Requires Commerce to establish a direct-support organization (DSO); renames the Florida Defense Support Task Force; provides for organizational composition; revises the mission of the DSO; requires the DSO to operate under a contract with Commerce; revises the due date for the annual report; and provides a repeal date of October 1, 2029.
- Revises the term "businesses" to include healthcare facilities and allied health care opportunities, and revises the funding priority purposes to provide that health care facilities, in addition to hospitals, operated by nonprofit or local government entities that provide opportunities in health care, are eligible for the funding under the Incumbent Worker Training Program.
- Specifies that board members of the State Workforce Development Board are voting members of the board.
- Extends the repayment period of the Local Government Emergency Revolving Bridge Loan Program from five to 10 years and authorizes Commerce to amend existing loans executed before February 1, 2024, in order to increase the loan term to a total of 10 years from the original date of execution.
- Specifies that a homeowner's association's proposed revived declaration of covenants and articles of incorporation and bylaws must be submitted to Commerce within 60 days after obtaining valid written consent from a majority of the affected parcel owners, or within 60 days after the date the documents are approved by affected parcel owners by a vote at a meeting.

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

The bill provides an effective date of July 1, 2024, except as otherwise expressly stated in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Defense Support Task Force

Present Situation

In 2011,[1] the Legislature created the Florida Defense Support Task Force (Task Force) with the mission to make recommendations to preserve and protect military installations to support the state's position in research and development related to or arising out of military missions and contracting, and to improve the state's military-friendly environment for servicemembers, military dependents, military retirees, and businesses that bring military and base-related jobs to the state.[2]

The task force is comprised of the Governor, or his or her designee, and 12 members comprised of four members appointed by the Governor, President of the Senate, and Speaker of the House of Representatives, respectively. Task Force members represent defense-related industries or communities that host military bases and installations.[3] With the exception of Legislative members, Task Force members serve for a term of four years. Vacancies are to be filled for the remainder of the unexpired term in the same manner as the initial appointment. Legislative members serve until the expiration of their legislative term and may be reappointed once. All members are eligible for reappointment.[4] The President and the Speaker each designate one of their appointees to serve as chair and the chair must rotate each July 1.[5] The Secretary of the Department of Commerce, or his or her designee, serves as the ex officio, nonvoting executive director.[6]

The Department of Commerce (Commerce) is required to contract with the task force for the expenditure of appropriated funds, which may be used by the task force for:

- Economic and product research and development;
- Joint planning with host communities to accommodate military missions and prevent base encroachment;
- Advocacy on the state's behalf with federal civilian and military officials;
- Assistance to school districts in providing a smooth transition for large numbers of additional military-related students;
- Job training and placement for military spouses in communities with high proportions of active duty military personnel; and
- Promotion of the state to military and related contractors and employers.[7]

The Task Force must submit an annual progress report and work plan to the Governor, the President, and the Speaker each February 1.[8]

[1] Chapter 2011-76, s. 38, Laws of Fla.
[2] Section 288.987(2), F.S.
[3] Section 288.987(3), F.S.
[4] Section 288.987(3), F.S.
[5] Section 288.987(4), F.S.
[6] Section 288.987(5), F.S., actually states that the Secretary of Economic Opportunity serves as the ex officio, nonvoting executive director; however, HB 5 from 2023 (enacted as Chapter 2023-173, Laws of Fla.) changed the name of the Department of Economic Opportunity to the Department of Commerce.
[7] Section 288.987(7), F.S.
[8] Section 288.987(6), F.S.

Effect of the Bill

The bill requires Commerce to establish a direct-support organization (DSO) to support Florida's military and defense industries and communities, and renames the Florida Defense Support Task Force as the DSO. The DSO must operate under a contract with Commerce which must provide that:

- Commerce may review the DSO's articles of incorporation;
- The DSO must submit an annual budget proposal to Commerce;
- Any DSO funds held in a trust must revert to the state upon the expiration or cancellation of the contract; and
- The DSO is subject to an annual compliance review by Commerce.

The bill states that the DSO fiscal year begins on July 1 and ends on June 30 of the next succeeding year. The DSO must also provide an annual financial audit.

The bill specifies that, under certain provisions of law, the DSO is not an agency for purposes of leasing buildings or for bids for printing. However, the DSO must comply with per diem and travel expense requirements. Commerce may allow the DSO to use the property, facilities, personnel, and services of Commerce if the DSO provides equal employment opportunities to all persons regardless of race, color, religion, sex, or national origin.

The bill revises the mission of the DSO. In addition to carrying out the provisions of the Task Force under current law, the DSO must assist with the coordination of economic and workforce development efforts in military communities and assist in the planning and research and development related to military missions, businesses, and military families. Additionally, the DSO is organized and operated to:

- Request, receive, hold, invest, and administer property;
- Manage and make expenditures for the operation of the activities, services, functions, and programs for economic and product research and development,
- Conduct joint planning with host communities to accommodate military missions and prevent base encroachment,
- Advocate on the state's behalf with federal civilian and military officials;
- Assist school districts in providing a smooth transition for additional military-related students;
- Provide job training and placement for military spouses in communities with high proportions of active duty military personnel; and
- Promote of the state to military and related contractors and employers.

Under the bill, the DSO must be governed by a board of directors composed of the Governor, or his or her designee, four members appointed by the Governor, the President, and the Speaker. All appointments in place as of July 1, 2024, must continue in effect until the expiration of the term. The President and the Speaker each designate one of their appointees to serve as chair for a 2-year term and the chair must rotate on July 1 of each odd-numbered year.

In the performance of its duties, the bill authorizes the DSO to make and enter into contracts as necessary to carry out its mission. A proposed contract with a total cost of $750,000 or more is subject to the noticing, review, and objection procedures provided in current law. The DSO may not divide one proposed contract with a total cost of $750,000 or more into multiple contracts to circumvent the prohibition. If the contract is contrary to legislative policy and intent, the DSO is prohibited from entering into such contract. The DSO is also authorized to establish grant programs and administer grant awards to support its mission.

The bill changes the due date for an annual report from February 1 to December 1.

Under the bill, unless the section establishing the DSO is reviewed and saved from repeal by the Legislature, the DSO is repealed on October 1, 2029.

Comprehensive Plans

Present Situation

The Community Planning Act (Act), codified in Part II of Ch. 163, F.S., promotes the establishment and implementation of comprehensive planning programs to guide and manage a local government's development.[9] Through the comprehensive planning process, the Legislature intended that local governments:

- Preserve, promote, protect, and improve public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare;
- Facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and
- Conserve, develop, utilize, and protect natural resources within their jurisdictions.[10]

To that end, the Act requires each local government to adopt and maintain a comprehensive plan that must provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area.[11] Specifically, the comprehensive plan must:

- Identify programs and activities for ensuring the comprehensive plan's implementation;
- Establish meaningful and predictable standards for land use and development and meaningful guidelines for the adoption of detailed land development regulations;[12] and
- Consist of elements set out in statute that must be based upon relevant and appropriate data and an analysis by the local government that may involve surveys, studies, community goals and vision, and other data available at the plan's adoption or amendment.[13]

The state land planning agency that administers these provisions is Commerce.[14]

Comprehensive Plan Adoption

Each of Florida's counties and municipalities has a comprehensive plan.[15] However, a newly-incorporated municipality must follow the state coordinated review process to adopt a comprehensive plan, which begins with an initial public hearing during which the municipality's governing body decides whether to transmit the plan to the reviewing agencies;[16] such decision must be by an affirmative vote of at least a majority of the governing body's members present at the hearing.[17] The municipality must then, within 10 working days of the hearing, transmit the proposed comprehensive plan to:

- The reviewing agencies for comment or, if the reviewing agency is the state land planning agency, for the production of the state land planning agency's statutorily-required report;[18] and
- Any other local government or government agency that filed a written request for a copy of the plan with the municipality.[19]

[9] S. 163.3161(2), F.S.
[10] S. 163.3161(4), F.S.
[11] S. 163.3177(1) and (2), F.S.
[12] "Land development regulations" means ordinances enacted to regulate any land development aspect, including zoning, rezoning, subdivision, building construction, and sign regulation. Within one year after submitting a new or revised comprehensive plan, a local government must adopt or amend and enforce land development regulations that are consistent with the plan. S. 163.3164(26), F.S.
[13] A comprehensive plan may also consist of optional elements. S. 163.3177(1), F.S.
[14] S. 163.3221(14), F.S.
[15] For the purposes of the Act, a county's authority extends to the total unincorporated area under its jurisdiction and to such unincorporated areas not included in a joint agreement with a municipality. A municipality's authority extends to the total area under its jurisdiction and adjacent unincorporated areas included in a joint agreement with the county. S. 163.3171(1) and (2), F.S.; Fla. Dept. of Environmental Protection, *Comprehensive Plan*, https://floridadep.gov/oip/oip/content/comprehensive-plan (last visited Jan. 27, 2024).
[16] "Reviewing agencies" means the state land planning agency; the appropriate regional planning council and water management district; the Florida Departments of Environmental Protection, State, and Transportation; the Florida Department of Education, if the plan amendment relates to public schools; the commanding officer of any affected military installation; the Florida Fish and Wildlife Conservation Commission and Department of Agriculture and Consumer Services, in the case of county plans and plan amendments; and the county in which the municipality is located, in the case of municipal plans or plan amendments. S. 163.3184(1), F.S.
[17] S. 163.3184(2), (4), and (11), F.S.
[18] If the state land planning agency reviews a proposed comprehensive plan, it must issue a report stating its objections, recommendations, and comments about the plan within 60 days of the plan's transmission to the agency. The state land planning agency is the Department of Economic Opportunity. S. 163.3184(4), F.S.; Fla. Dept. of Economic Opportunity, *Community Planning, Development, and Services*, https://floridajobs.org/community-planning-and-development (last visited Jan. 27, 2023).
[19] S. 163.3184(4), F.S.

Within 180 days after receipt of the state land planning agency's report, the municipality must hold a second public hearing to determine whether to adopt the comprehensive plan; such determination must be by an affirmative vote of at least a majority of the governing body's members present at the hearing.[20] An adopted comprehensive plan, along with the supporting data and analyses, must be transmitted within 10 working days of the adoption hearing to the state land planning agency and any other agency or local government that provided timely comments.[21] The state land planning agency then reviews the package for completeness and publishes a notice of intent to find that the plan complies or does not comply with the Act.[22] A comprehensive plan takes effect pursuant to the notice of intent.[23]

Comprehensive Plan Amendment

Comprehensive plan amendments are generally governed by the state expedited review process, which typically begins with an initial public hearing when the local government's governing body decides whether to transmit the proposed amendment to the reviewing agencies. Such decision must be by an affirmative vote of at least a majority of the governing body's members present at the hearing.[24] Within 10 working days of such hearing, the local government must transmit the plan amendment and appropriate supporting data and analyses to the reviewing agencies for expedited comment[25] and to any other local government or governmental agency that filed a written request for such transmittal with the local government.[26] Interested persons may also provide the local government with written or oral comments, recommendations, or objections to the plan amendment.[27]

Within 180 days after receipt of agency comments, the local government must hold a second public hearing to determine whether to adopt the plan amendment.[28] However, where the proposed plan amendment is a small-scale development amendment,[29] the local government must hold only the public adoption hearing; an initial public hearing is not required.[30] In either case, plan amendment adoption must be by an affirmative vote of at least a majority of the governing body's members present at the hearing, and failure to hold a timely adoption hearing causes the amendment to be deemed withdrawn unless the timeframe is extended by agreement with specified notice to the state land planning agency and other parties.[31]

Within 10 working days of the adoption hearing, the local government must transmit the plan amendment to the state land planning agency and any affected person who provided timely comments on the amendment.[32] The state land planning agency must review the amendment package for any deficiencies and send notice of such deficiencies to the local government within five working days of receipt of the amendment package.[33] If no deficiencies are found, the amendment takes effect 31 days after the state land planning agency notifies the local government that the amendment package is complete.[34]

Effect of the Bill

[20] S. 163.3184(4) and (11), F.S.
[21] S. 163.3184(4), F.S.
[22] *Id.*
[23] *Id.*
[24] The state coordinated review process applies to plan amendments that are in an area of critical state concern; propose a rural land stewardship area; propose a sector plan or an amendment to an adopted sector plan; or update a comprehensive plan based on an evaluation and appraisal. S. 163.3184(4) and (11), F.S.
[25] The expedited review process is set out in s. 163.3184(3), F.S.
[26] S. 163.3184(3), F.S.
[27] *Id.*
[28] *Id.*
[29] A "small-scale development amendment" involves a use of 50 acres or fewer; only proposes a land use change to the future land use map for a site-specific small-scale development activity; and applies to property not located within an area of critical state concern, absent an exception related to affordable housing development. *Id.*
[30] Ss. 163.3184(2) and 163.3187(2), F.S.
[31] S. 163.3184(3), (4), and (11), F.S.
[32] *Id.*
[33] *Id.*
[34] *Id.*

The bill provides that if the local government does not hold a second public hearing and adopt a comprehensive plan amendment within 180 days after Commerce provides comments, the amendment is deemed withdrawn.

The bill provides that if the local government fails to transmit the comprehensive plan amendment to Commerce within 10 working days after the final adoption hearing, the amendment is deemed withdrawn.

Florida Sports Foundation

Present Situation

The Florida Sports Foundation is a 501(c)(3) non-profit corporation, serving as the official sports promotion and development organization for the State of Florida. It is charged with the promotion and development of professional, amateur, and recreational sports, physical fitness opportunities, and assisting communities and host organizations in attracting major and minor sports events to help produce a thriving Florida sports industry and environment.[35] Under its duty to promote amateur sports and physical fitness, the Florida Sports Foundation must continue the successful amateur sports programs previously conducted by the Florida Governor's Council on Physical Fitness and Amateur Sports.[36]

Effect of the Bill

The bill removes an outdated requirement that the Florida Sports Foundation must continue amateur sports programs previously conducted by the Florida Governor's Council on Physical Fitness and Amateur Sports.

Florida Defense Support Task Force Public Records and Meetings Exemption

Present Situation

Current law provides a public record exemption for certain records held by the Task Force. Specifically, the following records are exempt[37] from public records requirements:[38]

- That portion of a record that relates to strengths and weaknesses of military installations or military missions in Florida relative to the selection criteria for the realignment and closure of military bases and missions under the United States base realignment and closure (BRAC) process.
- That portion of a record that relates to strengths and weaknesses of military installations or military missions in other state or territories and the vulnerability of such installations or missions to base realignment or closure under the United States BRAC process, and any agreements or proposals to relocate or realign military units and missions from other states or territories.
- That portion of a record that relates to Florida's strategy to retain its military bases during any United States BRAC process and any agreements or proposals to relocate or realign military units and missions.

[35] S. 288.1229, F.S.
[36] S. 288.1229(7)(g), F.S.
[37] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 04-09 (2004).
[38] S. 288.985(1)(a)-(c), F.S.

Current law also provides a public meeting exemption for any portion of a meeting of the Task Force, or a workgroup of the Task Force, wherein such exempt records are presented or discussed.[39] In addition, any records generated during the closed portion of the meeting are exempt from public record requirements.[40]

Effect of the Bill

The bill makes conforming changes to the public records exemption by changing the custodian of the records to the direct-support organization created in s. 288.987, F.S.

Incumbent Worker Training Program and CareerSource Florida, Inc.

Present Situation

Workforce Innovation and Opportunity Act of 2014

In 2014, Congress passed the Workforce Innovation and Opportunity Act (WIOA), which superseded the Workforce Investment Act of 1998.[41] WIOA requires each state to develop a single, unified plan for aligning workforce services through the identification and evaluation of core workforce programs.[42]

WIOA identifies four core programs that coordinate and complement each other to ensure job seekers have access to needed resources.[43] The core programs are:

- Adult, Dislocated Worker and Youth Programs;
- Adult Education and Literacy Activities;
- Employment Services under the Wagner-Peyser Act;[44] and
- Vocational Rehabilitation Services.[45]

WIOA establishes minimum performance accountability measures for the evaluation of core programs in each state and performance reports to be provided at the state, local, and training provider levels.[46] Performance measures that apply across all core programs include:[47]

- The percentage of participants in unsubsidized employment during second quarter after exit.
- The percentage of participants in unsubsidized employment during fourth quarter after exit.
- The median earnings of participants during second quarter after exit.
- The percentage of participants who obtain a postsecondary credential or secondary school diploma within one year after exit.
- The achievement of measureable skill gains toward credentials or employment; and
- The effectiveness in serving employers.

State Administration of Workforce Development

WIOA requires the Governor to establish a State Workforce Development Board (state board) to assist the Governor in carrying out the duties and responsibilities required by WIOA.[48] CareerSource Florida, Inc., implements the policy directives of the state board and administers state workforce development programs.[49] CareerSource Florida, Inc., provides administrative support to the state board, the principal workforce policy organization for the state. WIOA state board members are nonvoting and the number of members is determined by the Governor.[50]

[39] S. 288.985(2), F.S.
[40] S. 288.985(3), F.S.
[41] Workforce Innovation and Opportunity Act, 29 U.S.C. s. 3101 et seq. (2014).
[42] *See* 29 U.S.C. s. 3112(a).
[43] *See* 29 U.S.C. s. 3102(13).
[44] *See* 29 U.S.C. s. 49 et seq.
[45] *See* 29 U.S.C. s. 720 et. seq.
[46] *See* 29 U.S.C. s. 3141.
[47] *Id.*
[48] 29 U.S.C. s. 3111.
[49] S. 445.004(2), F.S.
[50] S. 445.004(3)(a), F.S.

WIOA requires states to designate local workforce development areas in the state. The local workforce development areas must be consistent with labor market areas and regional economic development areas in the state and have available federal and non-federal resources necessary to effectively administer workforce development services.[51] Within each area, a local workforce development board must be established.[52] Each local workforce development board is required to coordinate planning and service delivery strategies within the local workforce development area and submit to the Governor a 4-year local plan for the delivery of workforce development services.[53]

Commerce serves as Florida's lead workforce agency.[54] Commerce is responsible for the fiscal and administrative affairs of the workforce development system.[55] Commerce receives and distributes federal funds for employment-related programs to the local workforce development boards.[56] Under the direction of CareerSource, Commerce is required to annually meet with each local workforce development board to review the board's performance and to certify that the board is in compliance with applicable state and federal laws.[57]

Incumbent Worker Training Program

The Incumbent Worker Training Program (program) was created to provide grant funding for continuing education and training of incumbent employees at existing Florida businesses. The program provides reimbursement grants to businesses that pay for preapproved, direct, training-related costs. The term "business" includes hospitals operated by nonprofit or local government entities which provide nursing opportunities to acquire new or improved skills. [58]

Funding priority is given in the following order:[59]

- Businesses that provide employees with opportunities to acquire new or improved skills by earning a credential on the Master Credentials List;
- Hospitals operated by nonprofit or local government entities that provide nursing opportunities to acquire new or improved skills;
- Businesses whose grant proposals represent a significant upgrade in employee skills;
- Businesses with 25 employees or fewer, businesses in rural areas, and businesses in distressed inner-city areas; and
- Businesses in a qualified targeted industry or businesses whose grant proposals represent a significant layoff avoidance strategy.

Effect of the Bill

The bill revises the term "businesses" under the program to include healthcare facilities and allied health care opportunities. The bill also revises the funding priority for grant purposes to provide that health care facilities, in addition to hospitals, operated by nonprofit or local government entities that provide opportunities in health care, rather than nursing opportunities, are eligible for the funding.

The bill specifies that WIOA state board members are voting members.

Revitalization of Homeowner Association Covenants

Present Situation

[51] *See* 29 U.S.C. s. 3121.
[52] 29 U.S.C. s. 3122.
[53] *See* 29 U.S.C. ss. 3122 and 3123.
[54] Primarily through the Division of Workforce Services. *See* s. 20.60, F.S.
[55] *See* s. 20.60(5)(c), F.S. and s. 445.009(3)(c), F.S.
[56] *See* s. 20.60(5)(c), F.S. and s. 445.003, F.S.
[57] *See* s. 445.007(3), F.S.
[58] S. 445.003(3)3., F.S.
[59] *Id.*

Parcel owners in a community that was previously subject to a declaration of covenants that has ceased to govern one or more parcels in the community may revive the declaration and the association for the community upon approval by the parcel owners to be governed as provided in the Covenant Revitalization Act[60] and upon approval of the declaration and the other governing documents for the association by Commerce.[61]

No later than 60 days after the date the proposed revived declaration and other governing documents are approved by the affected parcel owners, the organizing committee must submit the proposed revived governing documents and any supporting materials to Commerce to review and determine whether to approve or disapprove of the proposal to preserve the residential community.[62]

Commerce must make a determination no later than 60 days and must notify the organizing committee in writing of its approval or reasons for the disapproval.[63]

Effect of Proposed Changes

The bill specifies that a homeowner's association's proposed revived declaration of covenants and articles of incorporation and bylaws must be submitted to Commerce within 60 days after obtaining valid written consent from a majority of the affected parcel owners, or within 60 days after the date the documents are approved by affected parcel owners by a vote at a meeting.

Local Government Emergency Revolving Bridge Loan Program

Present Situation

The Local Government Emergency Revolving Bridge Loan provides financial assistance to local governments impacted by federally declared disasters. The purpose of the loan program is to assist these local governments in maintaining operations by bridging the gap between the time that the declared disaster occurred and the time that additional funding sources or revenues are secured to provide them with financial assistance.[64]

The loans are interest-free with the loan amount determined based upon demonstrated need. The term of the loan is up to five years.[65] To be eligible, a local government must be a county or a municipality located in an area designated in the Federal Emergency Management Agency disaster declaration. The local government must show that it may suffer or has suffered substantial loss of its tax or other revenues as a result of the disaster and demonstrate a need for financial assistance to enable it to continue to perform its government operations.[66]

The program expires July 1, 2038, and a loan may not be awarded after June 30, 2038. Upon expiration, all unencumbered funds and loan repayments made on or after July 1, 2038, must be transferred to the General Revenue Fund.[67]

Effect of Proposed Changes

The bill amends s. 288.066, F.S., to extend the repayment period of the program from 5 to 10 years. Effective upon becoming a law, the bill also authorizes Commerce to amend any existing loans executed before February 1, 2024, in order to increase the loan term to a total of 10 years from the original date of execution.

[60] Ch. 720, Part III, F.S.
[61] S. 720.403(2), F.S.
[62] S. 720.406(1), F.S.
[63] S. 720.406(2), F.S.
[64] S. 288.066(1), F.S.
[65] S. 288.066(3), F.S.
[66] S. 288.066(2), F.S.
[67] S. 288.066(9), F.S.

The bill provides an effective date of July 1, 2024, except the portion of the bill which authorizes Commerce to amend any existing loans executed before February 1, 2024, which takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3175, F.S., relating to legislative findings on compatibility of development with military installations; exchange of information between local governments and military installations.

Section 2: Amends s. 163.3184, F.S., relating to process for adoption of comprehensive plan or plan amendment.

Section 3: Amends s. 288.066, F.S., extending the terms of loans provided under the Local Government Emergency Revolving Bridge Loan Program.

Section 4: Amends s. 288.1229, F.S., relating to promotion and development of sports-related industries and amateur athletics; direct-support organization established; powers and duties.

Section 5: Amends s. 288.980, F.S., relating to military base retention; legislative intent; grants program.

Section 6: Amends s. 288.985, F.S., relating to exemptions from public records and public meetings requirements.

Section 7: Amends s. 288.987, F.S., relating to the Florida Defense Support Task Force.

Section 8: Amends s. 445.003, F.S., relating to implementation of the federal Workforce Innovation and Opportunity Act.

Section 9: Amends s. 445.004, F.S., relating to CareerSource Florida, Inc., and the state board; creation; purpose; membership; duties and powers.

Section 10: Amends s. 720.406, F.S., relating to Department of Commerce; submission; review; and determination.

Section 11: Authorizes the Department of Commerce to amend certain previously executed loan agreements.

Section 12: Provides an effective date of July 1, 2024, except as otherwise expressly stated in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate, however it does not appear the bill will require any expenditures that the department cannot absorb within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 13, 2024, the Infrastructure & Tourism Appropriations Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Removes the provision that requires the Secretary of Commerce, rather than the Governor, to appoint commissioners of deeds who authenticate acknowledgements in certain real estate transactions outside of Florida.
- Extends the repayment period of the Local Government Emergency Revolving Bridge Loan Program from five to 10 years and authorizes Commerce to amend existing loans executed before February 1, 2024, in order to increase the loan term to a total of 10 years from the original date of execution.

The analysis is drafted to the committee substitute as approved by the Infrastructure & Tourism Appropriations Subcommittee.

A bill to be entitled

An act relating to the Department of Commerce; amending s. 163.3175, F.S.; conforming a provision to changes made by the act; amending s. 163.3184, F.S.; revising the procedure for adopting comprehensive plan amendments; providing that amendments are deemed withdrawn if the local government fails to transmit the comprehensive plan amendments to the department, in its role as the state land planning agency, within a certain time period; amending s. 288.066, F.S.; increasing the authorized term of a loan provided under the Local Government Emergency Revolving Bridge Loan Program; amending s. 288.1229, F.S.; revising the duties of the Florida Sports Foundation; amending ss. 288.980 and 288.985, F.S.; conforming provisions to changes made by the act; amending s. 288.987, F.S.; requiring the department to establish a direct-support organization; renaming the Florida Defense Support Task Force as the direct-support organization; specifying that the organization is a direct-support organization of the department and a corporation not for profit; requiring the organization to operate under contract with the department; specifying requirements for such contract; specifying the organization's fiscal year; specifying audit

requirements applicable to the organization; authorizing the organization to take certain actions regarding administration of property and expenditures; specifying that the organization is not an agency for purposes of specified provisions of law; authorizing the department to allow the organization to use certain departmental resources, if certain conditions are met; revising the mission of the organization; modifying provisions governing the composition of the organization; revising the date by which the organization's annual report is due; providing certain powers and duties of the organization, subject to certain requirements and limitations; providing for future repeal; amending s. 445.003, F.S.; revising the definition of the term "businesses"; revising funding priority for purposes of funding grants under the Incumbent Worker Training Program; amending s. 445.004, F.S.; specifying that certain members of the state workforce development board are voting members of the board; amending s. 720.406, F.S.; specifying required actions for a proposed revived declaration and other governing documents; making technical changes; authorizing the department to amend certain loan agreements under certain circumstances; providing effective dates.

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

Section 1. Subsection (3) of section 163.3175, Florida Statutes, is amended to read:

163.3175 Legislative findings on compatibility of development with military installations; exchange of information between local governments and military installations.—

(3) The direct-support organization created in s. 288.987 ~~Florida Defense Support Task Force~~ may recommend to the Legislature changes to the military installations and local governments specified in subsection (2) based on a military base's potential for impacts from encroachment, and incompatible land uses and development.

Section 2. Paragraph (c) of subsection (3) and paragraph (e) of subsection (4) of section 163.3184, Florida Statutes, are amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(3) EXPEDITED STATE REVIEW PROCESS FOR ADOPTION OF COMPREHENSIVE PLAN AMENDMENTS.—

(c)1. The local government shall hold a ~~its~~ second public hearing, which shall be a hearing on whether to adopt one or more comprehensive plan amendments pursuant to subsection (11). If the local government fails, within 180 days after receipt of

agency comments, to hold the second public hearing, and to adopt the comprehensive plan amendments, the amendments are ~~shall be~~ deemed withdrawn unless extended by agreement with notice to the state land planning agency and any affected person that provided comments on the amendment. The 180-day limitation does not apply to amendments processed pursuant to s. 380.06.

2. All comprehensive plan amendments adopted by the governing body, along with the supporting data and analysis, shall be transmitted within 10 working days after the final adoption ~~second public~~ hearing to the state land planning agency and any other agency or local government that provided timely comments under subparagraph (b)2. If the local government fails to transmit the comprehensive plan amendments within 10 working days after the final adoption hearing, the amendments are deemed withdrawn.

3. The state land planning agency shall notify the local government of any deficiencies within 5 working days after receipt of an amendment package. For purposes of completeness, an amendment shall be deemed complete if it contains a full, executed copy of:

a. The adoption ordinance or ordinances;

b. In the case of a text amendment, ~~a full copy of~~ the amended language in legislative format with new words inserted in the text underlined, and words deleted stricken with hyphens;

c. In the case of a future land use map amendment, ~~a copy~~

~~of~~ the future land use map clearly depicting the parcel, its existing future land use designation, and its adopted designation; and

d. ~~a copy of~~ Any data and analyses the local government deems appropriate.

4. An amendment adopted under this paragraph does not become effective until 31 days after the state land planning agency notifies the local government that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the state land planning agency or the Administration Commission enters a final order determining the adopted amendment to be in compliance.

(4) STATE COORDINATED REVIEW PROCESS.—

(e) *Local government review of comments; adoption of plan or amendments and transmittal.*—

1. The local government shall review the report submitted to it by the state land planning agency, if any, and written comments submitted to it by any other person, agency, or government. The local government shall, upon receipt of the report from the state land planning agency, ~~shall~~ hold its second public hearing~~, which shall be a hearing~~ to determine whether to adopt the comprehensive plan or one or more comprehensive plan amendments pursuant to subsection (11). If the local government fails to hold the second hearing and adopt the amendments within 180 days after receipt of the state land

planning agency's report, the amendments shall be deemed withdrawn unless extended by agreement with notice to the state land planning agency and any affected person that provided comments on the amendment. The 180-day limitation does not apply to amendments processed pursuant to s. 380.06.

2. All comprehensive plan amendments adopted by the governing body, along with the supporting data and analysis, shall be transmitted within 10 working days after the final adoption ~~second public~~ hearing to the state land planning agency and any other agency or local government that provided timely comments under paragraph (c). If the local government fails to transmit the comprehensive plan amendments within 10 working days after the final adoption hearing, the amendments are deemed withdrawn.

3. The state land planning agency shall notify the local government of any deficiencies within 5 working days after receipt of a plan or plan amendment package. For purposes of completeness, a plan or plan amendment shall be deemed complete if it contains a full, executed copy of each of the following:

a. The adoption ordinance or ordinances;

b. In the case of a text amendment, ~~a full copy of~~ the amended language in legislative format with new words inserted in the text underlined, and words deleted stricken with hyphens;

c. In the case of a future land use map amendment, ~~a copy of~~ the future land use map clearly depicting the parcel, its

existing future land use designation, and its adopted designation; and

d. ~~a copy of~~ Any data and analyses the local government deems appropriate.

4. After the state land planning agency makes a determination of completeness regarding the adopted plan or plan amendment, the state land planning agency shall have 45 days to determine whether ~~if~~ the plan or plan amendment is in compliance with this act. Unless the plan or plan amendment is substantially changed from the one commented on, the state land planning agency's compliance determination shall be limited to objections raised in the objections, recommendations, and comments report. During the period provided for in this subparagraph, the state land planning agency shall issue, through a senior administrator or the secretary, a notice of intent to find that the plan or plan amendment is in compliance or not in compliance. The state land planning agency shall post a copy of the notice of intent on the agency's Internet website. Publication by the state land planning agency of the notice of intent on the state land planning agency's Internet site is ~~shall be~~ prima facie evidence of compliance with the publication requirements of this subparagraph.

5. A plan or plan amendment adopted under the state coordinated review process shall go into effect pursuant to the state land planning agency's notice of intent. If timely

challenged, an amendment does not become effective until the state land planning agency or the Administration Commission enters a final order determining the adopted amendment to be in compliance.

Section 3. Effective upon becoming a law, paragraph (c) of subsection (3) of section 288.066, Florida Statutes, is amended to read:

288.066 Local Government Emergency Revolving Bridge Loan Program.—

(3) LOAN TERMS.—

(c) The term of the loan is up to 10 ~~5~~ years.

Section 4. Paragraph (g) of subsection (7) of section 288.1229, Florida Statutes, is amended to read:

288.1229 Promotion and development of sports-related industries and amateur athletics; direct-support organization established; powers and duties.—

(7) To promote amateur sports and physical fitness, the foundation shall:

~~(g) Continue the successful amateur sports programs previously conducted by the Florida Governor's Council on Physical Fitness and Amateur Sports created under former s. 14.22.~~

Section 5. Paragraph (b) of subsection (2) of section 288.980, Florida Statutes, is amended to read:

288.980 Military base retention; legislative intent;

grants program.—

(2)

(b)1. The department shall, annually by October 1, request military installations in this ~~the~~ state to provide the department with a list of base buffering encroachment lands for fee simple or less-than-fee simple acquisitions ~~before October 1~~.

2. The department shall submit the list of base buffering encroachment lands to the direct-support organization ~~Florida Defense Support Task Force~~ created in s. 288.987.

3. The direct-support organization created in s. 288.987 ~~Florida Defense Support Task Force~~ shall, annually by December 1, review the list of base buffering encroachment lands submitted by the military installations and provide its recommendations for ranking the lands for acquisition to the department.

4. The department shall annually submit the list of base buffering encroachment lands provided by the direct-support organization created in s. 288.987 ~~Florida Defense Support Task Force~~ to the Board of Trustees of the Internal Improvement Trust Fund, which may acquire the lands pursuant to s. 253.025. At a minimum, the annual list must contain all of the following for each recommended land acquisition:

a. A legal description of the land and its property identification number.~~;~~

b. A detailed map of the land.~~; and~~

c. A management and monitoring agreement to ensure the land serves a base buffering purpose.

Section 6. Subsection (1) and paragraph (a) of subsection (2) of section 288.985, Florida Statutes, are amended to read:

288.985 Exemptions from public records and public meetings requirements.—

(1) The following records held by the direct-support organization created in s. 288.987 ~~Florida Defense Support Task Force~~ are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) That portion of a record which relates to strengths and weaknesses of military installations or military missions in this state relative to the selection criteria for the realignment and closure of military bases and missions under any United States Department of Defense base realignment and closure process.

(b) That portion of a record which relates to strengths and weaknesses of military installations or military missions in other states or territories and the vulnerability of such installations or missions to base realignment or closure under the United States Department of Defense base realignment and closure process, and any agreements or proposals to relocate or realign military units and missions from other states or territories.

(c) That portion of a record which relates to the state's strategy to retain its military bases during any United States Department of Defense base realignment and closure process and any agreements or proposals to relocate or realign military units and missions.

(2)(a) Meetings or portions of meetings of the direct-support organization created in s. 288.987 ~~Florida Defense Support Task Force~~, or a workgroup of the direct-support organization ~~task force~~, at which records are presented or discussed that are exempt under subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

Section 7. Section 288.987, Florida Statutes, is amended to read:

288.987 Florida defense support ~~Task Force~~.—

(1) The Department of Commerce shall establish a direct-support organization to support Florida's military and defense industries and communities ~~The Florida Defense Support Task Force is created~~.

(a) The direct-support organization is a corporation not for profit, as defined in s. 501(c)(3) of the Internal Revenue Code, which is incorporated under chapter 617 and approved by the Department of State. The direct-support organization is exempt from paying filing fees under chapter 617.

(b) The direct-support organization shall operate under contract with the department. The contract must provide that:

1. The department may review the direct-support organization's articles of incorporation.

2. The direct-support organization shall submit an annual budget proposal to the department, on a form provided by the department, in accordance with department procedures for filing budget proposals based on recommendations of the department.

3. Any funds that the direct-support organization holds in trust must revert to the state upon the expiration or cancellation of the contract.

4. The direct-support organization is subject to an annual financial and performance review by the department to determine whether the direct-support organization is complying with the terms of the contract and is acting in a manner consistent with the goals of the department and in the best interest of the state.

(c) The fiscal year of the direct-support organization begins on July 1 and ends on June 30 of the next succeeding year.

(d) The direct-support organization shall provide an annual financial audit in accordance with s. 215.981.

(e) The direct-support organization is not an agency for purposes of parts I, II, and IV-VIII of chapter 112; chapter 120; s. 215.31; chapter 216; ss. 255.21, 255.25, and 255.254, relating to leasing of buildings; ss. 283.33 and 283.35, relating to bids for printing; and chapter 287. However, the

direct-support organization shall comply with the per diem and travel expense provisions of s. 112.061.

(f) Subject to the approval of the Secretary of Commerce, the department may allow the direct-support organization to use the property, facilities, personnel, and services of the department if the direct-support organization provides equal employment opportunities to all persons regardless of race, color, religion, sex, or national origin.

(2) The mission of the direct-support organization ~~task force~~ is to carry out the provisions of this section, to make recommendations to preserve and protect military installations, to assist with the coordination of economic and workforce development efforts in military communities, to assist in the planning and research and development related to military missions, businesses, and military families ~~to support the state's position in research and development related to or arising out of military missions and contracting~~, and to improve the state's military-friendly environment for servicemembers, military dependents, military retirees, and businesses that bring military and base-related jobs to the state. The direct-support organization is organized and operated to request, receive, hold, invest, and administer property and to manage and make expenditures for the operation of the activities, services, functions, and programs of this state for economic and product research and development, joint planning with host communities

to accommodate military missions and prevent base encroachment, advocacy on the state's behalf with federal civilian and military officials, assistance to school districts in providing a smooth transition for large numbers of additional military-related students, job training and placement for military spouses in communities with high proportions of active duty military personnel, and promotion of the state to military and related contractors and employers.

(3) The direct-support organization shall be governed by a board of directors.

(a) The board of directors is composed of the Governor, or his or her designee, and the following members ~~task force shall be comprised of the Governor or his or her designee, and 12 members~~ appointed as follows:

1.~~(a)~~ Four members appointed by the Governor.

2.~~(b)~~ Four members appointed by the President of the Senate.

3.~~(c)~~ Four members appointed by the Speaker of the House of Representatives.

(b)~~(d)~~ Appointed members must represent defense-related industries or communities that host military bases and installations. All appointments in place as of July 1, 2024, must continue in effect until the expiration of the term ~~must be made by August 1, 2011~~. Members shall serve for a term of 4 years~~, with the first term ending July 1, 2015~~. However, if

members of the Legislature are appointed to the direct-support organization ~~task force~~, those members shall serve until the expiration of their legislative term and may be reappointed once. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the initial appointment. ~~All members of the council are eligible for reappointment.~~ A member who serves in the Legislature may participate in all direct-support organization ~~task force~~ activities but may only vote on matters that are advisory.

(c) ~~(4)~~ The President of the Senate and the Speaker of the House of Representatives shall each designate one of their appointees to serve as chair of the direct-support organization ~~task force~~. The chair shall serve a 2-year term, rotating on ~~rotate each~~ July 1 of each odd-numbered year. The appointee designated by the President of the Senate shall serve as initial chair. If the Governor, instead of his or her designee, participates in the activities of the direct-support organization ~~task force~~, ~~then~~ the Governor shall serve as chair.

(d) ~~(5)~~ The Secretary of Commerce ~~Economic Opportunity~~, or his or her designee, shall serve as the ex officio, nonvoting executive director of the direct-support organization ~~task force~~.

(4) ~~(6)~~ The direct-support organization ~~task force~~ shall submit an annual ~~progress~~ report ~~and work plan~~ to the Governor, the President of the Senate, and the Speaker of the House of

Representatives each December ~~February~~ 1.

(5) The direct-support organization, in the performance of its duties, may:

(a) Make and enter into contracts and assume such other functions as are necessary to carry out the mission of the direct-support organization and its contract with the department, provided that any such contracts and assumptions are not inconsistent with this section or any other applicable provision of law governing the direct-support organization. A proposed contract with a total cost of $750,000 or more is subject to the notice, review, and objection procedures of s. 216.177. If the chair and vice chair of the Legislative Budget Commission, or the President of the Senate and the Speaker of the House of Representatives, timely advise the direct-support organization in writing that such proposed contract is contrary to legislative policy and intent, the direct-support organization may not enter into such proposed contract. The direct-support organization may not divide one proposed contract with a total cost of $750,000 or more into multiple contracts to circumvent the requirements of this paragraph.

(b) Establish grant programs and administer grant awards to support its mission.

~~(7) The department shall support the task force and contract with the task force for expenditure of appropriated funds, which may be used by the task force for economic and~~

~~product research and development, joint planning with host communities to accommodate military missions and prevent base encroachment, advocacy on the state's behalf with federal civilian and military officials, assistance to school districts in providing a smooth transition for large numbers of additional military-related students, job training and placement for military spouses in communities with high proportions of active duty military personnel, and promotion of the state to military and related contractors and employers. The task force may~~

(c) Annually spend up to $250,000 of funds appropriated to the department for the direct-support organization ~~task force~~ for staffing and administrative expenses of the direct-support organization ~~task force~~, including travel and per diem costs incurred by direct-support organization ~~task force~~ members who are not otherwise eligible for state reimbursement.

(6) This section is repealed October 1, 2029, unless reviewed and saved from repeal by the Legislature.

Section 8. Paragraph (a) of subsection (3) of section 445.003, Florida Statutes, is amended to read:

445.003 Implementation of the federal Workforce Innovation and Opportunity Act.—

(3) FUNDING.—

(a) Title I, Workforce Innovation and Opportunity Act funds; Wagner-Peyser funds; and NAFTA/Trade Act funds will be expended based on the 4-year plan of the state board. The plan

must outline and direct the method used to administer and coordinate various funds and programs that are operated by various agencies. The following provisions apply to these funds:

1. At least 50 percent of the Title I funds for Adults and Dislocated Workers which are passed through to local workforce development boards shall be allocated to and expended on Individual Training Accounts unless a local workforce development board obtains a waiver from the state board. Tuition, books, and fees of training providers and other training services prescribed and authorized by the Workforce Innovation and Opportunity Act qualify as Individual Training Account expenditures.

2. Fifteen percent of Title I funding shall be retained at the state level and dedicated to state administration and shall be used to design, develop, induce, fund, and evaluate the long-term impact of innovative Individual Training Account pilots, demonstrations, and programs to enable participants to attain self-sufficiency and to evaluate the effectiveness of performance-based contracts used by local workforce development boards under s. 445.024(5) on increasing wages and employment over the long term. Of such funds retained at the state level, $2 million may be reserved for the Incumbent Worker Training Program created under subparagraph 3. Eligible state administration costs include the costs of funding for the state board and state board staff; operating fiscal, compliance, and

management accountability systems through the department; conducting evaluation and research on workforce development activities; and providing technical and capacity building assistance to local workforce development areas at the direction of the state board. Notwithstanding s. 445.004, such administrative costs may not exceed 25 percent of these funds. An amount not to exceed 75 percent of these funds shall be allocated to Individual Training Accounts and other workforce development strategies for other training designed and tailored by the state board in consultation with the department, including, but not limited to, programs for incumbent workers, nontraditional employment, and enterprise zones. The state board, in consultation with the department, shall design, adopt, and fund Individual Training Accounts for distressed urban and rural communities.

3. The Incumbent Worker Training Program is created for the purpose of providing grant funding for continuing education and training of incumbent employees at existing Florida businesses. The program will provide reimbursement grants to businesses that pay for preapproved, direct, training-related costs. For purposes of this subparagraph, the term "businesses" includes hospitals and health care facilities operated by nonprofit or local government entities which provide nursing or allied health care opportunities to acquire new or improved skills.

a. The Incumbent Worker Training Program will be administered by CareerSource Florida, Inc., which may, at its discretion, contract with a private business organization to serve as grant administrator.

b. The program shall be administered under s. 134(d)(4) of the Workforce Innovation and Opportunity Act. Funding priority shall be given in the following order:

(I) Businesses that provide employees with opportunities to acquire new or improved skills by earning a credential on the Master Credentials List.

(II) Hospitals or health care facilities operated by nonprofit or local government entities that provide ~~nursing~~ opportunities in health care to acquire new or improved skills.

(III) Businesses whose grant proposals represent a significant upgrade in employee skills.

(IV) Businesses with 25 employees or fewer, businesses in rural areas, and businesses in distressed inner-city areas.

(V) Businesses in a qualified targeted industry or businesses whose grant proposals represent a significant layoff avoidance strategy.

c. All costs reimbursed by the program must be preapproved by CareerSource Florida, Inc., or the grant administrator. The program may not reimburse businesses for trainee wages, the purchase of capital equipment, or the purchase of any item or service that may possibly be used outside the training project.

A business approved for a grant may be reimbursed for preapproved, direct, training-related costs including tuition, fees, books and training materials, and overhead or indirect costs not to exceed 5 percent of the grant amount.

d. A business that is selected to receive grant funding must provide a matching contribution to the training project, including, but not limited to, wages paid to trainees or the purchase of capital equipment used in the training project; must sign an agreement with CareerSource Florida, Inc., or the grant administrator to complete the training project as proposed in the application; must keep accurate records of the project's implementation process; and must submit monthly or quarterly reimbursement requests with required documentation.

e. All Incumbent Worker Training Program grant projects shall be performance-based with specific measurable performance outcomes, including completion of the training project and job retention. CareerSource Florida, Inc., or the grant administrator shall withhold the final payment to the grantee until a final grant report is submitted and all performance criteria specified in the grant contract have been achieved.

f. The state board may establish guidelines necessary to implement the Incumbent Worker Training Program.

g. No more than 10 percent of the Incumbent Worker Training Program's total appropriation may be used for overhead or indirect purposes.

4. At least 50 percent of Rapid Response funding shall be dedicated to Intensive Services Accounts and Individual Training Accounts for dislocated workers and incumbent workers who are at risk of dislocation. The department shall also maintain an Emergency Preparedness Fund from Rapid Response funds, which will immediately issue Intensive Service Accounts, Individual Training Accounts, and other federally authorized assistance to eligible victims of natural or other disasters. At the direction of the Governor, these Rapid Response funds shall be released to local workforce development boards for immediate use after events that qualify under federal law. Funding shall also be dedicated to maintain a unit at the state level to respond to Rapid Response emergencies and to work with state emergency management officials and local workforce development boards. All Rapid Response funds must be expended based on a plan developed by the state board in consultation with the department and approved by the Governor.

Section 9. Paragraph (a) of subsection (3) of section 445.004, Florida Statutes, is amended to read:

445.004 CareerSource Florida, Inc., and the state board; creation; purpose; membership; duties and powers.—

(3)(a) Members of the state board described in Pub. L. No. 113-128, Title I, s. 101(b)(1)(C)(iii)(I)(aa) are voting ~~nonvoting~~ members. The number of members is determined by the Governor, who shall consider the importance of minority, gender,

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

and geographic representation in making appointments to the state board. When the Governor is in attendance, he or she shall preside at all meetings of the state board.

Section 10. Section 720.406, Florida Statutes, is amended to read:

720.406 Department of Commerce ~~Economic Opportunity~~; submission; review and determination.—

(1) Within ~~No later than~~ 60 days after obtaining valid written consent from a majority of the affected parcel owners, or within 60 days after the date the proposed revived declaration and other governing documents are approved by the affected parcel owners by vote at a meeting, the organizing committee or its designee must submit the proposed revived governing documents and supporting materials to the Department of Commerce ~~Economic Opportunity~~ to review and determine whether to approve or disapprove of the proposal to preserve the residential community. The submission to the department must include:

(a) The full text of the proposed revived declaration of covenants and articles of incorporation and bylaws of the homeowners' association.~~;~~

(b) A verified copy of the previous declaration of covenants and other previous governing documents for the community, including any amendments thereto.~~;~~

(c) The legal description of each parcel to be subject to

the revived declaration and other governing documents and a plat or other graphic depiction of the affected properties in the community.~~;~~

(d) A verified copy of the written consents of the requisite number of the affected parcel owners approving the revived declaration and other governing documents or, if approval was obtained by a vote at a meeting of affected parcel owners, verified copies of the notice of the meeting, attendance, and voting results.~~;~~

(e) An affidavit by a current or former officer of the association or by a member of the organizing committee verifying that the requirements for the revived declaration set forth in s. 720.404 have been satisfied.~~; and~~

(f) Such other documentation that the organizing committee believes is supportive of the policy of preserving the residential community and operating, managing, and maintaining the infrastructure, aesthetic character, and common areas serving the residential community.

(2) Within ~~No later than~~ 60 days after receiving the submission, the department must determine whether the proposed revived declaration of covenants and other governing documents comply with the requirements of this act.

(a) If the department determines that the proposed revived declaration and other governing documents comply with the act and have been approved by the parcel owners as required by this

act, the department shall notify the organizing committee in writing of its approval.

(b) If the department determines that the proposed revived declaration and other governing documents do not comply with, ~~this act~~ or have not been approved as required by, this act, the department shall notify the organizing committee in writing that it does not approve the governing documents and shall state the reasons for the disapproval.

Section 11. Effective upon becoming a law, the Department of Commerce may amend a loan agreement executed before February 1, 2024, and made pursuant to s. 288.066, Florida Statutes, in order to increase the loan term to a total of 10 years from the original date of execution, as authorized by this act, upon request of the local government and as determined by the department to be in the best interests of the state.

Section 12. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2024.

Commerce Committee
CS/HB 1419 by Rep. Tuck
Department of Commerce

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Duggan (line 53):

- Provides that the state land planning agency may assist in the planning and development of critical health care facilities.
- Prohibits a local government from requiring notice, application, approval, permit, fee, or mitigation for pruning, trimming, or removal of a tree on property being used for the construction or development of critical health care facilities under specified conditions.
- Prohibits a county ordinance or charter provision from preempting any part of a municipal local comprehensive plan or land development regulation.
- Provides that a county ordinance or charter provision which revokes or preempts any part of a municipal local comprehensive plan of land development regulation enacted prior to June 1, 2020, is prohibited.
- Modifies requirements for local governments implementing a transportation concurrency system.
- Modifies legislative intent about the adoption of impact fees by special districts.
- Clarifies circumstances under which a local government or special district must credit certain contributions toward the collection of an impact fee.
- Revises:
    - Exceptions governing credits against local impact fees.
    - Procedures regarding local government review of changes to previously approved developments of regional impact.
    - Acts that are deemed to constitute an act of reliance by a developer to vest rights.
- Specifies changes that are not subject to local government review.
- Authorizes changes to multimodal pathways, or the substitution of such pathways, in previously approved developments of regional impact if certain conditions are met.
- Specifies that certain changes to comprehensive plan policies and land development regulations do not apply to proposed changes to an approved development of regional impact or to development orders required to implement the approved development of regional impact.

Amendment 2 by Tuck (lines 262-417):

- Requires the Department of Commerce (Commerce) to:

    - Annually certify that the direct-support organization (DSO) is complying with the terms of its contract with Commerce.
    - Submit a proposed operating budget for the DSO by a specified date.
- Requires the DSO to adopt guidelines and application procedures and must publish such guidelines, application procedures, and awards on its website.
- Clarifies:
    - The mission of the DSO and its relation to other state entities.
    - The composition of the DSO's board.
    - The term for which DSO board members serve.
    - That each board member should serve without compensation, but shall be reimbursed for travel and per diem exempts while performing duties.
    - That the DSO must submit an annual report by November 1, which may be submitted as a supplement report to the report 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: Commerce Committee
Representative Duggan offered the following:

Amendment (with title amendment)

Between lines 53 and 54, insert:

Section 1. Section 163.046, Florida Statutes, is created to read:

163.046 Land development for critical health care facilities.-

(1) The state land planning agency may assist in the planning and development of critical health care facilities to serve Florida communities.

(2) A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on property being used

for the construction or development of a veterans health care facility if:

(a) Such construction or development has been preliminarily approved by the United States Department of Veterans Affairs, and

(b) The state land planning agency makes a finding that such construction or development serves a critical need for health care.

(3) A local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.

Section 2. Paragraph (d) of subsection (8) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(8)

(d) A county ordinance or charter provision that revokes or preempts any part of a municipal local comprehensive plan or land development regulation is prohibited as violative of the state and local government cooperation requirement of s. 163.3204.

(e) ~~(d)~~ It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order or land development regulation. It is the intent of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan amendment or map

amendment, except as specifically and narrowly allowed by paragraph (c). It is the intent of the Legislature that any ordinance or charter provision revoking or preempting a municipal local comprehensive plan or land development regulation not in effect prior to June 1, 2020, be prohibited. Therefore, the prohibition on initiative and referendum stated in paragraphs (a) and (c) is remedial in nature and applies retroactively to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process commenced or completed thereafter is deemed null and void and of no legal force and effect. The prohibition on any ordinance or charter provision stated in paragraph (d) is remedial in nature and applies retroactively to any ordinance or charter provision commenced after June 1, 2020, and such ordinance or charter provision adopted thereafter is deemed null and void and of no legal force and effect.

Section 3. Paragraphs (a) through (i) of subsection (5) of section 163.3180, Florida Statutes, are redesignated as paragraphs (b) through (j), respectively, present paragraph (h) is amended, and a new paragraph (a) is added to that subsection, to read:

163.3180 Concurrency.—

(5)(a) Local governments shall have exclusive power and responsibility to evaluate transportation impacts, apply

concurrency, and assess any fee related to transportation improvements set forth in this subsection.

(i) ~~(h)~~1. Notwithstanding any provision in a development order, an agreement, a local comprehensive plan, or a local land development regulation, local governments that continue to implement a transportation concurrency system, whether in the form adopted into the comprehensive plan before the effective date of the Community Planning Act, chapter 2011-139, Laws of Florida, or as subsequently modified, must:

a. Consult with the Department of Transportation when proposed plan amendments affect facilities on the strategic intermodal system.

b. Exempt public transit facilities from concurrency. For the purposes of this sub-subparagraph, public transit facilities include transit stations and terminals; transit station parking; park-and-ride lots; intermodal public transit connection or transfer facilities; fixed bus, guideway, and rail stations; and airport passenger terminals and concourses, air cargo facilities, and hangars for the assembly, manufacture, maintenance, or storage of aircraft. As used in this sub-subparagraph, the terms "terminals" and "transit facilities" do not include seaports or commercial or residential development constructed in conjunction with a public transit facility.

c. Allow an applicant for a development-of-regional-impact development order, development agreement, rezoning, or other

land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06, when applicable, if:

(I) The applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate share of required improvements in a manner consistent with this subsection.

(II) The proportionate-share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility. A local government may accept contributions from multiple applicants for a planned improvement if it maintains contributions in a separate account designated for that purpose.

d. Provide the basis upon which the landowners will be assessed a proportionate share of the cost addressing the transportation impacts resulting from a proposed development.

e. Credit the fair market value of any land dedicated to a governmental entity for transportation facilities against the total proportionate share payments computed pursuant to this section.

2. An applicant is ~~shall~~ not ~~be held~~ responsible for the additional cost of reducing or eliminating deficiencies. When an applicant contributes or constructs its proportionate share pursuant to this paragraph, a local government may not require

payment or construction of transportation facilities whose costs would be greater than a development's proportionate share of the improvements necessary to mitigate the development's impacts.

a. The proportionate-share contribution shall be calculated based upon the number of trips from the proposed development expected to reach roadways during the peak hour from the stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain or achieve the adopted level of service, multiplied by the construction cost, at the time of development payment, of the improvement necessary to maintain or achieve the adopted level of service.

b. In using the proportionate-share formula provided in this subparagraph, the applicant, in its traffic analysis, shall identify those roads or facilities that have a transportation deficiency in accordance with the transportation deficiency as defined in subparagraph 4. The proportionate-share formula provided in this subparagraph shall be applied only to those facilities that are determined to be significantly impacted by the project traffic under review. If any road is determined to be transportation deficient without the project traffic under review, the costs of correcting that deficiency shall be removed from the project's proportionate-share calculation and the necessary transportation improvements to correct that deficiency shall be considered to be in place for purposes of the

proportionate-share calculation. The improvement necessary to correct the transportation deficiency is the funding responsibility of the entity that has maintenance responsibility for the facility. The development's proportionate share shall be calculated only for the needed transportation improvements that are greater than the identified deficiency.

c. When the provisions of subparagraph 1. and this subparagraph have been satisfied for a particular stage or phase of development, all transportation impacts from that stage or phase for which mitigation was required and provided shall be deemed fully mitigated in any transportation analysis for a subsequent stage or phase of development. Trips from a previous stage or phase that were not analyzed ~~did not result in impacts for which mitigation was required or provided~~ may be cumulatively analyzed with trips from a subsequent stage or phase to determine whether an impact requires mitigation for the subsequent stage or phase.

d. In projecting the number of trips to be generated by the development under review, any trips assigned to a toll-financed facility shall be eliminated from the analysis.

e. The applicant shall receive a credit on a dollar-for-dollar basis for impact fees, mobility fees, and other transportation concurrency mitigation requirements paid or payable in the future for the project. The credit shall be reduced up to 20 percent by the percentage share that the

project's traffic represents of the added capacity of the selected improvement, or by the amount specified by local ordinance, whichever yields the greater credit.

3. This subsection does not require a local government to approve a development that, for reasons other than transportation impacts, is not qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

4. As used in this subsection, the term "transportation deficiency" means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing, committed, and vested trips, plus additional projected background trips from any source other than the development project under review, and trips that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida's Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.

Section 4. Subsection (2) and paragraph (a) of subsection (5) of section 163.31801, Florida Statutes, are amended to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—

(2) The Legislature finds that impact fees are an important source of revenue for a local government to use in

funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction. Due to the growth of impact fee collections and local governments' reliance on impact fees, it is the intent of the Legislature to ensure that, when a county or municipality adopts an impact fee by ordinance or a special district, if authorized by its special act, adopts an impact fee by resolution, the governing authority complies with this section.

(5)(a) Notwithstanding any charter provision, comprehensive plan policy, ordinance, development order, development permit, agreement, or resolution to the contrary, the local government or special district must credit against the collection of the impact fee any contribution, whether identified in an ~~a proportionate share~~ agreement or other form of exaction, related to public facilities or infrastructure, including land dedication, site planning and design, or construction. Any contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any impact fee collected for the general category or class of public facilities or infrastructure for which the contribution was made.

Section 5. Paragraph (d) of subsection (5) and subsections (7) and (8) of section 380.06, Florida Statutes, are amended to read:

380.06 Developments of regional impact.—

(5) CREDITS AGAINST LOCAL IMPACT FEES.—

(d) This subsection does not apply to internal, private onsite facilities required by local regulations or to any offsite facilities to the extent that such facilities are necessary to provide safe and adequate services solely to the development and not the general public.

(7) CHANGES.—

(a) Notwithstanding any provision to the contrary in any development order, agreement, local comprehensive plan, or local land development regulation, this section applies to all ~~any~~ proposed changes ~~change~~ to a previously approved development of regional impact. ~~shall be reviewed by~~ The local government must base its review ~~based~~ on the standards and procedures in its adopted local comprehensive plan and adopted local land development regulations, including, but not limited to, procedures for notice to the applicant and the public regarding the issuance of development orders. However, a change to a development of regional impact that has the effect of reducing the originally approved height, density, or intensity of the development or that changes only the location or acreage of uses and infrastructure or exchanges permitted uses must be administratively approved and is not subject to review by the local government. The local government review of any proposed change to a previously approved development of regional impact

and of any development order required to construct the development set forth in the development of regional impact ~~must be reviewed by the local government based on the standards in the local comprehensive plan at the time the development was originally approved, and if the development would have been consistent with the comprehensive plan in effect when the development was originally approved, the local government may approve the change. If the revised development is approved, the developer may proceed as provided in s. 163.3167(5). For any proposed change to a previously approved development of regional impact, at least one public hearing must be held on the application for change, and any change must be approved by the local governing body before it becomes effective. The review~~ must abide by any prior agreements or other actions vesting the laws and policies governing the development. Development within the previously approved development of regional impact may continue, as approved, during the review in portions of the development which are not directly affected by the proposed change.

(b) The local government shall either adopt an amendment to the development order that approves the application, with or without conditions, or deny the application for the proposed change. Any new conditions in the amendment to the development order issued by the local government may address only those impacts directly created by the proposed change, and must be

consistent with s. 163.3180(5)~~, the adopted comprehensive plan, and adopted land development regulations~~. Changes to a phase date, buildout date, expiration date, or termination date may also extend any required mitigation associated with a phased construction project so that mitigation takes place in the same timeframe relative to the impacts as approved.

(c) This section is not intended to alter or otherwise limit the extension, previously granted by statute, of a commencement, buildout, phase, termination, or expiration date in any development order for an approved development of regional impact and any corresponding modification of a related permit or agreement. Any such extension is not subject to review or modification in any future amendment to a development order pursuant to the adopted local comprehensive plan and adopted local land development regulations.

(d) Any proposed change to a previously approved development of regional impact showing a dedicated multimodal pathway suitable for bicycles, pedestrians, and low-speed vehicles, as defined in s. 320.01(41), along any internal roadway must be approved so long as the right-of-way remains sufficient for the ultimate number of lanes of the internal roadway. Any proposed change to a previously approved development of regional impact which proposes to substitute a multimodal pathway suitable for bicycles, pedestrians, and low-speed vehicles, as defined in s. 320.01(41), in lieu of an

internal roadway must be approved if the change does not result in any roadway within or adjacent to the development of regional impact falling below the local government's adopted level of service and does not increase the original distribution of trips on any roadway analyzed as part of the approved development of regional impact by more than 20 percent. If the developer has already dedicated right-of-way to the local government for the proposed internal roadway as part of the approval of the proposed change, the local government must return any interest it may have in the right-of-way to the developer.

(8) VESTED RIGHTS.—Nothing in this section shall limit or modify the rights of any person to complete any development that was authorized by registration of a subdivision pursuant to former chapter 498, by recordation pursuant to local subdivision plat law, or by a building permit or other authorization to commence development on which there has been reliance and a change of position and which registration or recordation was accomplished, or which permit or authorization was issued, prior to July 1, 1973. If a developer has, by his or her actions in reliance on prior regulations, obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to the developer's interests, nothing in this chapter authorizes any governmental agency to abridge those rights. Consistent with s. 163.3167(5), comprehensive plan policies and land development regulations

adopted after a development of regional impact has vested do not apply to proposed changes to an approved development of regional impact or to development orders required to implement the approved development of regional impact.

(a) For the purpose of determining the vesting of rights under this subsection, approval pursuant to local subdivision plat law, ordinances, or regulations of a subdivision plat by formal vote of a county or municipal governmental body having jurisdiction after August 1, 1967, and prior to July 1, 1973, is sufficient to vest all property rights for the purposes of this subsection; and no action in reliance on, or change of position concerning, such local governmental approval is required for vesting to take place. Anyone claiming vested rights under this paragraph must notify the department in writing by January 1, 1986. Such notification shall include information adequate to document the rights established by this subsection. When such notification requirements are met, in order for the vested rights authorized pursuant to this paragraph to remain valid after June 30, 1990, development of the vested plan must be commenced prior to that date upon the property that the state land planning agency has determined to have acquired vested rights following the notification or in a binding letter of interpretation. When the notification requirements have not been met, the vested rights authorized by this paragraph shall expire June 30, 1986, unless development commenced prior to that date.

(b) For the purpose of this act, the conveyance of property or compensation, or the agreement to convey~~,~~ property or compensation, to the county, state, or local government ~~as a prerequisite to zoning change approval~~ shall be construed as an act of reliance to vest rights as determined under this subsection~~, provided such zoning change is actually granted by such government~~.

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

Between lines 2 and 3, insert:

creating s. 163.046, F.S.; prohibiting local governments from requiring specified documents or a fee for tree pruning, trimming, or removal on certain properties; prohibiting local governments from requiring property owners to replant trees pruned, trimmed, or removed on certain properties; amending s. 163.3167, F.S.; prohibiting a county ordinance or charter provision from preempting any part of a municipal local comprehensive plan or land development regulation; amending s. 163.3180, F.S.; modifying requirements for local governments implementing a transportation concurrency system; amending s. 163.31801, F.S.; revising legislative intent with respect to the adoption of impact fees by special districts; clarifying circumstances under which a local government or special district must credit certain contributions toward the collection of an

impact fee; s. 380.06, F.S.; revising exceptions from provisions governing credits against local impact fees; revising procedures regarding local government review of changes to previously approved developments of regional impact; specifying changes that are not subject to local government review; authorizing changes to multimodal pathways, or the substitution of such pathways, in previously approved developments of regional impact if certain conditions are met; specifying that certain changes to comprehensive plan policies and land development regulations do not apply to proposed changes to an approved development of regional impact or to development orders required to implement the approved development of regional impact; revising acts that are deemed to constitute an act of reliance by a developer to vest rights;

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 262-417 and insert:

Section 1. Section 288.987, Florida Statutes, is amended to read:

288.987 Florida Defense Support ~~Task Force~~.—

(1) The Department of Commerce shall establish a direct-support organization to support Florida's military and defense industries and communities ~~The Florida Defense Support Task Force is created~~.

(a) The direct-support organization is a corporation not for profit, as defined in s. 501(c)(3) of the Internal Revenue Code, which is incorporated under chapter 617 and approved by

the Department of State. The direct-support organization is exempt from paying filing fees under chapter 617.

(b) The direct-support organization shall operate under contract with the department pursuant to s. 20.60. The contract must provide that:

1. The department may review the direct-support organization's articles of incorporation.

2. The direct-support organization shall submit an annual budget proposal to the department, on a form provided by the department, in accordance with department procedures for filing budget proposals based on recommendations of the department.

3. Any funds that the direct-support organization holds in trust must revert to the state upon the expiration or cancellation of the contract.

4. The direct-support organization is subject to an annual financial and performance review by the department to determine whether the direct-support organization is complying with the terms of the contract and is acting in a manner consistent with the goals of the department and in the best interest of the state.

(c) The department must determine and annually certify that the direct-support organization is complying with the terms of the contract and is doing so consistent with the goals and purposes of the organization and in the best interests of the state.

(d) The fiscal year of the direct-support organization begins on July 1 and ends on June 30 of the next succeeding year. By August 15 of each fiscal year, the department shall submit a proposed operating budget for the direct-support organization to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(e) The direct-support organization shall provide an annual financial audit in accordance with s. 215.981.

(f) The direct-support organization is not an agency for purposes of chapter 120; s. 215.31; chapter 216; ss. 255.21, 255.25, and 255.254, relating to leasing of buildings; and ss. 283.33 and 283.35, relating to bids for printing.

(g) Subject to the approval of the Secretary of Commerce, the department may allow the direct-support organization to use the property, facilities, personnel, and services of the department if the direct-support organization provides equal employment opportunities to all persons regardless of race, color, religion, sex, or national origin.

(2)(a) The mission of the direct-support organization ~~task force~~ is to carry out the provisions of this section, to make recommendations to preserve and protect military installations, to assist Florida is for Veterans, Inc., created in s. 295.21, with economic and workforce development efforts in military communities, to conduct planning and research and development to support military missions, businesses, and military families ~~to~~

~~support the state's position in research and development related to or arising out of military missions and contracting~~, and to improve the state's military-friendly environment for servicemembers, military dependents, military retirees, and businesses that bring military and base-related jobs to the state.

(b) The direct-support organization is organized and operated to request, receive, hold, invest, and administer property and to manage and make expenditures related to its mission and for joint planning with host communities to accommodate military missions and prevent base encroachment, advocacy on the state's behalf with federal civilian and military officials, promotion of the state to military and related contractors and employers, and support of economic and product research and development activities of the defense industry.

(c) As necessary and requested by Florida is for Veterans, Inc., the direct-support organization may undertake such activities that assist the corporation with job training and placement for military spouses in communities with high proportions of active duty military personnel. As necessary and requested by the Department of Education, school districts, or Florida state colleges and universities, the direct-support organization may undertake such activities that assist in providing a smooth transition for dependents of military

personnel and other military students. The direct-support organization is intended to complement but may not supplant the activities of other state entities.

(3) The direct-support organization shall be governed by a board of directors.

(a) The board of directors is composed of the Governor, or his or her designee, and the following members ~~task force shall be comprised of the Governor or his or her designee, and 12 members~~ appointed as follows:

1.~~(a)~~ Four members appointed by the Governor.

2.~~(b)~~ Four members appointed by the President of the Senate.

3.~~(c)~~ Four members appointed by the Speaker of the House of Representatives.

(b)~~(d)~~ Appointed members must represent defense-related industries or communities that host military bases and installations. All appointments in place as of July 1, 2024, must continue in effect until the expiration of the term ~~must be made by August 1, 2011~~. Members shall serve for a term of 4 years~~, with the first term ending July 1, 2015. However, if members of the Legislature are appointed to the task force, those members shall serve until the expiration of their legislative term and may be reappointed once~~. A vacancy shall be filled for the remainder of the unexpired term in the same

manner as the initial appointment. ~~All members of the council are eligible for reappointment.~~

(c) The President of the Senate and the Speaker of the House of Representatives shall each appoint a current member of their respective chambers who shall serve ex officio, nonvoting. An appointed Senator or Representative shall serve until the expiration of the member's legislative term and may be reappointed once. An appointed Senator or Representative ~~A member who serves in the Legislature~~ may participate in all direct-support organization ~~task force~~ activities but may not ~~only~~ vote ~~on matters that are advisory~~.

(d)~~(4)~~ The President of the Senate and the Speaker of the House of Representatives shall each designate one of their appointees under paragraph (b) to serve as chair of the direct-support organization ~~task force~~. The chair shall serve a 2-year term, rotating on December 1 of each even-numbered year ~~rotate each July 1~~. The appointee designated by the President of the Senate shall serve as initial chair. If the Governor, instead of his or her designee, participates in the activities of the direct-support organization ~~task force~~, ~~then~~ the Governor shall serve as chair.

(e)~~(5)~~ The Secretary of Commerce ~~Economic Opportunity~~, or his or her designee, shall serve as the ex officio, nonvoting executive director of the direct-support organization ~~task force~~.

(f) The Executive Director of Florida Department of Veterans' Affairs and the Adjutant General of the Florida National Guard, or their designees, shall serve as ex officio, nonvoting members of the direct-support organization.

(g) Any employees and appointed board members, in their capacity of service on the board, are not public employees for the purposes of chapter 110 or chapter 112, except that such employees and appointed board members of the corporation are subject to the provisions of s. 112.061, related to reimbursement for travel and per diem exempts incurred while performing duties, and part III of chapter 112. Otherwise, each member of the board of directors shall serve without compensation.

(4)~~(6)~~ The direct-support organization ~~task force~~ shall submit an annual ~~progress~~ report ~~and work plan~~ to the Governor, the President of the Senate, and the Speaker of the House of Representatives each November 1, which may be submitted as a supplement report with the annual report of the department pursuant to s. 20.60 ~~February~~ 1.

(5) The direct-support organization, in the performance of its duties, may:

(a) Make and enter into contracts and assume such other functions as are necessary to carry out the mission of the direct-support organization and its contract with the department, provided that any such contracts and assumptions are

not inconsistent with this section or any other applicable provision of law governing the direct-support organization. A proposed contract with a total cost of $750,000 or more is subject to the notice, review, and objection procedures of s. 216.177. If the chair and vice chair of the Legislative Budget Commission, or the President of the Senate and the Speaker of the House of Representatives, timely advise the direct-support organization in writing that such proposed contract is contrary to legislative policy and intent, the direct-support organization may not enter into such proposed contract. The direct-support organization may not divide one proposed contract with a total cost of $750,000 or more into multiple contracts to circumvent the requirements of this paragraph.

(b) Establish grant programs and administer grant awards to support its mission. The direct-support organization must publicly adopt guidelines and application procedures and must publish such guidelines, application procedures, and awards on its website. The direct-support organization may assist the department as requested and necessary with any statutorily established grants or other programs, but may not administer such grants on behalf of the department.

~~(7) The department shall support the task force and contract with the task force for expenditure of appropriated funds, which may be used by the task force for economic and product research and development, joint planning with host~~

~~communities to accommodate military missions and prevent base encroachment, advocacy on the state's behalf with federal civilian and military officials, assistance to school districts in providing a smooth transition for large numbers of additional military-related students, job training and placement for military spouses in communities with high proportions of active duty military personnel, and promotion of the state to military and related contractors and employers. The task force may~~

(c) Annually spend up to $250,000 of funds appropriated to the department for the direct-support organization ~~task force~~ for staffing and administrative expenses of the direct-support organization ~~task force~~, including travel and per diem costs ~~incurred by task force members who are not otherwise eligible for state reimbursement~~.

(6) This section is repealed October 1, 2029, unless reviewed and saved from repeal by the Legislature.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1537 Vacation Rentals
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Griffitts
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 280

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	10 Y, 4 N, As CS	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

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

The bill:

- Adds to the scope of the state preemption of public lodging establishments and public food service establishments by preempting "licensing" regulations, and revises the scope of the express state preemption on vacation rentals to allow local jurisdictions to amend local regulations to:
  - Be less restrictive; or
  - Comply with local registration requirements.
- Allows local governments to:
  - Create a local vacation rental registration program.
  - Charge a registration fee not to exceed $150 for processing an individual registration application.
  - Fine vacation rental operators up to $300, file and foreclose on a lien based on the fine, suspend registrations, and revoke or refuse to renew a registration, for violations of the local registration requirements.
- Preempts to the state the regulation of advertising platforms, requires users of advertising platforms to provide license and registration information in a vacation rental listing, requires advertising platforms to collect and remit certain taxes and adopt an antidiscrimination policy.
- Grants the Division certain enforcement mechanisms relating to unlicensed activities.
- Requires the Division to create and maintain a vacation rental license information system to allow local governments to notify the Division of suspensions and terminations, verify the license and local registration status of a vacation rental, and registered users to subscribe to receive notification of changes to the license or registration of a vacation rental.
- Specifically, does not supersede the authority of condominiums, cooperatives, or homeowners' associations to restrict the use of their properties.
- Requires vacation rental operators to display license and registration information.

The bill may have in indeterminate fiscal impact on state and local government, and the private sector.

Except as otherwise provided, the effective date of the bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Vacation Rentals

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

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

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

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

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

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

Licensure

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

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

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

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

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

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

- Hotels: 2,308 licenses;
- Motels: 2,397 licenses;
- Non-transient apartments: 18,315 licenses;
- Transient apartments: 913 licenses;
- Bed and Breakfast Inns: 261 licenses;
- Vacation rental condominiums: 12,716 licenses;
- Vacation rental dwellings: 26,733 licenses; and
- Vacation rental timeshare projects: 47 licenses.

License Fees

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

- Vacation rentals/collective license.

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

- Vacation rentals/group and single license.

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

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

[8] S. 509.241, F.S.
[9] S. 509.241(3), F.S.
[10] R. 61C-1.002(1), F.A.C.
[11] DBPR, *Division of Hotels and Restaurants Annual Report for FY 2021-2022*, p. 8, http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2021_22.pdf (last visited Jan. 26, 2024).
[12] R. 61C-1.008, F.A.C.
[13] S. 509.302, F.S., establishes the Hospitality Education Program. All public lodging establishments and all public food service establishments licensed under ch. 509, F.S., are required to pay an annual fee of no more than $10, which shall be included in the annual license fee and used for the sole purpose of funding the Hospitality Education Program.

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

Sanitation and Safety

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

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

Ventilation and Fire Safety

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

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

Conduct on Premises

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

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

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

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

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

In addition, an operator is authorized to take a person into custody and detain that person for disorderly conduct that creates a threat to the life or safety of the person or others. The operator is required to call a law enforcement officer to the scene immediately after detaining a person under this provision.[23]

Inspections

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

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

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

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

Registry

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

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

Violations

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

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

[22] S. 509.141(3), F.S.
[23] S. 509.143(1), F.S.
[24] *See generally* s. 509.032, F.S., r. 61C-1.002, F.A.C.
[25] *Id.*
[26] *See* ss. 509.211(3), 509.2112, F.S., and r. 61C-3.001, F.A.C.
[27] DBPR, *supra* note 11, at 21.
[28] R. 61C-1.002, F.A.C.
[29] S. 509.101(2), F.S.
[30] S. 509.261(1), F.S.

Preemption Authority

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

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

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

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

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

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

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

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

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

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

Local Ordinances

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[31] Ch. 2011-119, Laws of Fla., codified in s. 509.032(7), F.S.
[32] *Id.*
[33] *See* City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. *See also* Monroe County Code, No. 004-1997 (2013); Bal Harbour Village Code of Ordinances, s. 21-363.
[34] City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. *See also City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla. 2nd DCA 2011).
[35] Florida Today, *Explosion of vacation rentals in Cocoa Beach leaves residents frustrated and angry* (Oct. 5, 2023), https://www.floridatoday.com/story/news/local/2023/10/05/cocoa-beach-impacts-vacation-rental-growth-airbnb-vrbo-brevard-florida/70767082007/ (last visited Jan. 26, 2024).
[36] Ch. 2014-71, Laws of Fla., codified in s. 509.032(7)(b), F.S.
[37] S. 509.032(7)(c), F.S.
[38] S. 509.032(7)(a), F.S.

Currently, many local jurisdictions in Florida regulate vacation rentals. These counties and cities typically require some type of registration or certification, along with certain other requirements, including, but not limited to, fees, occupancy limits, and parking, noise, and garbage restrictions that are separate from such requirements and restrictions for other residential properties.

Flagler County

Flagler county has adopted an ordinance that regulates short term vacation rentals through a "certificate" program. The program allows such rentals in all residential zoning districts in the county. The ordinance defines such rentals as a "commercial business… of a single-family or a two-family dwelling..." Fees for initial certification are $400, renewals are $200, and inspections can be up to $200.[39]

Vacation rental owners, in part, must obtain a certificate and business tax receipt from the county, a Department of Revenue (DOR) certificate of registration, and a DBPR license as a transient public lodging establishment. The ordinance provides minimum life/safety requirements such as swimming pool, smoke detection, and emergency lighting requirements. The ordinance provides parking and solid waste requirements, initial and routine compliance inspections, and a responsible party requirement.[40]

The maximum occupancy requirements are one person per 150 gross square feet of permitted, conditioned living space, or in accordance with the maximum occupancy of a septic tank permit, or two persons per sleeping room plus two additional persons in a common area.[41]

Penalties for violations, include warnings for first time violations, and up to $500 per repeat violations. The ordinance also allows the county to seek other remedies such as injunctive relief, liens, and other civil and criminal penalties.[42]

Sarasota

The City of Sarasota has adopted an ordinance that regulates short term vacation rentals through a "certificate of registration" program. The ordinance allows such rentals within residential zoning districts in the city limits. The ordinance defines "vacation rental" as a rental as defined in F.S. ss. 509.242(1)(c) and 509.013(4)(a)(1), F.S., excluding those vacation rentals in condominiums and cooperatives and which is located in a residential zone within the coastal islands overlay district. Fees for an initial certificate of registration are $500, renewals are $350, and inspections can be up to $200.[43]

The ordinance requires vacation rental owners, in part, to obtain a copy of their business tax receipts from the city and county, evidence of an active account with the tax collector, a copy of the current DBPR vacation rental license, and a copy of the DOR certificate of registration. The ordinance provides minimum safety, minimum informational, parking, designated responsible party, and advertising requirements.[44]

The maximum occupancy in residential single-family zone districts is two persons per bedroom, plus two additional persons per property or ten persons, whichever is less. Maximum occupancy in residential multiple-family zone districts it two persons per bedroom, plus two additional persons per property or twelve persons, whichever is less. Children under six years of age are not included in the calculation of maximum occupancy. The ordinance also provides a minimum stay requirement of 7 days and 7 nights.[45]

[39] Flagler County Ordinance No. 2016-01.
[40] *Id*.
[41] *Id*.
[42] *Id*.
[43] City of Sarasota Ordinance No. 34.5.
[44] *Id*.
[45] *Id*.

The ordinance provides penalties that apply for each day a violation occurs, including fines and suspensions. The City's Code Compliance addresses complaints related to unsupervised vacation rentals, including but not limited to, over-occupancy, open and late-night parties, excessive noise, parking on public sidewalks and excessive trash and garbage accumulation. Fines for initial violations can be up to $1,000 per day, repeat violations can be up to $5,000 per day, and violations that are irreparable or irreversible in nature can be $15,000. In addition to any fines and any other remedies provided by law, a special magistrate may, in his or her discretion, suspend an initial or renewed certificate of registration for a vacation rental upon request.[46]

Recent Activity

Homeowners found to be in conflict with ordinances regulating vacation rentals have taken legal action against their respective local governments through the Bert J. Harris, Jr., Private Property Rights Protection Act.[47] The act provides a cause of action for private property owners whose real property has been inordinately burdened by a specific action of a governmental entity that may not rise to the level of a "taking" under the State or Federal Constitutions. The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.[48]

Anna Maria

In November 2015, the City of Anna Maria passed and adopted an ordinance that provides a general framework for the regulation of vacation rentals, including maximum occupancy requirements. According to the city's website, since April 2016, approximately 113 Bert Harris Act claims relating to the ordinance have been filed that could amount to approximately $38 million in damages. The City of Anna Maria website provides that the majority of these claims have been closed.[49]

Holmes Beach

Recent reports indicate that the City of Holmes Beach in Anna Maria Island settled similar claims in 2021. According to reports, the city agreed to allow property owners to build homes with more bedrooms than current ordinances allow. One property owner will be permitted to build an eight bedroom house while the city ordinance limits bedrooms to four. Other claims related to occupancy were decided by the courts. Local ordinances limit two people per bedroom. Attorney fees for the city related to these claims were paid for by the Florida League of Cities.[50]

Miami Beach

In March 2016, Miami Beach, which bans all short-term rentals, passed an ordinance making the fine for a first violation for a resident caught renting short-term $20,000. Each subsequent fine increases by $20,000 and can be as high as $100,000. Vacation/short-term rentals that are permitted in certain zoning districts of Miami Beach are required to provide and conspicuously display the city-issued business tax receipt number and the resort tax certificate number in every advertisement or listing of any type in connection with the rental of the residential property.[51] In June 2018, it was reported that

[46] *Id.*
[47] Kathy Prucnell, *2 more Holmes Beach Bert Harris claims proceed to courthouse*, The Islander (Feb. 20, 2018), https://www.islander.org/2018/02/2-more-holmes-beach-bert-harris-claims-proceed-to-courthouse/ (last visited Jan. 26, 2024).
[48] S. 70.001, F.S.
[49] City of Anna Maria, *Bert J. Harris, Jr., Private Property Rights Protection Act Claim Filings*, http://www.cityofannamaria.com/residents/bert_harris_claim.php (last visited Jan. 26, 2024).
[50] Kristin Swain, Bert Harris cases come to a close in Holmes Beach, Amisun (Nov. 1, 2021), https://www.amisun.com/2021/11/01/bert-harris-cases-come-to-a-close-in-holmes-beach/#:~:text=HOLMES%20BEACH%20%E2%80%93%20After%20more%20than,were%20too%20generous%20to%20developers. (last visited Jan. 29, 2024).
[51] *See* Miami Beach City Code, Sec. 142-1111 and 142-905(b).

Miami Beach had issued $12.1 million in fines, only $174,000 of which had been paid. Some vacation rental owners were reported to have accumulated up to $60,000 in fines.[52]

Since then, the Third District Court of Appeal invalidated the city's fine structure after determining the regulations conflict with state law that caps violation fines between $1,000 and $5,000.[53] As a result, the city has left the regulations in place and simply revised the fine structure. First-time offenders are fined $1,000 a day, and repeat offenders are fined $5,000 per day. According to a memo from the city attorney, the new fine structure complies with the ruling against Miami Beach.[54]

Condominiums, Cooperatives, and Homeowners' Associations

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common elements.[55] A condominium is created by recording a declaration in the public records of the county in which the condominium will be located.[56] A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws governing the administration of the association. The declaration as originally recorded or as amended may include covenants and restrictions concerning the use, occupancy, and transfer of the units in the association.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S., where real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[57] The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are similar in many ways. A cooperative is created using "cooperative documents" which include articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any. The documents may include restrictions, which affect the use of the property.

A homeowners' association (HOA) is an association of residential property owners, created pursuant to ch. 720, F.S., where voting membership consists of parcel owners, membership is a mandatory condition of parcel ownership, and which may impose assessments that, if unpaid, can become a lien on the parcel.[58] Chapter 720, F.S., only regulates HOAs whose covenants and restrictions include mandatory assessments. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes those provided in ch. 720, F.S., and contained in the governing documents of the association. The governing documents include the recorded covenants and restrictions, bylaws, articles of incorporation, and duly adopted amendments to those documents. The documents may include restrictive covenants governing the use and occupancy of properties.

Based on these laws, condominium, cooperative, and homeowners' associations may enact provisions that restrict the ability of the property owners to rent their properties.[59] This includes actions such as

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[52] Chabeli Herrera, *Miami Beach has the country's highest short-term rental fines. It just got sued,* Miami Herald (June 28, 2018), https://www.miamiherald.com/news/business/article213954174.html (last visited Jan. 26, 2024).
[53] Francisco Alvarado, *Miami-Dade judge strikes down Miami Beach short-term rental ban*, TheRealDeal South Florida Real Estate News (Oct. 8, 2019), https://therealdeal.com/miami/2019/10/08/miami-dade-judge-strikes-down-miami-beach-short-term-rental-ban/ (last visited Jan. 26, 2024).
[54] Francisco Alvarado, *Miami Beach slashes fines for illegal short-term rentals*, TheRealDeal South Florida Real Estate News (Oct. 14, 2019), https://therealdeal.com/miami/2020/10/14/miami-beach-slashes-fines-for-illegal-short-term-rentals/ (last visited Jan. 26, 2024).
[55] S. 718.103(11), F.S.
[56] S. 718.104(2), F.S.
[57] S. 719.103(2)(26), F.S.
[58] S. 720.301(9), F.S.
[59] Motley Fool, *Can an HOA Restrict Rentals? (Spoiler Alert: Yes)*, https://www.fool.com/millionacres/real-estate-investing/rental-properties/can-hoa-restrict-rentals-spoiler-alert-yes/# (last visited Jan. 26, 2024).

prohibiting owners from renting their properties, restricting the duration of the rental term, or limiting the frequency owners are allowed to rent their properties.

Effect of the Bill

Preemptions

Scope

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

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

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

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

Exemptions

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

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

Regulation of Vacation Rentals by Local Government

Registration

The bill:

- Authorizes local laws, ordinances, or regulations to require the registration of vacation rentals with a local vacation rental registration program.
- Authorizes local governments to implement such a program and impose a fine for failure to register under the program.
- Requires such programs to be administered by the tax collector.

The bill specifies that it does not prohibit a local government from establishing a local law, ordinance, or regulation if it is uniformly applied without regard to whether the residential property is used as a vacation rental.

Fees

The bill allows a local government to charge a fee of no more than $150 per unit for processing a registration application.

The bill allows a local law, ordinance, or regulation to:

- Require annual renewal of a registration; and
- Charge a renewal fee of no more than $50 per unit for processing of a registration renewal.

The bill specifies that if there is a change of ownership, the new owner may be required to submit a new application for registration.

The bill provides that subsequent to the registration of a vacation rental, a local government is authorized to charge a fee, not to exceed $150, for a person authorized by s. 633.118, F.S., to inspect the vacation rental and enforce the laws and rules of the State Fire Marshall for issues pertaining to the uniform firesafety standards.

Conditions for Registration

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

- Submit identifying information about the owner and the owner's operator, if applicable, and the subject vacation rental premises.
- Provide proof of a license with the unique identifier issued by the Division to operate as a vacation rental.
- Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue (DOR), a county, or a municipality.
- Update required information on a continuing basis to ensure it is current.
- Designate and maintain at all times a responsible party who is capable of responding to complaints or emergencies related to the vacation rental, including being available by telephone at a provided contact telephone number 24 hours a day, 7 days a week, and receiving legal notice of violations on behalf of the operator.
    - The responsible party has until 9 a.m. the next calendar day to respond to a complaint or emergency by telephone or otherwise.
- State the maximum occupancy of the vacation rental based on the number of sleeping accommodations for persons staying overnight in the vacation rental.
- Pay in full all recorded municipal or county code liens against the subject vacation rental premises.

Review and Acceptance

The bill requires that within 15 business days after receiving an application for registration of a vacation rental, a local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice of denial.

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

The bill provides that:

- If the local government fails to accept the registration within the timeframes provided, the application is deemed accepted.
- If a local government denies a registration of a vacation rental, the local government must give written notice to the applicant. Such notice:
    - May be provided by United States mail or electronically.
    - Must specify with particularity the factual reasons for the denial and include a citation to the applicable portions of the ordinance, rule, statute, or other legal authority for the denial of the registration.
- A local government may not prohibit an applicant from reapplying if the applicant cures the identified deficiencies.

The bill requires, upon an accepted vacation rental registration, a local government to immediately assign a unique registration number to the vacation rental unit and provide the registration number or other indicia of registration to the vacation rental operator in writing or electronically.

The bill requires a vacation rental operator to provide the vacation rental registration number to the Division.

Local Government Enforcement and Remedies

Fines and Liens

The bill allows a local government to fine a vacation rental operator up to $300 if he or she:

- Fails to continue to meet the registration requirements; or
- Is operating a vacation rental without registering with the local government as a vacation rental.

Regarding the process for a local government to fine a vacation rental operator, the bill:

- Allows a certified copy of an order imposing a fine to be recorded in the public records and thereafter constitutes a lien against the real property on which the violation exists.
- Specifies that upon petition to the circuit court, such order is enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order may not be deemed to be a court judgment except for enforcement purposes.
- Requires the fine to continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this provision, whichever occurs first.
- Provides that a lien arising from such a fine runs in favor of the local government, and the local government is authorized to execute a satisfaction or release of lien.
- Provides that three months or more after the filing of any such lien that remains unpaid, the local government is authorized to foreclose on the lien against the real property on which the violation exists or sue to recover a money judgment for the amount of the lien, plus accrued interest.
- Provides that a lien created pursuant to this part may not be foreclosed on real property that is a homestead under s. 4, Art. X of the State Constitution.
- Specifies that the money judgment provisions of this provision do not apply to real property or personal property that is covered under s. 4(a), Art. X of the State Constitution.[60]

Registration Suspensions

The bill provides that if a vacation rental owner is found by the code enforcement board or special magistrate to have materially violated a local law, ordinance, or regulation that does not solely apply to vacation rentals and the violation is directly related to the owner's vacation rental premises:

- The local government must issue a written notice of such violation.
- The code enforcement board or special magistrate must make a recommendation to the local government as to whether an owner's vacation rental registration should be suspended.
- The code enforcement board or special magistrate must recommend the suspension of the owner's vacation rental registration if the owner is found to have one or more material violations, as follows:
    - On 5 separate days during a 60-day period;
    - On 5 separate days during a 30-day period; or
    - After two prior suspensions of an owner's vacation rental registration during a six month period.
- If the code enforcement board or special magistrate recommends suspension of an owner's vacation rental registration, the local government is authorized to suspend such registration for a period of:
    - Up to 15 days for one or more material violations on 5 separate days during a 60-day period;

[60] Article X, s. 4(a), of the Florida Constitution provides "there shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person: (1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family; (2) personal property to the value of one thousand dollars.

    - Up to 30 days for one or more material violations on 5 separate days during a 30-day period; or
    - Up to 60 days for one or more material violations after two prior suspensions of an owner's vacation rental registration during a six month period.
- A local government is prohibited from suspending an owner's vacation rental registration for violations of a local law, ordinance, or regulation which are not directly related to the vacation rental premises.
- A local government is required to provide notice of the suspension of a vacation rental registration to the operator and the Division within 5 days after the suspension.
    - The notice must include the start date of the suspension, which must be at least 21 days after the suspension notice is sent to the operator and the Division.

Effective January 1, 2026, a local government is required to use the vacation rental information system described in s. 509.244, F.S., created by the bill, to provide notice of the suspension of a vacation rental registration to the Division.

Registration Revocations

The bill allows a local government to revoke or refuse to renew a vacation rental registration of a specific vacation rental, if:

- The code enforcement board or special magistrate has found that the vacation rental owner has habitually committed material violations under the suspension violation provisions and has imposed the strictest penalty;
- There is an unsatisfied recorded municipal lien or county lien on the real property of the vacation rental, provided local governments give a vacation rental owner at least 60 days to satisfy a recorded municipal or county code lien before terminating a local registration because of the unsatisfied lien;
    - The registration must immediately and automatically be reinstated or renewed upon satisfaction of such lien; or
- The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

The bill uses interchangeably the terms "revocation" and "termination."

The bill also requires local governments to provide notice of a termination or nonrenewal to the operator of a vacation rental within five days after the termination or nonrenewal. The notice must include the start date of the termination or refusal to renew, which must be at least 21 days after the notice is sent to the operator and the Division.

Effective January 1, 2026, a local government must use the vacation rental information system as established in s. 509.244, F.S., which is created by the bill, to provide the notice of termination or nonrenewal of a vacation rental registration to the Division.

Appeals

The bill authorizes a vacation rental owner to appeal a denial, suspension, termination, or nonrenewal of a vacation rental registration to the circuit court, as follows:

- The appeal must be filed within 30 days after the issuance of the denial, suspension, or termination.
- The court may assess and award reasonable attorney fees and costs and damages to a vacation rental owner.[61]
- The owner is authorized to apply for registration upon the sale of the vacation rental premises to a new owner or six months after revocation or refusal to renew the vacation rental registration.

[61] S. 162.11, F.S., provides for the appeal of a final administrative order of a local government enforcement board to the circuit court. This provision does not provide for the awarding of attorney fees and costs to the prevailing party.

Regulation of Vacation Rentals by the Division

Licensing

Effective January 1, 2025, the bill:

- Authorizes the Division, upon receiving an application for a vacation rental license, to grant a temporary license to permit the operation of the vacation rental while the license application is pending.
  - The temporary license automatically expires upon final agency action regarding the license application.
- Requires any license issued by the Division to be displayed conspicuously to the public inside the licensed establishment, instead of "in the office or lobby."
- Requires the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental local registration number, if applicable.
- Requires the licensee or licensed agent managing a vacation rental to submit to the Division, through the Division's online system, any applicable local vacation rental registration number.
- Requires the division to include a unique identifier on each vacation rental license it issues which identifies each individual vacation rental dwelling or unit.

Suspensions and Revocations of Vacation Rental Licenses

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

- The operation of the subject premises violates the terms of an applicable lease or property restriction, including any property restriction adopted pursuant to chs. 718, 719, or 720, F.S., as determined by a final order of a court or an arbitrator's written decision;[62]
- The registration of the vacation rental is suspended or revoked by a local government as provided in s. 509.032(8), F.S.; or
- The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

When revoking, suspending, or refusing to renew a vacation rental license, the bill requires the Division to specify the license number with the associated unique identifier of the vacation rental dwelling or unit that has been suspended, revoked or not renewed. The Division must also input such status into the vacation rental information system described in s. 509.244, F.S.

The bill requires that any suspension of a vacation rental license based on the suspension of a local registration must run concurrently with the local registration suspension.

Requirements for Advertising Platforms

Effective January 1, 2025, the bill provides requirements for an advertising platform, including tax collection and remittance requirements. Under the bill, an advertising platform must:

- Require that a person who places an advertisement for the rental of a vacation rental to:
  - Include the vacation rental license number with the associated unique identifier and, if applicable, the local registration number; and
  - Attest to the best of the person's knowledge that the license number and the local registration number, if applicable, for the vacation rental property are current and valid and that all related information is accurately stated in the advertisement.
- Display the vacation rental license number with the associated unique identifier.
- Adopt an anti-discrimination plan and inform its users of the public lodging discrimination prohibition found in s. 509.092, F.S.

Effective January 1, 2026, the bill requires advertising platforms to:

[62] Chapters 718, 719, or 720, F.S., relate to the regulation and governance of condominium, cooperative, and homeowners' associations, respectively.

- Remove the ability to book an advertisement or listing from its online application, software, website, or system within 15 business days after notification through the vacation rental information system as established in s. 509.244, F.S., that a vacation rental license or, if applicable, a local registration:
    - Has been suspended, revoked, or not renewed; or
    - Fails to display a valid license number with the associated unique identifier and, if applicable, the local registration number.

The bill requires advertising platforms to collect and remit taxes due under ss. 125.0104,[63] 125.0108,[64] 205.044,[65] 212.03,[66] 212.0305,[67] and 212.055, F.S.,[68] resulting from the reservation of a vacation rental property and payment therefor through an advertising platform.

The bill also:

- Provides processes for the Division to issue a cease and desist order to any person who violates ch. 509, F.S.
- Authorizes the Division to seek an injunction or a writ of mandamus to enforce a cease and desist order.
- Provides that, if the Division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, F.S., it is entitled to collect its attorney fees and costs, together with any cost of collection.
- Authorizes the Division to fine an advertising platform an amount not to exceed $1,000 per offense for a violation of the provisions in the bill or rules of the Division.
- Provides that the advertising platform requirements in the bill do not create a private right of action against advertising platforms.

Vacation Rental Information System

The bill requires the Division to create and maintain, by July 1, 2025, a vacation rental information system readily accessible through an application program interface to allow:

- Licensees and advertising platforms to promptly comply with ch. 509, F.S., relating in pertinent part to public lodging establishments;
- Local governments to notify the Division of a termination, failure to renew, or period of suspension of a local registration;
- Local governments to verify the status of a vacation rental; and
- The registered user to subscribe to receive notification of changes to the license or registration of a vacation rental.

Community Associations

The bill provides that the application of vacation rental provisions created by the bill do not supersede any current or future declaration or declaration of condominium adopted pursuant to ch. 718, F.S., cooperative documents adopted pursuant to ch. 719, F.S., or declaration of covenants or declaration for a homeowners' association adopted pursuant to ch. 720, F.S.

Effective Date

Except as otherwise expressly provided in the bill, the effective date of the bill is July 1, 2024.

B. SECTION DIRECTORY:

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

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

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

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

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

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

Section 6: Creates s. 509.244, F.S., relating to vacation rental information system.

Section 7: Amends s. 509.261, F.S., relating to revocation or suspension of licenses, fines, procedure.

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

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

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

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

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

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

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

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

Section 16: Amends s. 561.20, F.S., relating to limitation upon number of licenses issued.

Section 17: Amends s. 705.17, F.S., conforming a cross reference.

Section 18: Amends s. 705.185, F.S., conforming a cross reference.

Section 19: Amends s. 705.1355, F.S., conforming a cross reference.

Section 20: Amends s. 877.24, F.S., conforming a cross reference.

Section 21: Creates an unnumbered section providing for applicability.

Section 22: Creates an unnumbered section authorizing DOR emergency rulemaking authority.

Section 23: Provides for effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. According to DBPR, "there is an indeterminate increase in licensing revenue, but it is unknown how many rental advertisements currently exempt from licensing would require licensure. The bill may also result in an indeterminate increase in fines due to noncompliance.[69]

The bill has not been given an estimate by the REC.

2. Expenditures:

According to DBPR, it will incur the following "increase in staff and costs needed to implement the bill:"[70]

- "Hotels and Restaurants – 4 FTE with a $ 196,279 salary rate and $380,815 budget authority ($53,645 nonrecurring).
- Office of the General Counsel – 2 FTE with a 150,154 salary rate and $244,421 of budget authority ($16,922 nonrecurring).
- Division of Service Operations – 1 FTE with a 46,984 salary rate and $88,158 of budget authority ($9,040 nonrecurring).
- Information Technology – 2 FTE with 120,000 of salary rate and $3,608,507 of budget authority ($3,269,922 nonrecurring)."

"TOTAL FISCAL IMPACT of $4,318,901 of budget authority ($972,371 recurring and $3,346,529 nonrecurring)."[71]

FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. According to DBPR, there is a potential increase in tourism taxes and revenue if local registration fees are required.[72]

Allowing local governments to administer and enforce a vacation rental registration program may create a positive fiscal impact resulting from collection of program fees and fines.

2. Expenditures:

Indeterminate. Allowing local governments to administer and enforce a vacation rental registration program will create costs to those local governments that choose to participate. However, these costs may be offset by the revenues generated from the collection of program fees and fines.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

C. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[69] Florida Department of Business & Professional Regulation, SB 280 Agency Analysis, p. 7 (Dec. 1, 2023).
[70] Florida Department of Business & Professional Regulation, SB 280 Agency Analysis, p. 7 (Dec. 1, 2023).
[71] *Id*.
[72] Florida Department of Business & Professional Regulation, SB 280 Agency Analysis, p. 6 (Dec. 1, 2023).

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Regulatory Reform & Economic Development Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment:

- Required local registration programs to be administered by the tax collector.
- Limited local government's authority to charge a reasonable fee for building and fire code inspections to $150, and specified the inspectors must be authorized under the State Fire Marshall standards.
- Specified that when a vacation rental registration is accepted, the local government is required to immediately assign a unique registration number.
- Removed the 5 day timeframe that a vacation rental operator is required to provide the vacation rental registration number to the Division.
- Limited any lien for a registration violation to apply only to that specific property; removing the ability to lien all other property owned by that same owner.
- Required any violations that are subject to discipline to be "material" violations; required the code enforcement board or special magistrate to make such determination; and only allowed revocation if found to have habitual material violations.
- Decreased the related 30, 60, and 90 day suspension timeframes to 15, 30, and 60 days for material violation during a 60 day, 30 day and 6 month periods; the 60 day suspension only applies if violations that occur within 6-months of the two prior suspensions.
- Specified that registration revocations apply only to a specific vacation rental.
- Required immediate and automatic registration reinstatement or renewal upon satisfaction of the lien.
- Allowed registration 6 months after revocation of a registration.
- Removed the requirement for advertising platforms to:
    - Display the vacation rental local registration number.
    - Verify license numbers through the department.
    - Use the vacation rental information system to verify the vacation rental license number.
- Required advertising platforms to:
    - Remove the ability to book an advertisement or listing within 15 days of notification through the information system of a revocation or suspension.
    - Provide to the Division on a quarterly basis, in a manner compatible with the vacation rental information system, a list of all vacation rentals in the state which are advertised on its platform, along with the uniform resource locator for the Internet address of the vacation rental advertisement and the vacation rental license number associated with the vacation rental.
- Removed the requirement that the Division's vacation rental information system provide a system interface to allow advertising platforms to verify license and registration information.

This analysis is drafted to the committee substitute adopted by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to vacation rentals; amending s. 212.03, F.S.; requiring advertising platforms to collect and remit specified taxes for certain vacation rental transactions; reordering and amending s. 509.013, F.S.; defining the term "advertising platform"; making technical changes; amending s. 509.032, F.S.; adding licensing to the regulated activities of public lodging establishments and public food service establishments which are preempted to the state; providing applicability; revising an exception to the prohibition against certain local regulation of vacation rentals; providing applicability; preempting the regulation of advertising platforms to the state; authorizing the adoption of local laws, ordinances, or regulations that require the registration of vacation rentals; authorizing local governments to adopt vacation rental registration programs and impose fines for failure to register; requiring such registration programs to be administered by the tax collector; authorizing local governments to charge a specified fee for processing registration applications; authorizing local laws, ordinances, or regulations to require annual renewal of a registration and to charge a fee for such renewal; providing that a change in

ownership may require a new application for registration; authorizing local governments to charge a specified fee to inspect a vacation rental and enforce certain laws and rules for issues pertaining to uniform life safety requirements; specifying requirements and procedures for, and limitations on, local vacation rental registration programs; authorizing local governments to fine vacation rental operators under certain circumstances; specifying procedures related to the imposition of fines; providing applicability relating to certain money judgment provisions; requiring local governments to issue written notices of material violations under certain circumstances; requiring the code enforcement board or special magistrate to make certain recommendations under specified circumstances; authorizing local governments to suspend an owner's vacation rental registration for specified periods of time; prohibiting local governments from suspending an owner's vacation rental registration for violations not directly related to the vacation rental premises; requiring, within a specified timeframe, local governments to provide notice of registration suspension to vacation rental operators and the Division of Hotels and Restaurants of the Department

of Business and Professional Regulation; providing requirements for such notice; requiring, by a certain date, local governments to use the vacation rental information system to provide such notice to the division; authorizing local governments to revoke or refuse to renew a vacation rental registration of a specific vacation rental under certain circumstances; requiring, within a specified timeframe, local governments to provide notice of termination of or refusal to renew a vacation rental registration to vacation rental operators and the division; requiring, by a certain date, local governments to use the vacation rental information system to provide such notice to the division; providing that vacation rental owners may appeal a denial, suspension, or termination of, or a refusal to renew, a vacation rental registration; providing procedures for such appeal; authorizing a vacation rental owner to apply for registration upon the sale of the vacation rental premises or 6 months after revocation of or refusal to renew the vacation rental registration; providing construction; amending s. 509.241, F.S.; authorizing the division to issue temporary licenses upon receipt of vacation rental license applications while such applications are pending; providing for expiration of

such licenses; requiring that any license issued by the division be conspicuously displayed to the public inside the licensed establishment; requiring that operators of vacation rentals which offer a vacation rental for transient occupancy through an advertising platform also display to the public inside the vacation rental its local registration number, if applicable; requiring licensees or licensed agents managing a license classified as a vacation rental to submit local vacation rental registration numbers, if applicable, to the division through the division's online system; requiring the division to include a unique identifier on each vacation rental license issued which identifies each individual vacation rental dwelling or unit; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements or listings for vacation rentals include certain information in the advertisements or listings and attest to certain information; requiring advertising platforms to display certain information; requiring, as of a specified date, advertising platforms to remove the ability to book an advertisement or a listing under certain circumstances and to provide to the division on a quarterly basis, in a specified manner, a list of

all vacation rentals in the state which are advertised on its platforms, along with other specified information; requiring advertising platforms to collect and remit specified taxes for certain transactions; authorizing the division to issue and deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which certain hearings may be sought; authorizing the division to issue cease and desist notices in certain circumstances; providing that issuance of such notice does not constitute an agency action; authorizing the division to file certain proceedings for the purpose of enforcing a cease and desist notice; authorizing the division to collect attorney fees and costs under certain circumstances; authorizing the division to impose a fine on advertising platforms for certain violations; requiring the division to issue written notice of violations to advertising platforms before commencing certain legal proceedings; requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of the policy's provisions; providing construction; creating s. 509.244, F.S.; defining the term "application program interface"; requiring, by a specified date, the division to create

and maintain a certain vacation rental information system; specifying requirements for the system; amending s. 509.261, F.S.; authorizing the division to revoke, refuse to issue or renew, or suspend vacation rental licenses under certain circumstances; requiring the division to specify the license number of the vacation rental dwelling or unit which has been revoked, not renewed, or suspended; requiring the department to input such status in the vacation rental information system; requiring the division's vacation rental license suspension to run concurrently with a local vacation rental registration suspension; amending ss. 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.221, 553.5041, 559.955, 561.20, 705.17, 705.185, 717.1355, and 877.24, F.S.; conforming cross-references; providing construction; authorizing the Department of Revenue to adopt emergency rules; providing requirements and an expiration date for such emergency rules; providing for the expiration of such rulemaking authority; providing effective dates.

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

Section 1. Effective January 1, 2025, subsection (2) of section 212.03, Florida Statutes, is amended to read:

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

(2)(a) The tax provided for in this section is ~~herein shall be~~ in addition to the total amount of the rental, must ~~shall~~ be charged by the lessor or person receiving the rent in and by said rental arrangement to the lessee or person paying the rental, and is ~~shall be~~ due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in this chapter, who receives such ~~said~~ rental or payment. The owner, lessor, or person receiving the rent shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter ~~shall~~ apply to and are ~~be~~ binding upon all persons who manage or operate hotels, apartment houses, roominghouses, tourist and trailer camps, and the rental of condominium units, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter.

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

advertising platform must collect and remit taxes as provided in this paragraph.

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

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

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

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

509.013 Definitions.—As used in this chapter, except as

provided in subsection (14), the term:

(1) "Advertising platform" means a person as defined in s. 1.01(3) which:

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

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

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

(3) ~~(1)~~ "Division" means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

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

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

(10)(a) ~~(4)(a)~~ "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 2 ~~1~~. and a nontransient public lodging establishment as defined in subparagraph 1 ~~2~~.

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

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

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

(b) The following are not considered public lodging establishments ~~excluded from the definitions in paragraph (a)~~:

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

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

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

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

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

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

7. A facility operated by a nonprofit which provides ~~Any~~

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

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

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

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

standards.

(b) The following are not considered public food service establishments ~~excluded from the definition in paragraph (a)~~:

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or

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

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

a. For the use of members and associates; or

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

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

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

division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

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

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

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

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

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

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

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

11. Any research and development test kitchen limited to

the use of employees and which is not open to the general public.

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

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

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

(13) ~~(9)~~ "Theme park or entertainment complex" means a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

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

(16) ~~(11)~~ "Transient establishment" means any public lodging establishment that is rented or leased to guests by an

operator whose intention is that such guests' occupancy will be temporary.

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

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

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

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

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

Section 3. Paragraph (c) of subsection (3) and subsection (7) of section 509.032, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

509.032 Duties.—

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

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

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

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

3.a. ~~Unless excluded under s. 509.013(5)(b),~~ A public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an

annual license, for a fee of no more than $1,000, which ~~that~~ entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

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

(7) PREEMPTION AUTHORITY.—

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

(b) A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011,

including such a law, ordinance, or regulation that is amended to be less restrictive or to comply with the local registration requirements provided in subsection (8), or when a law, ordinance, or regulation adopted after June 1, 2011, regulates vacation rentals, if such law, ordinance, or regulation is less restrictive than a law, ordinance, or regulation that was in effect on June 1, 2011.

(c) Paragraph (b) and subsection (8) do ~~does~~ not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

(d) The regulation of advertising platforms is preempted to the state.

(8) LOCAL REGISTRATION OF VACATION RENTALS; SUSPENSION; REVOCATIONS; FINES.—Notwithstanding paragraph (7)(a), a local law, ordinance, or regulation may require the registration of vacation rentals with a local vacation rental registration program. Local governments may implement a vacation rental registration program pursuant to this subsection and may impose a fine for failure to register under the local program. Any such registration program implemented by a local government shall be administered by the tax collector.

(a) A local government may charge a fee of no more than

$150 per unit for processing a registration application. A local law, ordinance, or regulation may require annual renewal of a registration and may charge a renewal fee of no more than $50 per unit for processing of a registration renewal. However, if there is a change of ownership, the new owner may be required to submit a new application for registration. Subsequent to the registration of a vacation rental, a local government may charge a fee, not to exceed $150, for a person authorized by s. 633.118 to inspect the vacation rental and enforce the laws and rules of the State Fire Marshall for issues pertaining to the uniform firesafety standards.

(b) As a condition of registration or renewal of a vacation rental, a local law, ordinance, or regulation establishing a local vacation rental registration program may require the operator of a vacation rental to do only the following:

1. Submit identifying information about the owner and the owner's operator, if applicable, and the subject vacation rental premises.

2. Provide proof of a license with the unique identifier issued by the division to operate as a vacation rental.

3. Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue, a county, or a municipality.

4. Update required information on a continuing basis to

ensure it is current.

5. Designate and maintain at all times a responsible party who is capable of responding to complaints or emergencies related to the vacation rental, including being available by telephone at a provided contact telephone number 24 hours a day, 7 days a week, and receiving legal notice of violations on behalf of the operator. The responsible party has until 9 a.m. the next calendar day to respond to a complaint or emergency by telephone or otherwise.

6. State the maximum occupancy of the vacation rental based on the number of sleeping accommodations for persons staying overnight in the vacation rental.

7. Pay in full all recorded municipal or county code liens against the subject vacation rental premises.

(c) Within 15 business days after receiving an application for registration of a vacation rental, a local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice of denial.

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

2. If a local government fails to accept or deny the registration within the timeframes provided in this paragraph,

the application is deemed accepted.

(d) If a local government denies a registration of a vacation rental, the local government must give written notice to the applicant. Such notice may be provided by United States mail or electronically. The notice must specify with particularity the factual reasons for the denial and include a citation to the applicable portions of the ordinance, rule, statute, or other legal authority for the denial of the registration. A local government may not prohibit an applicant from reapplying if the applicant cures the identified deficiencies.

(e)1. Upon an accepted vacation rental registration, a local government shall immediately assign a unique registration number to the vacation rental unit and provide the registration number or other indicia of registration to the vacation rental operator in writing or electronically.

2. The vacation rental operator must provide the vacation rental registration number to the division.

(f) A local government may fine a vacation rental operator up to $300 if he or she:

1. Fails to continue to meet the registration requirements in paragraph (b); or

2. Is operating a vacation rental without registering with the local government as a vacation rental.

(g) A certified copy of an order imposing a fine may be

recorded in the public records and thereafter constitutes a lien against the real property on which the violation exists. Upon petition to the circuit court, such order is enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order may not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this subsection shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this subsection runs in favor of the local government, and the local government may execute a satisfaction or release of lien. Three months or more after the filing of any such lien that remains unpaid, the local government may foreclose on the lien against the real property on which the violation exists or sue to recover a money judgment for the amount of the lien, plus accrued interest. A lien created pursuant to this part may not be foreclosed on real property that is a homestead under s. 4, Art. X of the State Constitution. The money judgment provisions of this section do not apply to real property or personal property that is covered under s. 4(a), Art. X of the State Constitution.

(h)1. If a vacation rental owner is found by the code enforcement board or special magistrate to have materially violated a local law, ordinance, or regulation that does not

solely apply to vacation rentals and the violation is directly related to the owner's vacation rental premises, the local government must issue a written notice of such violation.

2. If the owner is found to have materially violated a local law, ordinance, or regulation as described in subparagraph 1., the code enforcement board or special magistrate must make a recommendation to the local government as to whether an owner's vacation rental registration should be suspended.

3. The code enforcement board or special magistrate must recommend the suspension of the owner's vacation rental registration if the owner is found to have:

a. One or more material violations on 5 separate days during a 60-day period;

b. One or more material violations on 5 separate days during a 30-day period; or

c. One or more material violations after two prior suspensions of an owner's vacation rental registration during a 6-month period.

4. If the code enforcement board or special magistrate recommends suspension of an owner's vacation rental registration, a local government may suspend such registration for a period of:

a. Up to 15 days for one or more material violations on 5 separate days during a 60-day period;

b. Up to 30 days for one or more material violations on 5

separate days during a 30-day period; or

c. Up to 60 days for one or more material violations after two prior suspensions of an owner's vacation rental registration during a 6-month period.

5. A local government may not suspend an owner's vacation rental registration for violations of a local law, ordinance, or regulation which are not directly related to the vacation rental premises.

6. A local government must provide notice of the suspension of a vacation rental registration to the operator and the division within 5 days after the suspension. The notice must include the start date of the suspension, which must be at least 21 days after the suspension notice is sent to the operator and the division. Effective January 1, 2026, a local government must use the vacation rental information system described in s. 509.244 to provide notice of the suspension of a vacation rental registration to the division.

(i)1. A local government may revoke or refuse to renew a vacation rental registration of a specific vacation rental if:

a. The code enforcement board or special magistrate has found that the vacation rental owner has habitually committed material violations pursuant to paragraph (h) and has imposed the strictest penalty thereunder;

b. There is an unsatisfied recorded municipal lien or county lien on the real property of the vacation rental;

however, the local government must allow the vacation rental owner at least 60 days before the termination of a registration to satisfy the recorded municipal lien or county lien and must immediately and automatically reinstate or renew the registration upon satisfaction of such lien; or

c. The vacation rental premises and its owner are the subject of a final order or judgment by a court of competent jurisdiction lawfully directing the termination of the premises' use as a vacation rental.

2. A local government must provide notice of the termination of or refusal to renew a vacation rental registration to the operator and the division within 5 days after the termination or refusal to renew. The notice must include the date of termination or nonrenewal, which must be at least 21 days after the notice is sent to the operator and the division. Effective January 1, 2026, a local government must use the vacation rental information system as established in s. 509.244 to provide notice of the termination of or refusal to renew a vacation rental registration to the division.

(j) A vacation rental owner may appeal a denial, suspension, or termination of a vacation rental registration, or a refusal to renew such registration, to the circuit court. An appeal must be filed within 30 days after the issuance of the denial, suspension, or termination of, or refusal to renew, the vacation rental registration. The court may assess and award

reasonable attorney fees and costs and damages to a vacation rental owner.

(k) A vacation rental owner may apply for registration upon the sale of the vacation rental premises to a new owner or 6 months after revocation of or refusal to renew the vacation rental registration pursuant to paragraph (i).

This subsection does not prohibit a local government from establishing a local law, ordinance, or regulation if it is uniformly applied without regard to whether the residential property is used as a vacation rental.

Section 4. Effective January 1, 2025, present paragraph (c) of subsection (4) of section 509.241, Florida Statutes, is redesignated as paragraph (d), a new paragraph (c) is added to that subsection, subsection (5) is added to that section, and subsections (2) and (3) of that section are amended, to read:

509.241 Licenses required; exceptions; division online accounts and transactions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division before ~~prior to~~ the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply

for or receive a public lodging establishment license. Upon receiving an application for a vacation rental license, the division may grant a temporary license that authorizes the vacation rental to begin operation while the application is pending. The temporary license automatically expires upon final agency action regarding the license application.

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

(4) ONLINE ACCOUNT AND TRANSACTIONS.—Each person who plans to open a public lodging establishment or a public food service establishment and each licensee or licensed agent must create and maintain a division online account and provide an e-mail address to the division to function as the primary contact for all communication from the division.

(c) Each licensee or licensed agent managing a license classified as a vacation rental as defined in s. 509.242(1)(c) must submit to the division, through the division's online system, any applicable local vacation rental registration

number.

(5) UNIQUE IDENTIFIER.—The division shall include a unique identifier on each vacation rental license it issues which identifies each individual vacation rental dwelling or unit.

Section 5. Effective January 1, 2025, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1) An advertising platform shall require that a person who places an advertisement or listing for a vacation rental which offers it for rent do all of the following:

(a) Include in the advertisement or listing the vacation rental license number with the associated unique identifier and, if applicable, the local registration number.

(b) Attest to the best of the person's knowledge that the vacation rental's license and, if applicable, its local registration are current and valid and that all related information is accurately stated in the advertisement.

(2) An advertising platform shall display the vacation rental license number with the associated unique identifier.

(3) Effective January 1, 2026, an advertising platform shall:

(a) Remove the ability to book an advertisement or a listing from its online application, software, website, or system within 15 business days after notification through the vacation rental information system as established in s. 509.244

that a vacation rental license or, if applicable, a local registration:

1. Has been suspended, revoked, or not renewed; or

2. Fails to display a valid vacation rental license number with the associated unique identifier, or, if applicable, a local registration number.

(b) Provide to the division on a quarterly basis, in a manner compatible with the vacation rental information system as established in s. 509.244, a list of all vacation rentals in the state which are advertised on its platform, along with the uniform resource locator for the Internet address of the vacation rental advertisement and the vacation rental license number associated with the vacation rental.

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

(5) If the division has probable cause to believe that a person not licensed by the division has violated this chapter or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under s. 120.569 or

s. 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates any provision of the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, it is entitled to collect attorney fees and costs, together with any cost of collection.

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

(7) An advertising platform shall adopt an antidiscrimination policy to help prevent discrimination by its users and shall inform all users that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin, as provided in s. 509.092.

(8) This section does not create a private cause of action

against advertising platforms. An advertising platform may not be held liable for any action that it takes voluntarily and in good faith in relation to its users in compliance with this chapter or the advertising platform's terms of service.

Section 6. Section 509.244, Florida Statutes, is created to read:

509.244 Vacation rental information system.—

(1) As used in this section, the term "application program interface" means a predefined protocol for reading or writing data across a network using a file system or a database.

(2) By July 1, 2025, the division shall create and maintain a vacation rental information system readily accessible through an application program interface. At a minimum, the system must do all of the following:

(a) Facilitate prompt compliance with this chapter by a licensee or an advertising platform.

(b) Allow local government users to notify the division of a termination or failure to renew, or the period of suspension of, a local registration, if applicable.

(c) Provide a system interface to allow local governments to verify the status of a vacation rental, if applicable.

(d) Allow a registered user to subscribe to receive automated notifications of changes to the license and registration status of a vacation rental, including any license revocation, local registration termination, period of suspension

imposed by the division or local government, or failure to renew a license or local registration.

Section 7. Subsection (11) is added to section 509.261, Florida Statutes, to read:

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

(11)(a) The division may revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a license of a vacation rental for any of the following reasons:

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

2. Local registration of the vacation rental is suspended or revoked by a local government as provided in s. 509.032(8).

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

(b) The division must specify the license number with the associated unique identifier of the vacation rental dwelling or unit which has been revoked, not renewed, or suspended and input such status in the vacation rental information system described

in s. 509.244.

(c) If the division suspends a license for the reason specified in subparagraph (a)2., the suspension must run concurrently with the local registration suspension.

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

159.27 Definitions.—The following words and terms, unless the context clearly indicates a different meaning, shall have the following meanings:

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

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

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a

representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(jj) *Complimentary meals.*—Also exempt from the tax imposed by this chapter are food or drinks that are furnished as part of a packaged room rate by any person offering for rent or lease any transient public lodging establishments ~~living accommodations~~ as described in s. 509.013(10)(a) ~~s. 509.013(4)(a)~~ which are licensed under part I of chapter 509 and which are subject to the tax under s. 212.03, if a separate charge or specific amount for the food or drinks is not shown. Such food or drinks are considered to be sold at retail as part of the total charge for the transient living accommodations.

Moreover, the person offering the accommodations is not considered to be the consumer of items purchased in furnishing such food or drinks and may purchase those items under conditions of a sale for resale.

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

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

(4)

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

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

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

(5) NOTIFICATION ON REAL ESTATE DOCUMENTS.—Notification shall be provided on at least one document, form, or application executed at the time of, or before ~~prior to~~, contract for sale

and purchase of any building or execution of a rental agreement for any building. Such notification must ~~shall~~ contain the following language:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

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

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

477.0135 Exemptions.—

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

~~509.013(9)~~.

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

509.221 Sanitary regulations.—

(2)

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

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

553.5041 Parking spaces for persons who have disabilities.—

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

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

entertainment complex or to transportation to such an accessible entrance.

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

559.955 Home-based businesses; local government restrictions.—

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

(b) Local laws, ordinances, or regulations related to transient public lodging establishments~~,~~ as defined in s. 509.013(10)(a)2. which ~~s. 509.013(4)(a)1., that~~ are not otherwise preempted under chapter 509.

Section 16. Paragraph (d) of subsection (7) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(7)

(d) Any corporation, partnership, or individual operating a club which owns or leases and which maintains any bona fide beach or cabana club consisting of beach facilities, swimming pool, locker rooms or bathroom facilities for at least 100 persons, and a public food service establishment as defined in s. 509.013 ~~s. 509.013(5)(a)~~, comprising in all an area of at least 5,000 square feet located on a contiguous tract of land of in excess of 1 acre may be issued a license under s. 565.02(4). The failure of such club to maintain the facilities shall be a ground for revocation of the license.

Section 17. Subsection (2) of section 705.17, Florida Statutes, is amended to read:

705.17 Exceptions.—

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

Section 18. Section 705.185, Florida Statutes, is amended to read:

705.185 Disposal of personal property lost or abandoned on the premises of certain facilities.—When any lost or abandoned personal property is found on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with this section, any lost or abandoned property must be delivered to such owner or operator, who must take charge of the property and make a record of the date such property was found. If the property is not claimed by its owner within 30 days after

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

Section 19. Section 717.1355, Florida Statutes, is amended to read:

717.1355 Theme park and entertainment complex tickets.—This chapter does not apply to any tickets for admission to a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, or to any tickets to a permanent exhibition or recreational activity within such theme park or entertainment complex.

Section 20. Subsection (8) of section 877.24, Florida Statutes, is amended to read:

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

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

Section 21. The application of this act does not supersede any current or future declaration or declaration of condominium adopted pursuant to chapter 718, Florida Statutes; any cooperative document adopted pursuant to chapter 719, Florida Statutes; or any declaration or declaration of covenant adopted pursuant to chapter 720, Florida Statutes.

Section 22. (1) The Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing the amendments made by this act to s. 212.03, Florida Statutes, including establishing procedures to facilitate the remittance of taxes.

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

(3) This section expires January 1, 2026.

Section 23. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2024.

COMMERCE COMMITTEE

HB 1537 by Rep. Griffitts
Vacation Rentals

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Griffitts (lines 475-802):

- Makes clarifying and technical changes to the bill.
- Specifies that tax collectors may charge a fee for processing vacation rental registrations.
- Requires instead of authorizes the Division of Hotels and Restaurants to grant temporary vacation rental licenses in certain situations, and specifies such licenses become permanent upon final agency action regarding the license application.
- Requires the Division to include the nature of the deficiency in suspension notices on the vacation rental information system.
- Revises the requirement for advertising platforms to collect and remit certain taxes, to also require the designated operator listing a property with an advertising platform to collect and remit such taxes.
- Removes the requirement that an advertising platform remove the ability to book an advertisement or listing if a local registration has been suspended, revoked, not renewed, or failed to display the license number or unique identifier.
- Removes the requirement that a local government use the vacation rental information system as established in s. 509.244, F.S., to provide notice of the termination of or refusal to renew a vacation rental registration to the Division.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Griffitts offered the following:

Amendment (with title amendment)

Remove lines 475-802 and insert:

(a) A local government or tax collector may charge a fee of no more than $150 per unit for processing a registration application. A local law, ordinance, or regulation may require annual renewal of a registration and may charge a renewal fee of no more than $50 per unit for processing of a registration renewal. However, if there is a change of ownership, the new owner may be required to submit a new application for registration. Subsequent to the registration of a vacation rental, a local government may charge a fee, not to exceed $150, for a person authorized by s. 633.118 to inspect the vacation

rental and enforce the laws and rules of the State Fire Marshall for issues pertaining to the uniform firesafety standards.

(b) As a condition of registration or renewal of a vacation rental, a local law, ordinance, or regulation establishing a local vacation rental registration program may require the operator of a vacation rental to do only the following:

1. Submit identifying information about the owner and the owner's operator, if applicable, and the subject vacation rental premises.

2. Provide proof of a license with the unique identifier issued by the division to operate as a vacation rental.

3. Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue, a county, or a municipality.

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

5. Designate and maintain at all times a responsible party who is capable of responding to complaints or emergencies related to the vacation rental, including being available by telephone at a provided contact telephone number 24 hours a day, 7 days a week, and receiving legal notice of violations on behalf of the operator. The responsible party has until 9 a.m. the next calendar day to respond to a complaint or emergency by telephone or otherwise.

6. State the maximum occupancy of the vacation rental based on the number of sleeping accommodations for persons staying overnight in the vacation rental.

7. Pay in full all recorded municipal or county code liens against the subject vacation rental premises.

(c) Within 15 business days after receiving an application for registration of a vacation rental, a local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice of denial.

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

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

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

from reapplying if the applicant cures the identified deficiencies.

(e)1. Upon an accepted vacation rental registration, a local government shall immediately assign a unique registration number to the vacation rental unit and provide the registration number or other indicia of registration to the vacation rental operator in writing or electronically.

2. The vacation rental operator must provide the vacation rental registration number to the division.

(f) A local government may fine a vacation rental operator up to $300 if he or she:

1. Fails to continue to meet the registration requirements in paragraph (b); or

2. Is operating a vacation rental without registering with the local government as a vacation rental.

(g) A certified copy of an order imposing a fine may be recorded in the public records and thereafter constitutes a lien against the real property on which the violation exists. Upon petition to the circuit court, such order is enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order may not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this subsection shall continue to accrue until the violator comes into compliance or until judgment is rendered in

a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this subsection runs in favor of the local government, and the local government may execute a satisfaction or release of lien. Three months or more after the filing of any such lien that remains unpaid, the local government may foreclose on the lien against the real property on which the violation exists or sue to recover a money judgment for the amount of the lien, plus accrued interest. A lien created pursuant to this part may not be foreclosed on real property that is a homestead under s. 4, Art. X of the State Constitution. The money judgment provisions of this section do not apply to real property or personal property that is covered under s. 4(a), Art. X of the State Constitution.

(h)1. If a vacation rental owner is found by the code enforcement board or special magistrate to have materially violated a local law, ordinance, or regulation that does not solely apply to vacation rentals and the violation is directly related to the owner's vacation rental premises, the local government must issue a written notice of such violation.

2. If the owner is found to have materially violated a local law, ordinance, or regulation as described in subparagraph 1., the code enforcement board or special magistrate must make a recommendation to the local government as to whether an owner's vacation rental registration should be suspended.

3. The code enforcement board or special magistrate must

recommend the suspension of the owner's vacation rental registration if the owner is found to have:

a. One or more material violations on 5 separate days during a 60-day period;

b. One or more material violations on 5 separate days during a 30-day period; or

c. One or more material violations after two prior suspensions of an owner's vacation rental registration during a 6-month period.

4. If the code enforcement board or special magistrate recommends suspension of an owner's vacation rental registration, a local government may suspend such registration for a period of:

a. Up to 15 days for one or more material violations on 5 separate days during a 60-day period;

b. Up to 30 days for one or more material violations on 5 separate days during a 30-day period; or

c. Up to 60 days for one or more material violations after two prior suspensions of an owner's vacation rental registration during a 6-month period.

5. A local government may not suspend an owner's vacation rental registration for violations of a local law, ordinance, or regulation which are not directly related to the vacation rental premises.

6. A local government must provide notice of the

suspension of a vacation rental registration to the operator and the division within 5 days after the suspension. The notice must include the start date of the suspension, which must be at least 21 days after the suspension notice is sent to the operator and the division. Effective January 1, 2026, a local government must use the vacation rental information system described in s. 509.244 to provide notice of the suspension of a vacation rental registration to the division.

(i)1. A local government may revoke or refuse to renew a vacation rental registration of a specific vacation rental if:

a. The code enforcement board or special magistrate has found that the vacation rental owner has habitually committed material violations pursuant to paragraph (h) and has imposed the strictest penalty thereunder;

b. There is an unsatisfied recorded municipal lien or county lien on the real property of the vacation rental; however, the local government must allow the vacation rental owner at least 60 days before the termination of a registration to satisfy the recorded municipal lien or county lien and must immediately and automatically reinstate or renew the registration upon satisfaction of such lien; or

c. The vacation rental premises and its owner are the subject of a final order or judgment by a court of competent jurisdiction lawfully directing the termination of the premises' use as a vacation rental.

2. A local government must provide notice of the termination of or refusal to renew a vacation rental registration to the operator and the division within 5 days after the termination or refusal to renew. The notice must include the date of termination or nonrenewal, which must be at least 21 days after the notice is sent to the operator and the division.

(j) A vacation rental owner may appeal a denial, suspension, or termination of a vacation rental registration, or a refusal to renew such registration, to the circuit court. An appeal must be filed within 30 days after the issuance of the denial, suspension, or termination of, or refusal to renew, the vacation rental registration. The court may assess and award reasonable attorney fees and costs and damages to a vacation rental owner.

(k) A vacation rental owner may apply for registration upon the sale of the vacation rental premises to a new owner or 6 months after revocation of or refusal to renew the vacation rental registration pursuant to paragraph (i).

This subsection does not prohibit a local government from establishing a local law, ordinance, or regulation if it is uniformly applied without regard to whether the residential property is used as a vacation rental.

Section 4. Effective January 1, 2025, present paragraph

(c) of subsection (4) of section 509.241, Florida Statutes, is redesignated as paragraph (d), a new paragraph (c) is added to that subsection, subsection (5) is added to that section, and subsections (2) and (3) of that section are amended, to read:

509.241 Licenses required; exceptions; division online accounts and transactions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division before ~~prior to~~ the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive a public lodging establishment license. Upon receiving an application for a vacation rental license, the division shall grant a temporary license that authorizes the vacation rental to begin operation while the application is pending. The temporary license becomes permanent upon final agency action regarding the license application that grants the vacation rental license.

(3) DISPLAY OF LICENSE.—A ~~Any~~ license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all

advertising for catering services. The operator of a vacation rental offered for transient occupancy through an advertising platform must also conspicuously display the vacation rental's local registration number, if applicable, inside the unit in a visible location.

(4) ONLINE ACCOUNT AND TRANSACTIONS.—Each person who plans to open a public lodging establishment or a public food service establishment and each licensee or licensed agent must create and maintain a division online account and provide an e-mail address to the division to function as the primary contact for all communication from the division.

(c) Each licensee or licensed agent managing a license classified as a vacation rental as defined in s. 509.242(1)(c) must submit to the division, through the division's online system, any applicable local vacation rental registration number.

(5) UNIQUE IDENTIFIER.—The division shall include a unique identifier expressed as a series of letters or numbers at the end of the vacation rental license number on each vacation rental license it issues which identifies each individual vacation rental dwelling or unit.

Section 5. Effective January 1, 2025, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1) An advertising platform shall require that a person

who places an advertisement or listing for a vacation rental which offers it for rent do all of the following:

(a) Include in the advertisement or listing the vacation rental license number with the associated unique identifier.

(b) Attest to the best of the person's knowledge that the vacation rental's license and, if applicable, its local registration are current and valid and that all related information is accurately stated in the advertisement.

(2) An advertising platform shall display the vacation rental license number with the associated unique identifier.

(3) Effective January 1, 2026, an advertising platform shall:

(a) Remove the ability to book an advertisement or a listing from its online application, software, website, or system within 15 business days after notification through the vacation rental information system as established in s. 509.244 that a vacation rental license:

1. Has been suspended, revoked, or not renewed; or

2. Fails to display a valid vacation rental license number with the associated unique identifier.

The notification shall identify the nature of the deficiency.

(b) Provide to the division on a quarterly basis, in a manner compatible with the vacation rental information system as established in s. 509.244, a list of all vacation rentals in the

state which are advertised on its platform, including the uniform resource locator for the Internet address of the vacation rental advertisement and the vacation rental license number associated with the vacation rental.

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

(5) If the division has probable cause to believe that a person not licensed by the division has violated this chapter or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under s. 120.569 or s. 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates any provision of the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, it is entitled to collect attorney fees and costs, together with any cost of collection.

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

(7) An advertising platform shall adopt an antidiscrimination policy to help prevent discrimination by its users and shall inform all users that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin, as provided in s. 509.092.

(8) This section does not create a private cause of action against advertising platforms. An advertising platform may not be held liable for any action that it takes voluntarily and in good faith in relation to its users in compliance with this chapter or the advertising platform's terms of service.

Section 6. Section 509.244, Florida Statutes, is created to read:

509.244 Vacation rental information system.—

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

interface" means a predefined protocol for reading or writing data across a network using a file system or a database.

(2) By July 1, 2025, the division shall create and maintain a vacation rental information system readily accessible through an application program interface. At a minimum, the system must do all of the following:

(a) Facilitate prompt compliance with this chapter by a licensee or an advertising platform.

(b) Provide a system interface to allow local governments to verify the status of a vacation rental, if applicable.

(c) Allow a registered user to subscribe to receive automated notifications of changes to the license and registration status of a vacation rental, including any license revocation, local registration termination, period of suspension imposed by the division or local government, or failure to renew a license or local registration.

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

Remove lines 21-103 and insert:

authorizing local governments and tax collectors to charge a specified fee for processing registration applications; authorizing local laws, ordinances, or regulations to require annual renewal of a

registration and to charge a fee for such renewal; providing that a change in ownership may require a new application for registration; authorizing local governments to charge a specified fee to inspect a vacation rental and enforce certain laws and rules for issues pertaining to uniform life safety requirements; specifying requirements and procedures for, and limitations on, local vacation rental registration programs; authorizing local governments to fine vacation rental operators under certain circumstances; specifying procedures related to the imposition of fines; providing applicability relating to certain money judgment provisions; requiring local governments to issue written notices of material violations under certain circumstances; requiring the code enforcement board or special magistrate to make certain recommendations under specified circumstances; authorizing local governments to suspend an owner's vacation rental registration for specified periods of time; prohibiting local governments from suspending an owner's vacation rental registration for violations not directly related to the vacation rental premises; requiring, within a specified timeframe, local governments to provide notice of registration suspension to vacation rental operators and the

Division of Hotels and Restaurants of the Department of Business and Professional Regulation; providing requirements for such notice; requiring, by a certain date, local governments to use the vacation rental information system to provide such notice to the division; authorizing local governments to revoke or refuse to renew a vacation rental registration of a specific vacation rental under certain circumstances; requiring, within a specified timeframe, local governments to provide notice of termination of or refusal to renew a vacation rental registration to vacation rental operators and the division; requiring, by a certain date, local governments to use the vacation rental information system to provide such notice to the division; providing that vacation rental owners may appeal a denial, suspension, or termination of, or a refusal to renew, a vacation rental registration; providing procedures for such appeal; authorizing a vacation rental owner to apply for registration upon the sale of the vacation rental premises or 6 months after revocation of or refusal to renew the vacation rental registration; providing construction; amending s. 509.241, F.S.; requiring the division to issue temporary licenses upon receipt of vacation rental license applications while such

applications are pending; providing for expiration of such licenses; requiring that any license issued by the division be conspicuously displayed to the public inside the licensed establishment; requiring that operators of vacation rentals which offer a vacation rental for transient occupancy through an advertising platform also display to the public inside the vacation rental its local registration number, if applicable; requiring licensees or licensed agents managing a license classified as a vacation rental to submit local vacation rental registration numbers, if applicable, to the division through the division's online system; requiring the division to include a unique identifier on each vacation rental license issued which identifies each individual vacation rental dwelling or unit; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements or listings for vacation rentals include certain information in the advertisements or listings and attest to certain information; requiring advertising platforms to display certain information; requiring, as of a specified date, advertising platforms to remove the ability to book an advertisement or a listing under certain circumstances and to provide to the division

on a quarterly basis, in a specified manner, a list of all vacation rentals in the state which are advertised on its platforms, along with other specified information; requiring advertising platforms or designated operators of such platforms to

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1541 Transparency In Social Media
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Fine
TIED BILLS: **IDEN./SIM. BILLS:** SB 1448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 0 N, As CS	Wright	Anstead
2) Commerce Committee		Wright	Hamon

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 15 percent owned or 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 visited Feb. 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" 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.[74] The term "owned or controlled" means that a national, government, or corporation designated as 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.
- "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] As defined in 15 C.F.R. s. 7.4.

    - 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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 6, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- 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.

[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).

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

A bill to be entitled

An act relating to 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" 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 term "owned or controlled" means that a national, government, or corporation designated as a foreign adversary 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.

(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.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1555 Cybersecurity
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Energy, Communications & Cybersecurity Subcommittee, Giallombardo
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1662

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	15 Y, 0 N, As CS	Bauldree	Keating
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N, As CS	Mullins	Topp
3) Commerce Committee		Bauldree	Hamon

SUMMARY ANALYSIS

Over the last decade, cybersecurity has rapidly become a growing concern. Cyberattacks are growing in frequency and severity. Currently, the Department of Management Services (DMS) oversees information technology (IT) governance and security for the executive branch of state government. The Florida Digital Service (FLDS) is housed within DMS and was established in 2020 to replace the Division of State Technology. Through FLDS, DMS implements duties and policies for IT and cybersecurity for state agencies.

The bill:

- Revises the duties of FLDS;
- Provides definitions;
- Provides that the state chief information officer (CIO), in consultation with the Secretary of DMS, must designate a state chief technology officer and specifies the position's responsibilities;
- Requires state agencies to report all ransomware incidents, regardless of severity level, to the FLDS Cybersecurity Operations Center (CSOC) as soon as possible, but no later than 12 hours after a cybersecurity incident and no later than 6 hours after the discovery of a ransomware incident;
- Requires local governments to report any cybersecurity incident determined to be level 3, 4, or 5 to the CSOC rather than to the Cybercrime Office and the sheriff who has jurisdiction over the local government;
- Requires the CSOC to immediately notify the Cybercrime Office of the Florida Department of Law Enforcement of a reported incident;
- Requires the CSOC to immediately the state chief information security officer of a reported incident; and
- Revises the mission, goals, and responsibilities of the Florida Center for Cybersecurity.

The bill has an indeterminate fiscal impact on state expenditures. *See* Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Over the last decade, cybersecurity has rapidly become a growing concern. Cyberattacks are growing in frequency and severity. Cybercrime was expected to inflict $8 trillion worth of damage globally in 2023.[1] The United States is often a target of cyberattacks, including attacks on critical infrastructure, and has been a target of more significant cyberattacks[2] over the last 14 years than any other country.[3] The Colonial Pipeline is an example of critical infrastructure that was attacked, disrupting what is arguably the nation's most important fuel conduit.[4]

Ransomware is a type of cybersecurity incident where malware[5] that is designed to encrypt files on a device renders the files and the systems that rely on them unusable. In other words, critical information is no longer accessible. During a ransomware attack, malicious actors demand a ransom in exchange for regained access through decryption. If the ransom is not paid, the ransomware actors will often threaten to sell or leak the data or authentication information. Even if the ransom is paid, there is no guarantee that the bad actor will follow through with decryption.

In recent years, ransomware incidents have become increasingly prevalent among the nation's state, local, tribal, and territorial government entities and critical infrastructure organizations.[6] For example, Tallahassee Memorial Hospital was hit by a ransomware attack early in 2023, and the hospital's systems were forced to shut down, impacting many local residents in need of medical care.[7] Likewise, Tampa General Hospital detected a data breach in May of 2023, which may have compromised the data of up to 1.2 million patients.[8]

IT and Cybersecurity Management

The Department of Management Services (DMS) oversees information technology (IT)[9] governance and security for the executive branch in Florida.[10] The Florida Digital Service (FLDS) is housed within

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[1] Cybercrime Magazine, *Cybercrime to Cost the World $8 Trillion Annually in 2023*, https://cybersecurityventures.com/cybercrime-to-cost-the-world-8-trillion-annually-in-2023/ (last visited Jan. 23, 2024).
[2] "Significant cyber-attacks" are defined as cyber-attacks on a country's government agencies, defense, and high-tech companies, or economic crimes with losses equating to more than a million dollars. FRA Conferences, *Study: U.S. Largest Target for Significant Cyber-Attacks*, https://www.fraconferences.com/insights-articles/compliance/study-us-largest-target-for-significant-cyber-attacks/#:~:text=The%20United%20States%20has%20been%20on%20the%20receiving,article%20is%20from%20FRA%27s%20sister%20company%2C%20Compliance%20Week (last visited Jan. 23, 2024).
[3] *Id*.
[4] S&P Global, *Pipeline operators must start reporting cyberattacks to government: TSA orders*, https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/electric-power/052721-pipeline-operators-must-start-reporting-cyberattacks-to-government-tsa-orders?utm_campaign=corporatepro&utm_medium=contentdigest&utm_source=esgmay2021 (last visited Jan. 23, 2024).
[5] "Malware" means hardware, firmware, or software that is intentionally included or inserted in a system for a harmful purpose. https://csrc.nist.gov/glossary/term/malware (last visited Jan. 23, 2024).
[6] Cybersecurity and Infrastructure Agency, *Ransomware 101,* https://www.cisa.gov/stopransomware/ransomware-101 (last visited Jan. 23, 2024).
[7] Tallahassee Democrat, *TMH says it has taken 'major step' toward restoration after cybersecurity incident* (Feb. 15, 2023) https://www.tallahassee.com/story/news/local/2023/02/14/tmh-update-hospital-has-taken-major-step-toward-restoration/69904510007/ (last visited Jan. 23, 2023).
[8] Alessandro Mascellino, Infosecurity Magazine, *Tampa General Hospital Data Breach Impacts 1.2 Million Patients* (Jul. 24, 2023), https://www.infosecurity-magazine.com/news/tampa-hospital-data-breach/ (last visited Jan. 24, 2023).
[9] The term "information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. S. 282.0041(19), F.S.
[10] *See* s. 20.22, F.S.

DMS and was established in 2020 to replace the Division of State Technology.[11] FLDS works under DMS to implement policies for IT and cybersecurity for state agencies.[12]
The head of FLDS is appointed by the Secretary of Management Services[13] and serves as the state chief information officer (CIO).[14] The CIO must have at least five years of experience in the development of IT system strategic planning and IT policy and, preferably, have leadership-level experience in the design, development, and deployment of interoperable software and data solutions.[15] FLDS must propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support Florida's cloud first policy.[16]

DMS, through FLDS, has the following powers, duties, and functions:

- Develop IT policy for the management of the state's IT resources;
- Develop an enterprise architecture;
- Establish project management and oversight standards with which state agencies must comply when implementing IT projects;
- Perform project oversight on all state agency IT projects that have a total cost of $10 million or more and that are funded in the General Appropriations Act or any other law; and
- Identify opportunities for standardization and consolidation of IT services that support interoperability, Florida's cloud first policy, and business functions and operations that are common across state agencies.[17]

State Cybersecurity Act

In 2021, the Legislature passed the State Cybersecurity Act,[18] which requires DMS and the heads of the state agencies[19] to meet certain requirements to enhance the cybersecurity[20] of the state agencies. DMS is tasked with completing the following, through FLDS:

- Establishing standards for assessing agency cybersecurity risks;
- Adopting rules to mitigate risk, support a security governance framework, and safeguard agency digital assets, data,[21] information, and IT resources;[22]
- Designating a chief information security officer (CISO);
- Developing and annually updating a statewide cybersecurity strategic plan to address matters such as identification and mitigation of risk, protections against threats, and tactical risk detection for cyber incidents;[23]
- Developing and publishing for use by state agencies a cybersecurity governance framework;
- Assisting the state agencies in complying with the State Cybersecurity Act;
- Annually providing training on cybersecurity for managers and team members;
- Annually reviewing the strategic and operational cybersecurity plans of state agencies;
- Tracking the state agencies' implementation of remediation plans;

[11] Ch. 2020-161, L.O.F.
[12] *See* s. 20.22(2)(b), F.S.
[13] The Secretary of Management Services serves as the head of DMS and is appointed by the Governor, subject to confirmation by the Senate. S. 20.22(1), F.S.
[14] S. 282.0051(2)(a), F.S.
[15] *Id.*
[16] S. 282.0051(1), F.S.
[17] *Id*.
[18] Ch. 2012-234, L.O.F.
[19] For purposes of the State Cybersecurity Act, the term "state agency" includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services. S. 282.318(2), F.S.
[20] "Cybersecurity" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and IT resources. S. 282.0041(8), F.S.
[21] "Data" means a subset of structured information in a format that allows such information to be electronically retrieved and transmitted. S. 282.0041(9), F.S.
[22] "Information technology resources" means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training. S. 282.0041(22), F.S.
[23] "Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of IT resources, security, policies, or practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur. S. 282.0041(19), F.S.

- Providing cybersecurity training to all state agency technology professionals that develops, assesses, and documents competencies by role and skill level;
- Maintaining a Cybersecurity Operations Center (CSOC) led by the CISO to serve as a clearinghouse for threat information and coordinate with FDLE to support responses to incidents; and
- Leading an Emergency Support Function under the state emergency management plan.[24]

The State Cybersecurity Act requires the head of each state agency to designate an information security manager to administer the state agency's cybersecurity program.[25] The head of the agency has additional tasks in protecting against cybersecurity threats as follows:

- Establish a cybersecurity incident response team with FLDS and the Cybercrime Office in FDLE, which must immediately report all confirmed or suspected incidents to the CISO;
- Annually submit to DMS the state agency's strategic and operational cybersecurity plans;
- Conduct and update a comprehensive risk assessment to determine the security threats;
- Develop and update written internal policies and procedures for reporting cyber incidents;
- Implement safeguards and risk assessment remediation plans to address identified risks;
- Ensure internal audits and evaluations of the agency's cybersecurity program are conducted;
- Ensure that the cybersecurity requirements for the solicitation, contracts, and service-level agreement of IT and IT resources meet or exceed applicable state and federal laws, regulations, and standards for cybersecurity, including the National Institute of Standards and Technology (NIST)[26] cybersecurity framework;
- Provide cybersecurity training to all agency employees within 30 days of employment; and
- Develop a process that is consistent with the rules and guidelines established by FLDS for detecting, reporting, and responding to threats, breaches, or cybersecurity incidents.[27]

Florida Cybersecurity Advisory Council

The Florida Cybersecurity Advisory Council[28] (CAC) within DMS[29] assists state agencies in protecting IT resources from cyber threats and incidents.[30] The CAC must assist FLDS in implementing best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force – a task force created to review and assess the state's cybersecurity infrastructure, governance, and operations.[31] The CAC meets at least quarterly to:

- Review existing state agency cybersecurity policies;
- Assess ongoing risks to state agency IT;
- Recommend a reporting and information sharing system to notify state agencies of new risks;
- Recommend data breach simulation exercises;
- Assist FLDS in developing cybersecurity best practice recommendations; and
- Examine inconsistencies between state and federal law regarding cybersecurity.[32]

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[24] Ch. 2021-234, L.O.F.
[25] S. 282.318(4)(a), F.S.
[26] NIST, otherwise known as the National Institute of Standards and Technology, "is a non-regulatory government agency that develops technology, metrics, and standards to drive innovation and economic competitiveness at U.S.-based organizations in the science and technology industry." Nate Lord, *What is NIST Compliance*, DataInsider (Dec. 1, 2020), https://www.digitalguardian.com/blog/what-nist-compliance (last visited Jan. 23, 2024).
[27] S. 282.318(4), F.S.
[28] The CAC is comprised of: the Lieutenant Governor or his or her designee; the state CIO; the state chief information security officer; the director of the Division of Emergency Management or his or her designee; a representative of the computer crime center of the Department of Law Enforcement, appointed by the executive director of the Department of Law Enforcement; a representative of the Florida Fusion Center of the Department of Law Enforcement, appointed by the executive director of the Department of Law Enforcement; the Chief Inspector General; up to two representatives from institutions of higher education located in this state, appointed by the Governor; three representatives from critical infrastructure sectors, one of whom must be from a water treatment facility, appointed by the Governor; four representatives of the private sector with senior level experience in cybersecurity or software engineering from within the finance, energy, health care, and transportation sectors, appointed by the Governor; and two representatives with expertise on emerging technology, with one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives. S, 282.319(3), F.S.
[29] S. 282.319(1), F.S.
[30] S. 282.319(2), F.S.
[31] S. 282.319(3), F.S.
[32] S. 282.319(9), F.S.

The CAC must work with NIST and other federal agencies, private sector businesses, and private security experts to identify which local infrastructure sectors, not covered by federal law, are at the greatest risk of cyber-attacks and to identify categories of critical infrastructure as critical cyber infrastructure if cyber damage to the infrastructure could result in catastrophic consequences.[33]

The CAC must also prepare and submit a comprehensive report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes data, trends, analysis, findings, and recommendations for state and local action regarding ransomware incidents that includes:

- Descriptive statistics, including the amount of ransom requested, duration of the incident, and overall monetary cost to taxpayers of the incident;
- A detailed statistical analysis of the circumstances that led to the ransomware incident which does not include the name of the state agency or local government, network information, or system identifying information;
- Statistical analysis of the level of cybersecurity employee training and frequency of data backup for the state agencies or local governments that reported incidents;
- Specific issues identified with current policy, procedure, rule, or statute and recommendations to address those issues; and
- Other recommendations to prevent ransomware incidents.

Cyber Incident Response

The National Cyber Incident Response Plan (NCIRP) was developed according to the direction of Presidential Policy Directive-41,[34] by the U.S. Department of Homeland Security. The NCIRP is part of the broader National Preparedness System and establishes the strategic framework for a whole-of-Nation approach to mitigating, responding to, and recovering from cybersecurity incidents posing risk to critical infrastructure.[35] The NCIRP was developed in coordination with federal, state, local, and private sector entities and is designed to interface with industry best practice standards for cybersecurity, including the NIST Cybersecurity Framework.

The NCIRP adopted a schema for describing the severity of cybersecurity incidents affecting the U.S. The schema establishes a common framework to evaluate and assess cybersecurity incidents to ensure that all departments and agencies have a common view of the severity of a given incident; urgency required for responding to a given incident; seniority level necessary for coordinating response efforts; and level of investment required for response efforts.[36]

The severity level of a cybersecurity incident in accordance with the NCIRP is determined as follows:

- Level 5: An emergency-level incident within the specified jurisdiction if the incident poses an imminent threat to the provision of wide-scale critical infrastructure services; national, state, or local security; or the lives of the country's, state's, or local government's citizens.
- Level 4: A severe-level incident if the incident is likely to result in a significant impact within the affected jurisdiction which affects the public health or safety; national, state, or local security; economic security; or individual civil liberties.
- Level 3: A high-level incident if the incident is likely to result in a demonstrable impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.
- Level 2: A medium-level incident if the incident may impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

[33] S. 282.319(10), F.S.
[34] Annex for PPD-41: *U.S. Cyber Incident Coordination*, available at: https://obamawhitehouse.archives.gov/the-press-office/2016/07/26/annex-presidential-policy-directive-united-states-cyber-incident (last visited Jan. 23, 2024).
[35] Cybersecurity & Infrastructure Security Agency, *Cybersecurity Incident Response*, available at https://www.cisa.gov/topics/cybersecurity-best-practices/organizations-and-cyber-safety/cybersecurity-incident-response#:~:text=%20National%20Cyber%20Incident%20Response%20Plan%20%28NCIRP%29%20The,incidents%20and%20how%20those%20activities%20all%20fit%20together (last visited Jan. 23, 2024).
[36] *Id.*

- Level 1: A low-level incident if the incident is unlikely to impact public health or safety; national, state, or local security; economic security; or public confidence.[37]

State agencies and local governments in Florida, must report all ransomware incidents and any cybersecurity incidents at severity levels 3, 4, and 5 as soon as possible to the CSOC, but no later than 48 hours after discovery of a cybersecurity incident and no later than 12 hours after discovery of a ransomware incident.[38] CSOC must notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible, but no later than 12 hours after receiving the incident report from the state agency or local government.[39] For state agency incidents at severity levels 1 and 2, the agency or local government must report these incidents to CSOC and the Cybercrime Office at FDLE as soon as possible.[40]

The notification must include a high-level description of the incident and the likely effects. An incident report for a cybersecurity or ransomware incident by a state agency or local government must include, at a minimum:

- A summary of the facts surrounding the cybersecurity or ransomware incident;
- The date on which the state agency or local government most recently backed up its data, the physical location of the backup, if the backup was affected, and if the backup was created using cloud computing;
- The types of data compromised by the cybersecurity or ransomware incident;
- The estimated fiscal impact of the cybersecurity or ransomware incident;
- In the case of a ransomware incident, the details of the ransom demanded; and
- If the reporting entity is a local government, a statement requesting or declining assistance from CSOC, FDLE Cybercrime Office, or sheriff.[41]

In addition, CSOC must provide consolidated incident reports to the President of the Senate, Speaker of the House of Representatives, and the CAC on a quarterly basis.[42] The consolidated incident reports to the CAC may not contain any state agency or local government name, network information, or system identifying information, but must contain sufficient relevant information to allow the CAC to fulfill its responsibilities.[43]

State agencies and local governments must submit an after-action report to FLDS within one week of the remediation of a cybersecurity or ransomware incident.[44] The report must summarize the incident, state the resolution, and any insights from the incident.

Florida Center for Cybersecurity

The Florida Center for Cybersecurity (Cyber Florida) is housed within the University of South Florida (USF) and was first established in 2014.[45] The goals of Cyber Florida are to:[46]

- Position Florida as the national leader in cybersecurity and its related workforce through education, research, and community engagement.
- Assist in the creation of jobs in the state's cybersecurity industry and enhance the existing cybersecurity workforce.
- Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training.
- Seek out partnerships with major military installations to assist, when possible, in homeland cybersecurity defense initiatives.

[37] S. 282.318(3)(c)9.a, F.S.
[38] S. 282.318(3)(c)9.c, F.S.
[39] S. 282.318(3)(c)9.c.(II), F.S.
[40] S. 282.318(3)(c)(9)(d), F.S.
[41] S. 282.318(3)(c)9.b, F.S.
[42] S. 282.318(3)(c)9.e, F.S.
[43] *Id*.
[44] S. 282.318(4)(k), F.S.
[45] Ch. 2014-56, L.O.F.
[46] S. 1004.444, F.S.

- Attract cybersecurity companies to the state with an emphasis on defense, finance, health care, transportation, and utility sectors.

Effect of the Bill

Definitions

The bill provides the following definitions:

- "As a service" means the contracting with or outsourcing to a third party of a defined role or function as a means of delivery.
- "Cloud provider" means an entity that provides cloud-computing services.
- “Criminal Justice Agency” has the same meaning as defined in s. 943.045 (11), F.S.

The bill also defines “enterprise digital data” as information held by a state agency in electronic form that is deemed to be data owned by the state and held for state purposes by the state agency.

DMS and FLDS Duties

The bill revises the duties of FLDS to include:

- Leading enterprise IT and cybersecurity efforts.
- Proposing and evaluating solutions pursuant to interagency agreements that securely modernize state government.

The bill provides that the state CIO, in consultation with the Secretary of DMS, must designate a state chief technology officer who is responsible for the following:

- Establishing and maintaining an enterprise architecture framework that ensures IT investments align with the state’s strategic objectives and initiatives.
- Conducting comprehensive evaluations of potential technological solutions and cultivating strategic partnerships, internally with state enterprise agencies and externally with the private sector, to leverage collective expertise, foster collaboration, and advance the state’s technological capabilities.
- Supervising program management of certain enterprise IT initiatives; providing advisory support and oversight for technology-related projects; and continuously identifying and recommending best practices to optimize outcomes of technology projects and enhance the enterprise’s technological efficiency and effectiveness.

Under the bill, all confirmed or suspected incidents or threats to state IT resources must be reported by the state CIO, in consultation with the state CISO, to the Governor.

The bill authorizes FLDS to obtain immediate and complete access to state agency accounts and instances that hold enterprise digital data and to direct, in consultation with the state agency that holds the particular data, measures to assess, monitor, and protect the security of such data. DMS is not authorized to view, modify, transfer, or otherwise duplicate enterprise digital data except as required to respond to a cyber incident or as agreed to in writing by the state agency that holds the particular enterprise digital data. The bill exempts all criminal justice entities from this FLDS access authorization.

State Agency Incident Reporting and Responsibilities

The bill requires state agencies to report all ransomware incidents, regardless of severity level, to CSOC as soon as possible, but no later than 12 hours after a cybersecurity incident and no later than 6 hours after the discovery of a ransomware incident.

Under the bill, CSOC must immediately notify the Cybercrime Office of FDLE of a reported incident and provide regular reports on the status of the incident, preserve forensic data to support the subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office, upon request, if the state CISO finds that the investigation does not impede remediation of the incident and that there is no risk to the public and no risk to critical state functions.

Under the bill, the CSOC must also immediately notify the state CIO and the state CISO of a reported incident. The bill requires that within 30 days after the end of each quarter, CSOC must provide a consolidated incident report to the Governor, Attorney General, the executive director of FDLE, President of the Senate, Speaker of the House of Representatives, and the CAC.

Under the bill, each agency's information security manager must coordinate with the agency's chief information security officer and CSOC and ensure compliance with cybersecurity governance and with the state's enterprise security program and incident response plan.

Local Government Incident Reporting and Responsibilities

The bill removes the requirement that a local government must report any cybersecurity incident determined to be level 3, 4, or 5 to the Cybercrime Office of FDLE and the sheriff who has jurisdiction over the local government. The bill requires a local government to report a cybersecurity incident to CSOC within 12 hours of discovery and to report a ransomware incident within 6 hours after discovery.

Under the bill, after CSOC receives a report of a cybersecurity or ransomware incident, CSOC must immediately notify the Cybercrime Office of FDLE and the sheriff who has jurisdiction over the local government. CSOC must provide these entities with regular reports on the status of the incident, preserve forensic data to support a subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office upon the office's request if the state CISO finds that the investigation does not impede remediation of the incident and that there is no risk to the public and no risk to critical state functions. The bill also requires that CSOC immediately notify the state CISO of the reported incident.

Under the bill, if CSOC receives a report from a local government of a level 1 or 2 cybersecurity incident, CSOC must immediately notify the Cybercrime Office and the sheriff who has jurisdiction over the local government, and CSOC shall provide regular reports on the status of the incident, preserve forensic data to support a subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office upon the office's request if the state CISO finds that the investigation does not impede remediation of the incident and that there is no risk to the public and no risk to critical state functions.

Florida Center for Cybersecurity (Cyber Florida)

The bill provides that the Florida Center for Cybersecurity may also be referred to as "Cyber Florida." The bill clarifies that Cyber Florida is under the direction of the president of USF or the president's designee. Under the bill, the USF president may assign Cyber Florida to a college of USF if the college has a strong emphasis in cybersecurity, technology, or computer sciences and engineering as determined and approved by USF's board of trustees.

The bill revises Cyber Florida's mission and goals to be:

- Position Florida as the national leader in cybersecurity and its related workforce primarily through advancing and funding education, and research and development initiatives in cybersecurity and related fields, with a secondary emphasis on, and community engagement and cybersecurity awareness;
- Assist in the creation of jobs in the state's cybersecurity industry and enhance the existing cybersecurity workforce through education, research, applied science, and engagements and partnerships with the private and military sectors;
- Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training;
- Seek out research and development agreements and other partnerships with major military installations and affiliated contractors to assist, when possible, in homeland cybersecurity defense initiatives;
- Attract cybersecurity companies and jobs to the state with an emphasis on defense, finance, health care, transportation, and utility sectors; and

- Conduct, fund, and facilitate research and applied science that leads to the creation of new technologies and software packages that have military and civilian applications and which can be transferred for military and homeland defense purposes or for sale or use in the private sector.

The bill provides that if Cyber Florida receives a request for assistance from DMS, FLDS, or another state agency, Cyber Florida is authorized, but may not be compelled by the agency, to conduct, consult on, or otherwise assist any state-funded initiatives related to:

- Cybersecurity training, professional development, and education for state and local government employees, including school districts and the judicial branch.
- Increasing the cybersecurity effectiveness of the state's and local governments' technology platforms and infrastructure, including school districts and the judicial branch.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 110.205, F.S., relating to career service; exemptions.

Section 2: Amends s. 282.0041, F.S., relating to definitions.

Section 3: Amends s. 282.0051, F.S., relating to Department of Management Services; Florida Digital Service; power, duties, and functions.

Section 4: Amends s. 282.318, F.S., relating to cybersecurity.

Section 5: Amends s. 282.3185, F.S., relating to local government cybersecurity.

Section 6: Amends s. 1004.444, F.S., relating to Florida Center for Cybersecurity.

Section 7: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill has an indeterminate but likely significant fiscal impact. DMS may have costs related to systems integration and process automation services necessary to receive all agency cybersecurity incidents and to obtain the immediate CSOC cybersecurity incident notifications proposed in the bill.

According to DMS, the Chief Technology Officer established in the bill can be created utilizing an existing position and within current resources.[47]

State agencies may incur additional workload of reporting all cybersecurity incidents as proposed in the bill. [48]

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:

[47] Email from Jake Holmgreen, Deputy Legislative Affairs Director, Department of Management Services, FW: Chief Technology Officer Position in HB 1555 (Feb. 13, 2024).

[48] *See e.g.* Florida Department of Law Enforcement, Agency Analysis of 2024 House Bill 1555, p. 5 (Jan. 30, 2024).

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. Lines 100 to 102 provide a definition for “as a service”. This term was used in the original bill but no longer applies to the current committee substitute.
2. Lines 103 to 104 provide a definition for “cloud provider”. The bill does not use this term, nor is the term included in current statute.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Energy, Communications & Cybersecurity Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed provisions of the bill that designate certain information security personnel positions as select exempt positions.
- Removed provisions of the bill that require each state agency head to designate a CISO and that specify how an agency’s information security manager must interact with the agency CISO.
- Updated the mission, goals, and responsibilities of the Florida Center for Cybersecurity (“Cyber Florida”) housed within USF and authorize the USF president to assign the Center to an appropriate college within the university, with approval of the board of trustees.

On February 13, 2024, the State Administration and Technology Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Added a definition for “criminal justice agency” and revises the definition of “enterprise digital data”.
- Revised the duties of the FLDS.
- Removed provisions of the bill that change FLDS’ project oversight responsibilities.
- Removed provisions of the bill that repeal the responsibility for FLDS to conduct an annual market analysis.
- Removed provisions of the bill that repeal the requirement for FLDS to execute a data sharing agreement with an agency in order to disclose or retrieve that agency’s data.
- Clarified provisions of the bill that change the CSOC incident notification process.
- Removed provisions of the bill that clarify how and when the President of the Senate and the Speaker of the House of Representatives would be notified of cybersecurity incidents and ransomware.
- Removed provisions of the bill that specify how the Legislature would be briefed on cybersecurity and who in the Legislature is authorized to receive these briefings.

This analysis is drafted to the committee substitute as passed by the State Administration and Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to cybersecurity; amending s. 110.205, F.S.; exempting the state chief technology officer from the career service; amending s. 282.0041, F.S.; providing definitions; amending s. 282.0051, F.S.; revising the purposes for which the Florida Digital Service is established; revising the date by which Department of Management Services, acting through the Florida Digital Service, must provide certain recommendations to the Executive Office of the Governor and the Legislature; requiring the state chief information officer, in consultation with the Secretary of Management Services, to designate a state chief technology officer; providing duties of the state chief technology officer; amending s. 282.318, F.S.; providing that the Florida Digital Service is the lead entity for a certain purpose; requiring the Cybersecurity Operations Center to provide certain notifications; requiring the state chief information officer to make certain reports in consultation with the state chief information security officer; requiring a state agency to report ransomware and cybersecurity incidents within certain time periods; requiring the Cybersecurity Operations Center to immediately notify a certain entity of reported

incidents and take certain actions; requiring the department to preserve certain data and provide certain aid in certain circumstances; requiring the state chief information security officer to notify the Legislature of certain incidents within a certain period; requiring the Cybersecurity Operations Center to provide a certain report to certain entities by a specified date; authorizing the Florida Digital Service to obtain certain access to certain state agency accounts and instances and direct certain measures; prohibiting the department from taking certain actions; providing applicability; revising the purpose of an agency's information security manager and the date by which he or she must be designated; amending s. 282.3185, F.S.; requiring a local government to report ransomware and certain cybersecurity incidents to the Cybersecurity Operations Center within certain time periods; requiring the Cybersecurity Operations Center to immediately notify certain entities of certain incidents and take certain actions; requiring the Department of Law Enforcement to coordinate certain incident responses; amending s. 1004.444, F.S.; providing that the Florida Center for Cybersecurity may be referred to in a certain manner; providing that

the center is established under the direction of the president of the University of South Florida and may be assigned within a college that meets certain requirements; revising the mission and goals of the center; authorizing the center to take certain actions relating to certain initiatives; providing an effective date.

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

Section 1. Paragraph (e) of subsection (2) of section 110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(e) The state chief information officer, the state chief data officer, the state chief technology officer, and the state chief information security officer. The Department of Management Services shall set the salary and benefits of these positions in accordance with the rules of the Senior Management Service.

Section 2. Subsections (3) through (5), (6), (7) through (16), and (17) through (38) of section 282.0041, Florida Statutes, are renumbered as subsections (4) through (6), (8), (10) through (19), and (21) through (42), respectively, and new subsections (3), (7), (9), and (20) are added to that section to

read:

282.0041 Definitions.—As used in this chapter, the term:

(3) "As a service" means the contracting with or outsourcing to a third party of a defined role or function as a means of delivery.

(7) "Cloud provider" means an entity that provides cloud-computing services.

(9) "Criminal justice agency" has the same meaning as in s. 943.045.

(20) "Enterprise digital data" means information held by a state agency in electronic form that is deemed to be data owned by the state and held for state purposes by the state agency. Enterprise digital data must be maintained in accordance with chapter 119. This subsection may not be construed to create, modify, abrogate, or expand an exemption from public records requirements under s. 119.07(1) or s. 24(a), Art. I of the State Constitution.

Section 3. Subsection (1) of section 282.0051, Florida Statutes, is amended, and paragraph (c) is added to subsection (2) of that section, to read:

282.0051 Department of Management Services; Florida Digital Service; powers, duties, and functions.—

(1) The Florida Digital Service is established ~~has been created~~ within the department to lead enterprise information technology and cybersecurity efforts, to propose and evaluate

innovative solutions pursuant to interagency agreements that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support the cloud-first policy as specified in s. 282.206. The department, through the Florida Digital Service, shall have the following powers, duties, and functions:

(a) Develop and publish information technology policy for the management of the state's information technology resources.

(b) Develop an enterprise architecture that:

1. Acknowledges the unique needs of the entities within the enterprise in the development and publication of standards and terminologies to facilitate digital interoperability;

2. Supports the cloud-first policy as specified in s. 282.206; and

3. Addresses how information technology infrastructure may be modernized to achieve cloud-first objectives.

(c) Establish project management and oversight standards with which state agencies must comply when implementing information technology projects. The department, acting through the Florida Digital Service, shall provide training opportunities to state agencies to assist in the adoption of the project management and oversight standards. To support data-driven decisionmaking, the standards must include, but are not limited to:

1. Performance measurements and metrics that objectively reflect the status of an information technology project based on a defined and documented project scope, cost, and schedule.

2. Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of an information technology project.

3. Reporting requirements, including requirements designed to alert all defined stakeholders that an information technology project has exceeded acceptable variances defined and documented in a project plan.

4. Content, format, and frequency of project updates.

5. Technical standards to ensure an information technology project complies with the enterprise architecture.

(d) Perform project oversight on all state agency information technology projects that have total project costs of $10 million or more and that are funded in the General Appropriations Act or any other law. The department, acting through the Florida Digital Service, shall report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project that the department identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in a project plan. The report must include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project, and

a recommendation for corrective actions required, including suspension or termination of the project.

(e) Identify opportunities for standardization and consolidation of information technology services that support interoperability and the cloud-first policy, as specified in s. 282.206, and business functions and operations, including administrative functions such as purchasing, accounting and reporting, cash management, and personnel, and that are common across state agencies. The department, acting through the Florida Digital Service, shall biennially on January 15 ~~1~~ of each even-numbered year provide recommendations for standardization and consolidation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(f) Establish best practices for the procurement of information technology products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services.

(g) Develop standards for information technology reports and updates, including, but not limited to, operational work plans, project spend plans, and project status reports, for use by state agencies.

(h) Upon request, assist state agencies in the development of information technology-related legislative budget requests.

(i) Conduct annual assessments of state agencies to

determine compliance with all information technology standards and guidelines developed and published by the department and provide results of the assessments to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(j) Conduct a market analysis not less frequently than every 3 years beginning in 2021 to determine whether the information technology resources within the enterprise are utilized in the most cost-effective and cost-efficient manner, while recognizing that the replacement of certain legacy information technology systems within the enterprise may be cost prohibitive or cost inefficient due to the remaining useful life of those resources; whether the enterprise is complying with the cloud-first policy specified in s. 282.206; and whether the enterprise is utilizing best practices with respect to information technology, information services, and the acquisition of emerging technologies and information services. Each market analysis shall be used to prepare a strategic plan for continued and future information technology and information services for the enterprise, including, but not limited to, proposed acquisition of new services or technologies and approaches to the implementation of any new services or technologies. Copies of each market analysis and accompanying strategic plan must be submitted to the Executive Office of the Governor, the President of the Senate, and the Speaker of the

House of Representatives not later than December 31 of each year that a market analysis is conducted.

(k) Recommend other information technology services that should be designed, delivered, and managed as enterprise information technology services. Recommendations must include the identification of existing information technology resources associated with the services, if existing services must be transferred as a result of being delivered and managed as enterprise information technology services.

(l) In consultation with state agencies, propose a methodology and approach for identifying and collecting both current and planned information technology expenditure data at the state agency level.

(m)1. Notwithstanding any other law, provide project oversight on any information technology project of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of $20 million or more. Such information technology projects must also comply with the applicable information technology architecture, project management and oversight, and reporting standards established by the department, acting through the Florida Digital Service.

2. When performing the project oversight function specified in subparagraph 1., report at least quarterly to the Executive Office of the Governor, the President of the Senate,

and the Speaker of the House of Representatives on any information technology project that the department, acting through the Florida Digital Service, identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in the project plan. The report shall include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project and a recommendation for corrective actions required, including suspension or termination of the project.

(n) If an information technology project implemented by a state agency must be connected to or otherwise accommodated by an information technology system administered by the Department of Financial Services, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services, consult with these departments regarding the risks and other effects of such projects on their information technology systems and work cooperatively with these departments regarding the connections, interfaces, timing, or accommodations required to implement such projects.

(o) If adherence to standards or policies adopted by or established pursuant to this section causes conflict with federal regulations or requirements imposed on an entity within the enterprise and results in adverse action against an entity or federal funding, work with the entity to provide alternative standards, policies, or requirements that do not conflict with

the federal regulation or requirement. The department, acting through the Florida Digital Service, shall annually by January 15 report such alternative standards to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(p)1. Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:

a. Identification of the information technology product and service categories to be included in state term contracts.

b. Requirements to be included in solicitations for state term contracts.

c. Evaluation criteria for the award of information technology-related state term contracts.

d. The term of each information technology-related state term contract.

e. The maximum number of vendors authorized on each state term contract.

f. At a minimum, a requirement that any contract for information technology commodities or services meet the National Institute of Standards and Technology Cybersecurity Framework.

g. For an information technology project wherein project oversight is required pursuant to paragraph (d) or paragraph

(m), a requirement that independent verification and validation be employed throughout the project life cycle with the primary objective of independent verification and validation being to provide an objective assessment of products and processes throughout the project life cycle. An entity providing independent verification and validation may not have technical, managerial, or financial interest in the project and may not have responsibility for, or participate in, any other aspect of the project.

2. Evaluate vendor responses for information technology-related state term contract solicitations and invitations to negotiate.

3. Answer vendor questions on information technology-related state term contract solicitations.

4. Ensure that the information technology policy established pursuant to subparagraph 1. is included in all solicitations and contracts that are administratively executed by the department.

(q) Recommend potential methods for standardizing data across state agencies which will promote interoperability and reduce the collection of duplicative data.

(r) Recommend open data technical standards and terminologies for use by the enterprise.

(s) Ensure that enterprise information technology solutions are capable of utilizing an electronic credential and

comply with the enterprise architecture standards.

(2)

(c) The state chief information officer, in consultation with the Secretary of Management Services, shall designate a state chief technology officer who shall be responsible for all of the following:

1. Establishing and maintaining an enterprise architecture framework that ensures information technology investments align with the state's strategic objectives and initiatives pursuant to paragraph (1)(b).

2. Conducting comprehensive evaluations of potential technological solutions and cultivating strategic partnerships, internally with state enterprise agencies and externally with the private sector, to leverage collective expertise, foster collaboration, and advance the state's technological capabilities.

3. Supervising program management of enterprise information technology initiatives pursuant to paragraphs (1)(c), (d), and (l); providing advisory support and oversight for technology-related projects; and continuously identifying and recommending best practices to optimize outcomes of technology projects and enhance the enterprise's technological efficiency and effectiveness.

Section 4. Subsection (3) and paragraph (a) of subsection (4) of section 282.318, Florida Statutes, are amended to read:

282.318 Cybersecurity.—

(3) The ~~department, acting through the~~ Florida Digital Service~~,~~ is the lead entity responsible for leading enterprise information technology and cybersecurity efforts, establishing standards and processes for assessing state agency cybersecurity risks, and determining appropriate security measures. Such standards and processes must be consistent with generally accepted technology best practices, including the National Institute for Standards and Technology Cybersecurity Framework, for cybersecurity. The department, acting through the Florida Digital Service, shall adopt rules that mitigate risks; safeguard state agency digital assets, data, information, and information technology resources to ensure availability, confidentiality, and integrity; and support a security governance framework. The department, acting through the Florida Digital Service, shall also:

(a) Designate an employee of the Florida Digital Service as the state chief information security officer. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources. The state chief information security officer is responsible for the development, operation, and oversight of cybersecurity for state technology systems. The Cybersecurity Operations Center shall immediately notify the state chief information officer and the state chief information

security officer ~~shall be notified~~ of all confirmed or suspected incidents or threats of state agency information technology resources. The state chief information officer, in consultation with the state chief information security officer, ~~and~~ must report such incidents or threats to ~~the state chief information officer and~~ the Governor.

(b) Develop, and annually update by February 1, a statewide cybersecurity strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for a cyber incident.

(c) Develop and publish for use by state agencies a cybersecurity governance framework that, at a minimum, includes guidelines and processes for:

1. Establishing asset management procedures to ensure that an agency's information technology resources are identified and managed consistent with their relative importance to the agency's business objectives.

2. Using a standard risk assessment methodology that includes the identification of an agency's priorities, constraints, risk tolerances, and assumptions necessary to support operational risk decisions.

3. Completing comprehensive risk assessments and cybersecurity audits, which may be completed by a private sector

vendor, and submitting completed assessments and audits to the department.

4. Identifying protection procedures to manage the protection of an agency's information, data, and information technology resources.

5. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

6. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

7. Establishing agency cybersecurity incident response teams and describing their responsibilities for responding to cybersecurity incidents, including breaches of personal information containing confidential or exempt data.

8. Recovering information and data in response to a cybersecurity incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

9. Establishing a cybersecurity incident reporting process that includes procedures for notifying the department and the Department of Law Enforcement of cybersecurity incidents.

a. The level of severity of the cybersecurity incident is defined by the National Cyber Incident Response Plan of the United States Department of Homeland Security as follows:

(I) Level 5 is an emergency-level incident within the

specified jurisdiction that poses an imminent threat to the provision of wide-scale critical infrastructure services; national, state, or local government security; or the lives of the country's, state's, or local government's residents.

(II) Level 4 is a severe-level incident that is likely to result in a significant impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; or civil liberties.

(III) Level 3 is a high-level incident that is likely to result in a demonstrable impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

(IV) Level 2 is a medium-level incident that may impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

(V) Level 1 is a low-level incident that is unlikely to impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

b. The cybersecurity incident reporting process must specify the information that must be reported by a state agency following a cybersecurity incident or ransomware incident, which, at a minimum, must include the following:

(I) A summary of the facts surrounding the cybersecurity incident or ransomware incident.

(II) The date on which the state agency most recently backed up its data; the physical location of the backup, if the backup was affected; and if the backup was created using cloud computing.

(III) The types of data compromised by the cybersecurity incident or ransomware incident.

(IV) The estimated fiscal impact of the cybersecurity incident or ransomware incident.

(V) In the case of a ransomware incident, the details of the ransom demanded.

c.(I) A state agency shall report all ransomware incidents and ~~any~~ cybersecurity incidents ~~incident determined by the state agency to be of severity level 3, 4, or 5~~ to the Cybersecurity Operations Center ~~and the Cybercrime Office of the Department of Law Enforcement~~ as soon as possible but no later than 12 ~~48~~ hours after discovery of the cybersecurity incident and no later than 6 ~~12~~ hours after discovery of the ransomware incident. The report must contain the information required in sub-subparagraph b.

(II) The Cybersecurity Operations Center shall:

(A) Immediately notify the Cybercrime Office of the Department of Law Enforcement of a reported incident and provide to the Cybercrime Office of the Department of Law Enforcement regular reports on the status of the incident. The department shall preserve forensic data to support a subsequent

investigation and provide aid to the investigative efforts of the Cybercrime Office of the Department of Law Enforcement upon the office's request if the investigation does not impede remediation of the incident and there is no risk to the public and no risk to critical state functions.

(B) Immediately notify the state chief information officer and the state chief information security officer of a reported incident. The state chief information security officer shall notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible but no later than 12 hours after receiving a state agency's incident report. The notification must include a high-level description of the incident and the likely effects.

~~d. A state agency shall report a cybersecurity incident determined by the state agency to be of severity level 1 or 2 to the Cybersecurity Operations Center and the Cybercrime Office of the Department of Law Enforcement as soon as possible. The report must contain the information required in sub-subparagraph b.~~

d.~~c.~~ The Cybersecurity Operations Center shall provide a consolidated incident report by the 30th day after the end of each quarter ~~on a quarterly basis~~ to the Governor, the Attorney General, the executive director of the Department of Law Enforcement, the President of the Senate, the Speaker of the House of Representatives, and the Florida Cybersecurity Advisory

Council. The report provided to the Florida Cybersecurity Advisory Council may not contain the name of any agency, network information, or system identifying information but must contain sufficient relevant information to allow the Florida Cybersecurity Advisory Council to fulfill its responsibilities as required in s. 282.319(9).

10. Incorporating information obtained through detection and response activities into the agency's cybersecurity incident response plans.

11. Developing agency strategic and operational cybersecurity plans required pursuant to this section.

12. Establishing the managerial, operational, and technical safeguards for protecting state government data and information technology resources that align with the state agency risk management strategy and that protect the confidentiality, integrity, and availability of information and data.

13. Establishing procedures for procuring information technology commodities and services that require the commodity or service to meet the National Institute of Standards and Technology Cybersecurity Framework.

14. Submitting after-action reports following a cybersecurity incident or ransomware incident. Such guidelines and processes for submitting after-action reports must be developed and published by December 1, 2022.

(d) Assist state agencies in complying with this section.

(e) In collaboration with the Cybercrime Office of the Department of Law Enforcement, annually provide training for state agency information security managers and computer security incident response team members that contains training on cybersecurity, including cybersecurity threats, trends, and best practices.

(f) Annually review the strategic and operational cybersecurity plans of state agencies.

(g) Annually provide cybersecurity training to all state agency technology professionals and employees with access to highly sensitive information which develops, assesses, and documents competencies by role and skill level. The cybersecurity training curriculum must include training on the identification of each cybersecurity incident severity level referenced in sub-subparagraph (c)9.a. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the State University System.

(h) Operate and maintain a Cybersecurity Operations Center led by the state chief information security officer, which must be primarily virtual and staffed with tactical detection and incident response personnel. The Cybersecurity Operations Center shall serve as a clearinghouse for threat information and coordinate with the Department of Law Enforcement to support

state agencies and their response to any confirmed or suspected cybersecurity incident.

(i) Lead an Emergency Support Function, ESF-20 ~~ESF CYBER~~, under the state comprehensive emergency management plan as described in s. 252.35.

(j) During a cyber incident or as otherwise agreed to in writing by the state agency that holds the particular enterprise digital data, have the authority to obtain immediate and complete access to state agency accounts and instances that hold enterprise digital data and to direct, in consultation with the state agency that holds the particular enterprise digital data, measures to assess, monitor, and protect the security of enterprise digital data. The department may not view, modify, transfer, or otherwise duplicate enterprise digital data except as required to respond to a cyber incident or as agreed to in writing by the state agency that holds the particular enterprise digital data. This paragraph does not apply to a criminal justice entity.

(4) Each state agency head shall, at a minimum:

(a) Designate an information security manager to ensure compliance with cybersecurity governance and with the state's enterprise security program and incident response plan. The information security manager must coordinate with the agency's information security personnel and the Cybersecurity Operations Center to ensure that the unique needs of the agency are met

~~administer the cybersecurity program of the state agency~~. This designation must be provided annually in writing to the department by January 15 ~~1~~. A state agency's information security manager, for purposes of these information security duties, shall report directly to the agency head.

Section 5. Paragraphs (b) and (c) of subsection (5) of section 282.3185, Florida Statutes, are amended to read:

282.3185 Local government cybersecurity.—

(5) INCIDENT NOTIFICATION.—

(b)1. A local government shall report all ransomware incidents and any cybersecurity incident determined by the local government to be of severity level 3, 4, or 5 as provided in s. 282.318(3)(c) to the Cybersecurity Operations Center~~, the Cybercrime Office of the Department of Law Enforcement, and the sheriff who has jurisdiction over the local government~~ as soon as possible but no later than 12 ~~48~~ hours after discovery of the cybersecurity incident and no later than 6 ~~12~~ hours after discovery of the ransomware incident. The report must contain the information required in paragraph (a).

2. The Cybersecurity Operations Center shall:

a. Immediately notify the Cybercrime Office of the Department of Law Enforcement and provide to the Cybercrime Office of the Department of Law Enforcement and the sheriff who has jurisdiction over the local government regular reports on the status of the incident, preserve forensic data to support a

subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office of the Department of Law Enforcement upon the office's request. The Department of Law Enforcement shall coordinate the response to an incident in which a law enforcement agency is the subject of the incident and must provide updates to the Cybersecurity Operations Center.

b. Immediately notify the state chief information security officer of a reported incident. The state chief information security officer shall notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible but no later than 12 hours after receiving a local government's incident report. The notification must include a high-level description of the incident and the likely effects.

(c) A local government may report a cybersecurity incident determined by the local government to be of severity level 1 or 2 as provided in s. 282.318(3)(c) to the Cybersecurity Operations Center, the Cybercrime Office of the Department of Law Enforcement, and the sheriff who has jurisdiction over the local government. The report shall contain the information required in paragraph (a). The Cybersecurity Operations Center shall immediately notify the Cybercrime Office of the Department of Law Enforcement and the sheriff who has jurisdiction over the local government of a reported incident and provide regular reports on the status of the cybersecurity incident, preserve

forensic data to support a subsequent investigation, and provide aid to the investigative efforts of the Cybercrime Office of the Department of Law Enforcement upon request if the investigation does not impede remediation of the cybersecurity incident and there is no risk to the public and no risk to critical state functions.

Section 6. Section 1004.444, Florida Statutes, is amended to read:

1004.444 Florida Center for Cybersecurity.—

(1) The Florida Center for Cybersecurity, which may also be referred to as "Cyber Florida," is established as a center within the University of South Florida under the direction of the president of the university or the president's designee. The president may assign the center within a college of the university if the college has a strong emphasis in cybersecurity, technology, or computer sciences and engineering as determined and approved by the university's board of trustees.

(2) The mission and goals of the center are to:

(a) Position Florida as the national leader in cybersecurity and its related workforce primarily through advancing and funding education and~~,~~ research and development initiatives in cybersecurity and related fields, with a secondary emphasis on~~, and~~ community engagement and cybersecurity awareness.

(b) Assist in the creation of jobs in the state's cybersecurity industry and enhance the existing cybersecurity workforce through education, research, applied science, and engagements and partnerships with the private and military sectors.

(c) Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training.

(d) Seek out research and development agreements and other partnerships with major military installations and affiliated contractors to assist, when possible, in homeland cybersecurity defense initiatives.

(e) Attract cybersecurity companies and jobs to the state with an emphasis on defense, finance, health care, transportation, and utility sectors.

(f) Conduct, fund, and facilitate research and applied science that leads to the creation of new technologies and software packages that have military and civilian applications and which can be transferred for military and homeland defense purposes or for sale or use in the private sector.

(3) Upon receiving a request for assistance from the Department of Management Services, the Florida Digital Service, or another state agency, the center is authorized, but may not be compelled by the agency, to conduct, consult on, or otherwise assist any state-funded initiatives related to:

(a) Cybersecurity training, professional development, and education for state and local government employees, including school districts and the judicial branch.

(b) Increasing the cybersecurity effectiveness of the state's and local governments' technology platforms and infrastructure, including school districts and the judicial branch.

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

Commerce Committee
CS/CS/HB 1555 by Rep. Giallombardo
Cybersecurity

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Giallombardo (lines 78-82)

- Removes definitions for unused terms.

Amendment 2 by Giallombardo (line 543)

- Corrects a scrivener's error by replacing the term "criminal justice entity" with the term "criminal justice agency."

Amendment 3 by Giallombardo (line 555, with title amendment)

- Authorizes the Speaker of the House of Representatives or the President of the Senate to designate certain committee or subcommittee chairs to attend closed portions of meetings of the Cybersecurity Advisory Council.

Amendment 4 by Giallombardo (line 606, with title amendment)

- Modifies the membership of the Cybersecurity Advisory Council by:
    - Providing that one of the three representatives from critical infrastructure sectors must be from a utility provider rather than a water treatment facility.
    - Adding a representative of local government.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Giallombardo offered the following:

Amendment

Remove lines 78-82

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Giallombardo offered the following:

Amendment

Remove line 543 and insert:

justice agency.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with directory and title amendments)

Between lines 555 and 556, insert:

(6)(a) Those portions of a public meeting as specified in s. 286.011 which would reveal records which are confidential and exempt under subsection (5) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of an exempt meeting may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and

exempt by this section. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt data and information may be disclosed to a third party.

(b) If authorized by the President of the Senate or the Speaker of the House of Representatives, as applicable, the chair of a standing or select committee of the Legislature, or a subcommittee thereof, with responsibility over the subject area of cybersecurity may attend those portions of a meeting that are exempt under paragraph (a).

D I R E C T O R Y A M E N D M E N T

Remove lines 324-325 and insert:

Section 4. Subsection (3), paragraph (a) of subsection (4), and subsection (6) of section 282.318, Florida Statutes, are amended to read:

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

Between lines 39 and 40, insert:

authorizing the chairs of certain legislative committees or subcommittees to attend exempt portions of meetings of the Florida Cybersecurity Advisory Council if authorized by the

President of the Senate or Speaker of the House of Representatives, as applicable;

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Giallombardo offered the following:

Amendment (with title amendment)

Between lines 606 and 607, insert:

Section 7. Paragraph (j) of subsection (4) of section 282.319, Florida Statutes, is amended, and paragraph (m) is added to that subsection, to read:

282.319 Florida Cybersecurity Advisory Council.—

(4) The council shall be comprised of the following members:

(j) Three representatives from critical infrastructure sectors, one of whom must be from a utility provider ~~water treatment facility~~, appointed by the Governor.

(m) A representative of local government.

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

Remove line 48 and insert:

incident responses; amending s. 282.319, F.S.; revising the membership of the Florida Cybersecurity Advisory Council; amending s. 1004.444, F.S.;

HB 1559

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1559 Professional Licensure
SPONSOR(S): McClure
TIED BILLS: **IDEN./SIM. BILLS:** SB 1786

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

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

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

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

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

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

The bill may have a positive fiscal impact on state government and the private sector, and no fiscal impact on local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Land Surveying and Mapping

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

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

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

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

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

According to DACS, in 2022, there were 2,579 surveyors and mappers licensed in Florida.[6]

Licensing Examinations

Current law provides education and experience prerequisites that must be met in order to be eligible to take the licensure examination to practice as a surveyor and mapper or as a surveyor and mapper intern.[7] All applicants must be approved by the Board prior to taking any examination.[8]

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

[1] S. 472.007, F.S.
[2] *See* ch. 472, F.S.
[3] Florida Department of Agriculture and Consumer Services, Consumer Services, *Surveyors and Mappers*, https://www.fdacs.gov/Business-Services/Surveyors-and-Mappers (last visited Jan. 27, 2024).
[4] S. 472.008, F.S.
[5] Ch. 2009-66, Laws of Fla.
[6] Email from Carlos Nathan, Legislative Affairs Director, Department of Agriculture and Consumer Services, Re: Surveyors Data, (Jan. 6, 2022).
[7] S. 472.013, F.S.
[8] R. 5J-17.030, F.A.C.

mapper are as follows:[9]

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

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

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

The board, by rule,[10] is authorized to establish fees for examination. The initial application and examination fee must not exceed $125 plus the actual per applicant cost to DACS to purchase the examination from the National Council of Engineering Examiners or a similar national organization. The examination fee must be sufficient to cover the cost of obtaining and administering the examination and is refundable if the applicant is found ineligible to sit for the examination. The application fee is nonrefundable.[11]

Exiled Foreign-Trained Professionals

Exiled foreign-trained professionals that wish to become surveyors and mappers must have graduated with an appropriate college degree from a college or university and must have lawfully practiced the profession for at least three years.[12] Specifically, an exiled professional is eligible for examination if the exiled professional satisfies all of the following seven requirements:[13]

- Immigrated to the United States after leaving the person's home country because of political reasons, provided the country is located in the Western Hemisphere and does not have diplomatic relations with the United States;
- Applied to DACS and submits a fee;
- Was a resident of this state immediately preceding the person's application;

[9] *See* s. 472.013, F.S.
[10] R. 5J-17.070, F.S.
[11] S. 472.011, F.S.
[12] *See* s. 472.0101, F.S.
[13] S. 472.0101(1)(a)-(g), F.S.

- Demonstrated to DACS, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant graduated with an appropriate professional or occupational degree from a college or university.
    - However, DACS may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;
- Lawfully practiced the profession for at least 3 years;
- Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and
- Presented a certificate demonstrating the successful completion of a continuing education program, which offers a course of study that will prepare the applicant for the examination.

DACS is required to develop rules for the approval of such programs for the Board.[14]

Upon request of a person who meets the requirements and submits an examination fee, DACS, for the Board, is required to conduct a written practical examination that tests the person's current ability to practice the profession competently in accordance with the actual practice of the profession. The fees charged for the examinations are established by DACS, for the board, by rule,[15] and must be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.[16]

Recent Trends

The average age of a land surveyor in the U.S. is in the upper 50s. According to the Bureau of Labor Statistics, in 2023 there were 43,000 working surveyors in the U.S., 8,000 were 34 years of age or younger, and 16,000 were age 55 and over.[17] Many in the profession will be retiring and need to be replaced.[18]

In addition, reports indicate that the most common degree for land surveyors is a bachelor's degree, with 43 percent of land surveyors earning that degree. The second and third most common degree level is an associate degree at 24 percent and high school diploma at 21 percent.[19]

Certain education and licensing qualifications for surveyors have created recruitment barriers.[20] Some in the industry have indicated that a shortage may exist in the profession because of extensive education expectations and cost. Many state boards require a four-year degree before beginning work in the surveying field. These requirements might hinder those from pursuing a surveying path. Nationally there appears to be a decline in the number of students graduating from surveying programs.[21]

In Florida, as of 2022, the number of licensed surveyors had decreased by 305 licensees, from 2,884 licensees in 2013 to 2,579 licensees in 2021.[22]

Other States

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[14] S. 472.001(1), F.S.
[15] R. 5J-17.210, F.A.C.
[16] S. 472.0101(2), F.S.
[17] U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, https://www.bls.gov/cps/cpsaat11b.pdf (last visited Jan. 27, 2024).
[18] U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook*, https://www.bls.gov/ooh/architecture-and-engineering/surveyors.htm#tab-6 (last visited Jan. 27, 2024).
[19] Zippia, The Career Expert, *LAND SURVEYOR DEMOGRAPHICS AND STATISTICS IN THE US*, https://www.zippia.com/land-surveyor-jobs/demographics/ (last visited Jan. 27, 2024).
[20] The American Surveyor, *Reaching Out, Using Technology and Outreach to Encourage Students to Join the Profession*, https://amerisurv.com/2023/06/10/reaching-out/ (last visited Jan. 27, 2024).
[21] Nearterm Blog, *Is There a Shortage of Land Surveyors?* (Nov. 2, 2020), https://nearterm.com/is-there-a-shortage-of-land-surveyors/ (last visited Jan. 27, 2024).
[22] Email from Carlos Nathan, Legislative Affairs Director, Department of Agriculture and Consumer Services, Re: Surveyors Data, (Jan. 6, 2022).

Each state and territory in the U.S. require those who perform the tasks defined as the practice of surveying to hold a professional surveying license. Most states require professional surveyors to meet a combination of requirements in education and exams.[23]

Generally, while each state board for surveyors has its own requirements for licensure, potential licensees will follow a similar path of prerequisites to obtain a license in any state. Prerequisites typically include:[24]

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

According to research, the education and experience requirements in all 50 states appear to indicate the following patterns:[25]

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

One example of a state that allows a number of different pathways to licensure is North Carolina:[26]

- **Bachelor's Degree**: Graduates with a Bachelor's degree in surveying can take the licensing exam after **two years** of supervised experience.
- **Associate's Degree**: Graduates with a two-year Associate's degree in surveying can take the licensing exam with **five years** of supervised experience.
- **High School Diploma and Apprenticeship:** Graduates with a high school diploma and an apprenticeship can take the licensing exam with **seven years** of supervised experience.
- **High School Diploma**: Graduates with a high school diploma or equivalent can take the licensing exam with **nine years** of supervised experience.

Effect of the Bill

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

[23] The National Council of Examiners for Engineering and Surveying (NCEES), *Surveying Licensure*, https://ncees.org/surveying/surveying-licensure/ (last visited Jan. 27, 2024).
[24] The National Council of Examiners for Engineering and Surveying (NCEES), *NCEES Member Licensing Boards*, https://ncees.org/member-licensing-boards/ (last visited Jan. 27, 2024).
[25] NCEES, *supra* note 24.
[26] North Carolina Society of Surveyors, *Licensure Requirements in North Carolina*, https://www.ncsurveyors.com/education/licensure_requirements (last visited Jan. 27, 2024).

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

- Received an **associate degree or a high school diploma** and completes a minimum of 25 semester hours specific to surveying and mapping at a college or university accredited by an accrediting body recognized by the United States Department of Education.
    - The hours may be from courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences.
    - Such applicants must have **six or more years' experience** as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, **five years of which must be of a nature indicating that the applicant was in responsible charge of the work performed**.
- Hold a **valid license** to practice surveying and mapping **in another state**, jurisdiction, or territory, and:
    - Gave **two years of experience in the active practice** of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.
- Have received a **registered apprenticeship certificate** in surveying and mapping after completing a registered apprenticeship program approved by the Department of Education, and:
    - Have an experience record of **two or more years as a subordinate** to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

The bill specifies that work experience acquired as a part of the education requirements may not be construed as experience in responsible charge.

Regarding a bachelor's degree in a course of study other than surveying and mapping, the bill removes a provision authorizing the Board to approve any of the required 25 semester hours of study completed not as a part of the bachelor's degree, its equivalent, or higher.

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

B. SECTION DIRECTORY:

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. The bill may have a positive impact on examination and licensing revenue, to the extent that additional individuals will take the licensure examination and become licensed. All funds collected are deposited into the DACS General Inspection Trust Fund. According to DACS, it "could experience an indeterminate positive fiscal impact due to new applicant fees."[27]

2. Expenditures:

[27] Department of Agriculture and Consumer Services, Agency Analysis of 2024 SB 1776, p. 2 (Jan. 24, 2024).

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to professional licensure; amending s. 472.0101, F.S.; authorizing the practice of a profession as a substitute for certain professional or occupational degrees for certain foreign-trained professionals; amending s. 472.013, F.S.; revising education and work experience requirements for taking the surveyor and mapper licensure examination; providing an effective date.

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

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

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

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

(d) Demonstrates to the department, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant was graduated with an appropriate professional or occupational

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

degree from a college or university. However, the department may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;

(e) Lawfully practiced the profession for at least 3 years. Such practice of the profession may be substituted for the professional or occupational degree requirement under paragraph (d);

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

472.013 Examinations, prerequisites.—

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

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

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

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

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

(d) The applicant has received a high school diploma or its equivalent and has a specific experience record of at least 6 years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, at least 5 years of which shall be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The applicant must have completed at least 25 semester hours from a college or university accredited by an accrediting body recognized by the United States Department of Education in

surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Work experience acquired as a part of the education requirement may not be construed as experience in responsible charge.

(e) The applicant holds a valid license to practice surveying and mapping in another state, jurisdiction, or territory, and has at least 2 years of experience in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1611 Insurance
SPONSOR(S): Insurance & Banking Subcommittee, Stevenson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1622

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	19 Y, 0 N, As CS	Fortenberry	Lloyd
2) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

Among the variety of changes regarding insurance, the bill:

- **Data reporting:** requires that the information that property insurers were reporting to the Office of Insurance Regulation (OIR) on a quarterly basis be reported on a monthly basis; and, that the data must be reported based on zip code rather than county.
- **Property insurance policy nonrenewals:** provides the Financial Services Commission with express rulemaking authority to adopt rules and forms to regulate how, and in what format, insurers will provide notice to OIR of nonrenewal of more than 10,000 residential property insurance policies within a 12-month period.
- **Public housing authority (PHA) self-insurance trust funds:** revises the maximum per-loss occurrence amount that a PHA self-insurance fund may retain from $350,000 to an amount that the fund can withstand, as long as it maintains a continuing program of excess insurance coverage and reinsurance to protect the stability of the fund, and meets certain additional criteria.
- **Prohibition on cancellation of surplus lines property insurance policies:** restricts the ability for surplus lines insurers to cancel or nonrenew personal and commercial lines residential insurance policies due to unrepaired damage after a hurricane or wind loss.
- **Hurricane modeling:** specifies that if an insurer uses the average of two or more models in its rate filing, the same average model must be used throughout the state. However, if the insurer uses a weighted average, it must provide OIR with a justification for using the weighted average, which shows that it results in a rate that is reasonable, adequate, and fair.
- **Citizens Property Insurance Corporation:** eliminates the statutory provision that allows Citizens to charge up to 50 percent above the established Citizens rate for policyholders whose coverage was last provided by an insurer determined to be unsound or place into receivership.
- **Reciprocal Insurers:** updates the statutory chapter regarding reciprocal insurers to align it with OIR's existing authority to license and regulate other types of insurers, including significant changes to the application and acquisition processes.

The bill has no impact on local or state government revenues. It may have positive impact on local government expenditures, a negative impact on state government expenditures, and an indeterminate negative direct economic impact on the private sector.

The bill is effective on July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

DATA REPORTING

Background

Each insurer doing business in Florida must file a report containing certain information with the Office of Insurance Regulation (OIR) on a quarterly basis.[1] The report must contain premium information for each of the property lines of business.[2] It must also contain the following information for each county on a monthly basis:

- Total number of policies in force at the end of each month.
- Total number of policies canceled.
- Number of policies canceled due to hurricane risk.
- Number of policies nonrenewed due to hurricane risk.
- Number of new policies written.
- Total dollar value of structure exposure under policies that include wind coverage.
- Number of policies that exclude wind coverage.
- Number of claims open each month.
- Number of claims closed each month.
- Number of claims pending each month.
- Number of claims in which either the insurer or insured invoked any form of alternative dispute resolution (ADR), and specifying which form of ADR was invoked. [3]

OIR is required to aggregate this data on a statewide basis and make it available to the public on its website.[4] OIR uses this data to track market trends and shares it with the Florida Division of Emergency Management after natural disasters to help determine where emergency response is most necessary.[5]

While the data is reported on a county-by-county basis, insurers already collect data that would allow them to report on a zip-code basis instead.[6]

Effect of the Bill

Pursuant to the bill, the information that property insurers were reporting to OIR on a quarterly basis must be reported on a monthly basis instead. Additionally, the bill requires that the data is reported based on zip code rather than county. These changes will allow OIR to receive more accurate data on an expedited basis.[7]

[1] S. 624.424(10)(a), F.S. For the purpose of these reports, the property insurance lines include personal and commercial residential property insurance.
[2] *Id.*
[3] *Id.*
[4] S. 624.424(10)(b), F.S.
[5] Office of Insurance Regulation (OIR), Agency Analysis of 2024 House Bill 1611, p. 2 (Jan. 21, 2024).
[6] *Id.*
[7] OIR has indicated that the data is constantly changing and that it is outdated by the time they receive it on a quarterly basis.

PROPERTY INSURANCE POLICY NONRENEWALS

Background

Any property insurer planning to nonrenew more than 10,000 residential property insurance policies in Florida within a 12-month period must give written notice to OIR 90 days before the issuance of any notices of nonrenewal.[8] While the notice is for informational purposes only, it must include:

- the insurer's reasons for the action;
- the effective dates of nonrenewal; and
- any arrangements the insurer has made for other insurers to offer coverage to the affected policyholders.[9]

The law regarding this notice does not contain a grant of rulemaking authority to allow the Financial Services Commission (FSC)[10] to adopt rules and forms to administer it.

Effect of the Bill

The bill provides the FSC with express rulemaking authority to adopt rules and forms to regulate how, and in what format, insurers will provide notice to OIR of nonrenewal of more than 10,000 residential property insurance policies within a 12-month period.

PUBLIC HOUSING SELF-INSURANCE TRUST FUND

Background

Florida law provides for a public housing authority (PHA) in each city and county in the state where the local governing body has declared the need for such an authority based upon the lack of safe or sanitary dwellings within the city or county.[11] Two or more PHAs in Florida may form a self-insurance fund to pool and spread their members' casualty and real or personal property risks, as long as the self-insurance fund:[12]

- has annual premiums that exceed $5 million;
- uses a qualified actuary:
    - to determine rates and submits an annual certification to OIR that the rates are actuarially sound and not inadequate;
    - to establish loss and loss adjustment expense reserves and submits an annual certification to OIR that such reserves are adequate; and
    - maintains a continuing program of excess insurance coverage and reserve evaluation to protect the self-insurance fund's financial stability, as determined by the actuary.

At a minimum, the PHA self-insurance program must purchase excess insurance from authorized insurance carriers or eligible surplus lines carriers, but cannot retain liability of more $350,000, per occurrence. However, if the excess insurance is not available at such terms or is especially costly, a PHA self-insurance fund has limited ability to comply with the statute.

Effect of the Bill

The bill revises the maximum per-loss occurrence amount that a PHA self-insurance fund may retain from $350,000 to an amount that the fund can withstand, as long as it maintains a continuing program of excess insurance coverage and reinsurance to protect the stability of the fund, and, at a minimum:

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[8] S. 624.4305, F.S.

[9] *Id.*

[10] The Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of OIR for the purposes of rulemaking.

[11] Ss. 421.04 and 421.27, F.S.

[12] S. 624.46226, F.S.

- includes a net retention selected by the fund administrator, ratified by the fund's governing body, and certified by a qualified actuary;
- includes reinsurance or excess insurance from authorized insurance carriers or eligible surplus lines insurers; and
- is certified by a qualified, independent actuary as to the program's adequacy.

PROHIBITION ON CANCELLATION OF SURPLUS LINES PROPERTY INSURANCE POLICIES

Background

An authorized insurer may not cancel or nonrenew any personal residential or commercial residential property insurance policy covering a dwelling or residential property in Florida, including but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents:

- For 90 days after the dwelling or residential property has been repaired, if the property has been damaged as a result of a hurricane or wind loss that is the subject of a declaration of emergency and the filing of an order by the Insurance Commissioner.[13]
- Until the earlier of when the dwelling or residential property has been repaired or one year after the insurer issues the final claim payment, if the property was damaged by a covered peril, but not a hurricane or wind loss.[14]

However, an authorized insurer or agent may cancel or nonrenew a policy before the dwelling or residential property has been repaired:

- Upon 10 days' notice for nonpayment of premium; or
- Upon 45 days' notice for:
  - A material misstatement or fraud related to the claim;
  - If the insurer determines that the insured has unreasonably caused a delay in the repair; or
  - If the insurer has paid policy limits.[15]

If an insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90 days' notice that the insurer intends to nonrenew the policy 90 days after the property has been repaired.[16] A structure is considered repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer writing policies in Florida.[17]

Section 626.9201, F.S., governs the cancellation or nonrenewal of personal and commercial residential property insurance policies issued by surplus lines insurers, but it does not include specific language regarding cancellation following a declared state of emergency.

Effect of the Bill

The bill amends s. 626.9201, F.S., to better align the cancellation and nonrenewal requirements with those currently in law for admitted insurers. Upon a declaration of emergency and the issuance of an order by the Insurance Commissioner, a surplus lines insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property in Florida that has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency for 90 days after the dwelling or residential property has been repaired. The bill establishes that a dwelling or residential property is deemed repaired when it is substantially completed and restored such that it is insurable by another insurer writing policies in Florida.

[13] S. 627.4133(2)(e)1.a., F.S.
[14] S. 627.4133(2)(e)1.b., F.S.
[15] S. 627.4133(2)(e)2., F.S.
[16] S. 627.4133(2)(e)3., F.S.
[17] S. 627.4133(2)(e)5., F.S.

Additionally, a surplus lines insurer or agent may cancel or nonrenew a policy before the dwelling or residential property has been repaired:

- with 10 days' notice for nonpayment of premium; or
- with 45 days' notice:
  - for a material misstatement or fraud related to the claim;
  - if the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling or residential property;
  - if the insurer or its agent has made a reasonable written inquiry to the insurer as to the status of the repair and the insured fails to respond within 30 calendar days; or
  - if the insurer has paid policy limits.

Pursuant to the bill, if the surplus lines insurer elects to nonrenew a policy covering a dwelling or residential property that has been damaged, the insurer must provide at least 90 days' notice to the insurer that it intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired.

HURRICANE MODEL AVERAGES

Background

The law regarding OIR's review and approval of residential property insurance rate filings requires that a rate filing consider mitigation measures that policyholders undertake to reduce hurricane losses.[18] It sets forth the criteria under which OIR may disprove rate filings, including disproval of rates that it determines to be excessive, inadequate, or unfairly discriminatory.[19] The law also establishes criteria for the Commission's consideration, and approval, of hurricane loss models and prescribes how those models affect OIR's approval of property insurance rate filings.[20] With respect to residential property insurance rate filings, the rate filing may use a modeling indication that is the weighted or straight average of two or more hurricane loss models found to be accurate or reliable by the Commission.[21] The law does not require consistency in the model used, which potentially allows insurers to use different models to produce rates in various parts of the state.[22]

Effect of the Bill

The bill specifies that if an insurer uses the average of two or more models in its rate filing, the same average model must be used throughout the state. However, if the insurer uses a weighted average, it must provide OIR with a justification for using the weighted average, which shows that it results in a rate that is reasonable, adequate, and fair.

[18] S. 627.062(2)(j), F.S.
[19] S. 627.062(2)(b), F.S.
[20] Ss. 627.0628-627.06281, F.S.
[21] S. 627.062(2)(j), F.S.
[22] OIR, *supra* note 5, at 3.

CITIZENS PROPERTY INSURANCE CORPORATION

Background

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under this glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percent per year to 15 percent, as follows: [23]

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

The "glidepath," which functions as a rate cap, is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private insurers and does not need to purchase as much reinsurance as private insurers because of Citizens' higher levels of capital and surplus.[24]

Until December 2022, Citizens' rates did not differ based upon whether the property is a policyholder's primary residence, a policyholder's second home (e.g., a vacation home), or occupied by a long-term tenant.[25] During Special Session 2022A, the Legislature removed the glidepath rate limitations for any new or renewal personal lines policy for non-primary residences written on or after November 1, 2023. The rate for these residences must be no more than 50 percent above, but not less than, the established rate for Citizens which was in effect one year before the date of the application for coverage.[26]

In addition to non-primary residences, the "glidepath" normally imposed on Citizens year-to-year rate growth does not apply to policies where coverage for the risk insured by Citizens was last provided by an insurer determined by OIR to be unsound or placed into receivership due to impairment or insolvency.[27] Instead, these risks must be no more than 50 percent above, but not less than, the established rate for Citizens which was in effect one year before the date of the application for coverage.[28] The limitation on Citizens rate increases for non-primary residences and policies assumed from unsound insurers applies on a year-over-year basis, rather than being attached to a fixed date (i.e., the rate in effect the year before the date of application for coverage).

Effect of the Bill

The bill eliminates the statutory provision that allows Citizens to charge up to 50 percent above the established Citizens rate for policyholders whose coverage was last provided by an insurer determined

[23] S. 627.351(6)(n)5., F.S.
[24] S. 627.351(6)(t), F.S. *See also* s. 627.351(6)(c)9. for information regarding Citizens purchase of reinsurance.
[25] Citizens would not issue a personal lines policy to someone using a home as a short-term vacation rental as that is considered a business use of the home.
[26] S. 627.351(n)8., F.S.
[27] *Id.* In practical effect, this means that such policyholders might continue to pay the premium amount that they paid their prior insurer, not a lower premium that they might otherwise be charged by Citizens if subject to the rate increase limitations.
[28] *Id.*

to be unsound or place into receivership.[29] The applicable rate would thus be subject to the glidepath limitation on rates.

RECIPROCAL INSURERS

Reciprocal insurance exchanges are a form of insurance organization in which businesses and individuals exchange insurance contracts and spread the risks associated with such contracts among themselves.[30] Policyholders of a reciprocal insurance exchange are known as "subscribers."[31]

Chapter 629, F.S., governs the regulation of reciprocal insurers in Florida. A reciprocal insurer may transact any kind of insurance other than title insurance in Florida.[32]

Typically, an advisory board manages a reciprocal insurance company.[33] The board is responsible for choosing and monitoring the attorney-in-fact, approving rates, and providing oversight of the operations of the reciprocal.[34]

Florida law provides that the advisory committee of a domestic reciprocal insurer exercising the subscribers' rights must be selected under such rules as the subscribers adopt.[35] Not less than two-thirds of such committee may be subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.[36]

The committee must:

- Supervise the finances of the insurer;
- Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;
- Procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and
- Have such additional powers and functions as may be conferred by the subscribers' agreement.[37]

Definitions

Background

The term "reciprocal insurance" is currently defined under ch. 629, F.S., as insurance resulting from an interexchange among subscribers of reciprocal agreements of indemnity, with the interexchange being effectuated through an "attorney in fact" common to all such parties.[38]

Additionally, the term "reciprocal insurer" is currently defined under ch. 629, F.S., as an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.[39]

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[29] OIR maintains that treating these policyholders differently because they were previously insured by an unsound, impaired, or insolvent insurer is unfairly discriminatory and, therefore, does not meet the rating standards in s. 627.062, F.S.

[30] Julia Kagan and Eric Estevez, *Reciprocal Insurance Exchange: Definition, How It Works, Example* (last updated Sep. 28, 2023), Investopedia, https://www.investopedia.com/terms/r/reciprocal-insurance-exchange.asp (last visited Jan. 29, 2024).

[31] *Id.*

[32] S. 629.041(1), F.S. Such an insurer may purchase reinsurance and may grant reinsurance as to any kind of insurance it is authorized to transact directly. *See* s. 629.041(2), F.S.

[33] *See id.*

[34] *See id.*

[35] S. 629.201(1), F.S.

[36] S. 629.201(2), F.S.

[37] S. 629.201(3), F.S.

[38] S. 629.011, F.S.

[39] S. 629.021, F.S.

Effect of the Bill

The bill creates definitions for the following terms in ch. 629, F.S.:

- "Affiliated person" of another person means any of the following:
  - The spouse of the other person.
  - The parents of the other person and their lineal descendants, or the parents of the other person's spouse and their lineal descendants.
  - A person who directly or indirectly owns or controls, or holds with the power to vote, 10 percent or more of the outstanding voting securities of the other person.
  - A person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with the power to vote, by the other person.
  - A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person.
  - A person who is a director, officer, trustee, partner, owner, manager, joint venturer, or an employee, or another person who is performing duties similar to those of a person in one of the aforementioned positions.
  - If the other person is an investment company, any investment adviser of such company or any member of an advisory board of such company.
  - If the other person is an unincorporated investment company not having a board of directors, the depositor of such company.
  - A person who has entered into an agreement, written or unwritten, to act in concert with the other person in acquiring or limiting the disposition of:
    - Securities of an attorney in fact or controlling company that is a stock corporation; or
    - An ownership interest of an attorney in fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.
- "Attorney in fact" or "attorney" means the attorney in fact of a reciprocal insurer, and may be an individual, a corporation, or another person.
- "Controlling company" means any person, corporation, trust, limited liability company, association, or other entity owning, directly or indirectly, 10 percent or more of the voting securities of one or more attorneys in fact that are stock corporations, or 10 percent or more of the ownership interest of one or more attorneys in fact that are not stock corporations.

The bill amends the current definition of "reciprocal insurer" to mean an insurer that is an incorporated aggregation of subscribers domiciled in this state operating individually and collectively through an attorney in fact to provide reciprocal insurance to such subscribers.

The bill retains the current definition of "reciprocal insurance."

Organization of Reciprocal Insurer

Background

Twenty-five or more persons domiciled in Florida may organize a domestic reciprocal insurer and apply to OIR for a certificate of authority to transact insurance.[40] The proposed attorney must fulfill the requirements of, and must execute and file with OIR when applying for a certificate of authority, a declaration that sets forth:

[40] S. 629.081, F.S.

- The name of the insurer;
- The location of the insurer's principal office, which must be the same as that of the attorney and must be maintained within Florida;
- The kinds of insurance proposed to be transacted;
- The names and addresses of the original subscribers;
- The designation and appointment of the proposed attorney and a copy of the power of attorney;
- The names and addresses of the officers and directors of the attorney, if a corporation, or of its members, if other than a corporation;
- The powers of the subscribers' advisory committee, and the names and terms of office of the members thereof;
- That all moneys paid to the reciprocal must, after deducting any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
- A copy of the subscribers' agreement;
- A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate that has been filed with and approved by OIR;
- A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as described above is on hand; and
- A copy of each policy, endorsement, and application form it then proposes to issue or use.[41]

Effect of the Bill

The bill clarifies that twenty-five or more persons domiciled in Florida who wish to organize as a domestic reciprocal insurer may make an application to OIR for a permit to do so. The bill provides that a domestic reciprocal insurer may not be formed unless the persons so proposing have received a permit from OIR. Additionally, the permit application must be in writing and made in accordance with forms prescribed by the Commission.

The bill provides that the following information must be included in an application for a permit in addition to the current required information (which is in also in addition to any applicable requirements of s. 628.051, F.S.,[42] or other relevant statutes):

- The background information as specified in the proposed s. 629.227, F.S., for all officers, directors, managers, and those in equivalent positions of the proposed attorney in fact as well as for any person with an ownership interest of 10 percent or more in the proposed attorney in fact.
- The articles of incorporation and bylaws, or equivalent documents, of the proposed attorney in fact, dated within the last year and appropriately certified.
- The proposed charter of the subscribers' advisory committee, and the names and terms of office of the members thereof, as well as the background information for each proposed member.
- A copy of the proposed subscribers' agreement; and
- Any other pertinent information and documents reasonably requested by OIR.

The bill removes certain other information currently required to be included in permit application and relocates such information to the provision of Florida law relating to certificates of authority for reciprocal insurers.

The bill requires that a filed application must be accompanied by the application fee[43] and such other pertinent information and documents as reasonably requested by OIR. The bill provides that OIR must evaluate and grant or deny permit applications in accordance with ss. 628.061,[44] 628.071,[45] F.S., and other relevant provisions of the Florida Insurance Code.

[41] S. 629.081(2), F.S.
[42] S. 628.051, F.S., codifies Florida's laws governing domestic stock insurers, mutual insurers, and captive insurers. *See* s. 628.011, F.S.
[43] The application fee is $1,500. *See* s. 624.501(1)(a), F.S.
[44] S. 628.061, F.S., relates to the investigation of proposed domestic stock insurers, mutual insurers, and captive insurers.

Certificate of, and Continued Eligibility for, Certificate of Authority

Background

Current law provides that the certificate of authority of a reciprocal insurer must be issued to its attorney in the name of the insurer.[46]

Effect of the Bill

The bill provides that, in applying for a certificate of authority as a domestic reciprocal insurer, the attorney in fact of an applicant who has previously received a permit from OIR may file an application in accordance with forms prescribed by the Commission which, in addition to applicable requirements of other relevant statutes, consists of all of the following:

- Executed copies of any proposed documents required as part of the permit application.
- A statement affirming that all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney in fact, be held in the name of the insurer and for the purposes specified in the subscribers' agreement.
- A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at the rate that was filed with and approved by OIR.
- A copy of the required bond.
- A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the required surplus is on hand.
- Such other pertinent information or documents as reasonably requested by OIR.

If the reciprocal insurer intends to issue nonassessable policies, and if OIR determines that the reciprocal insurer meets the legal requirements to issue nonassessable policies, including the surplus requirements, OIR shall grant the authorization. If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue or renew nonassessable policies or convert assessable policies to nonassessable policies.

To maintain its eligibility for a certificate authority, the bill requires that a domestic reciprocal insurer continue to meet all conditions required to be met under the Florida Insurance Code and the rules adopted thereunder for the initial applications for a permit and certificate of authority.

Power of Attorney

Background

Under Florida law, the rights and powers of the attorney of a reciprocal insurer are as provided in the power of attorney given to it by the subscribers.[47] The power of attorney must set forth:

- The powers of the attorney;
- That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;
- The general services to be performed by the attorney;
- The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and
- Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than five times nor more than ten times the premium or premium deposit stated in the policy.[48]

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[45] S. 628.061, F.S., relates to the granting and denial of permits for proposed domestic stock insurers, mutual insurers, and captive insurers.
[46] S. 629.091, F.S.
[47] S. 629.101(1), F.S.

Currently, the power of attorney may:

- Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;
- Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;
- Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and
- Contain other lawful provisions deemed advisable.[49]

The terms of any power of attorney or agreement collateral must be reasonable and equitable, and no such power or agreement may be used or be effective in Florida unless filed with OIR.[50]

Effect of the Bill

The bill establishes that, in addition to current requirements, the attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer. The bill also requires that a power of attorney must also set forth the place where the office of the attorney in fact is maintained.

Acquisitions

Background

Florida law does not currently provide specific statutory authority for the acquisition of a reciprocal insurer.

Effect of the Bill

The bill creates a new statutory section providing details regarding the acquisition of a reciprocal insurer. No one may, individually or in conjunction with an affiliated person, directly or indirectly acquire 10 percent or more of the ownership interest in a reciprocal insurer unless all of the following conditions are met:

- The person or affiliated person must file with OIR and send to the reciprocal insurer and its attorney in fact a letter notifying them of the transaction no later than five days after the offer is proposed or no later than five days after the acquisition of securities or ownership interest if no offer is involved.
- The person or affiliated person must file an application with OIR within 30 days after the offer is proposed or the acquisition occurs.
- OIR has approved the offer or acquisition.

If there is no change in the ultimate controlling shareholders, no change in the ownership percentages of the ultimate controlling shareholders, and no acquisition of direct or indirect interest in the attorney in fact, OIR may waive the filing of the letter of notification and the application upon request.

The application, if required, must contain all of the following information and any other information that OIR deems necessary to determine the character, experience, ability, and other qualifications of the applicant:

- identity and background information of each person by whom, or on whose behalf the acquisition is being made, and any other persons who control these individuals;
- the source and amount of funds or other consideration used in making the acquisition;
- plans or proposals that applicants may have to liquidate the attorney in fact or controlling company, to sell any of their assets or merge or consolidate them with any person, or to make other major changes in the business, business structure, or management;

[48] S. 629.101(2), F.S.
[49] S. 629.101(3), F.S.
[50] S. 629.101(4), F.S.

- the nature and extent of the controlling interest which the person, or affiliated person, proposes to acquire;
- the number of shared or other security that the person, or affiliated person, proposed to acquire; and
- information as to any contract, arrangement, or understanding with any party relating to the transfer of any of the securities, option arrangements, puts or calls, or giving or withholding of proxies.

The bill requires that an application be accompanied by an application fee.[51] If any material change occurs in the facts provided in the application or the background information, an amendment must be filed with OIR immediately and sent to the principal offices of the reciprocal and its attorney in fact.

OIR must review the application in accordance with the Administrative Procedures Act.[52] Pursuant to the bill, while OIR is reviewing the acquisition, the acquiring person may not make any material change to the operation of the attorney in fact or controlling company unless OIR specifically approves the change. Additionally, the acquiring person may not make any change in the management of the attorney in fact unless advance notice is provided to OIR. The bill provides relevant definitions of material change in the operation and the management of the attorney in fact.

The bill permits OIR to disapprove any acquisition of the interest in a reciprocal by any person, or affiliated person, who:
- willfully violates the law regarding acquisition of interest in a reciprocal; or
- fails to divest himself or herself of interest in a reciprocal acquired in violation of the law, when ordered to do so by OIR.

The bill places the burden of proof regarding an acquisition application on the applicant. However, the bill provides criteria, which, if met, require OIR to approve the application as long as no administrative proceeding has been requested under ch. 120, F.S.

The bill establishes that any vote by a stockholder that acquired stock in a reciprocal in violation of the acquisition statute created by the bill is not valid. Additionally, any acquisition contrary to the same statute is void. The circuit court for the county in which the principal office of the attorney in fact for the reciprocal insurer may order an injunction or issue another order to enforce the statute. The bill also creates a private right of action for the attorney in fact and the controlling company to enforce the acquisition statute.

The bill provides that approval of an acquisition application by OIR does not constitute a recommendation of an acquisition or an offer for an acquisition. It is third-degree felony for anyone to represent that OIR has made such a recommendation.

According to the bill, any person may rebut the presumption of having control of a reciprocal insurer by filing a disclaimer of control with OIR on a form prescribed by the FSC or by filing a copy of a Schedule 13G filed with the Securities and Exchange Commission.

The bill gives OIR the authority to suspend or revoke a reciprocal insurer's certificate of authority if necessary to protect the public interest when the interest was acquired in violation of the acquisition statute. If a reciprocal insurer is subject to suspension or revocation on this basis, the attorney in fact is deemed to be in such a condition, or to be using or have been subject to methods or practices as to render its further transaction or insurance hazardous. OIR may offer the reciprocal insurer the ability to cure any suspension or revocation by procuring another attorney in fact acceptable to OIR.

Filing of Background Information

[51] The current fee for acquisition is $1,500. S. 624.501(1)(a), F.S.
[52] Chapter 120, F.S., codifies Florida's Administrative Procedure Act, which provides uniform procedures for the exercise of specified authority.

Background

Florida law does not currently provide for filing of background information on reciprocal insurers, their attorneys in fact, nor their subscribers.

Effect of the Bill

The bill creates statutory criteria for background information that must be submitted to OIR regarding certain individuals involved in the creation or acquisition of reciprocal insurers. The information must include, but is not limited to:

- A sworn biographical statement with information for the past twenty years regarding:
  - occupations, positions of employment, and offices held;
  - convictions of crimes other than traffic violations;
  - license revocation proceedings;
  - bankruptcy proceedings, either personal or of a business where the individual held a significant position; and
  - injunction proceedings involving federal or state law regulating insurance, securities, or banking.
- Each individual's fingerprints;
- Authorizations allowing background investigations regarding each individual; and
- Any other information that OIR deems necessary to determine the character, experience, ability, and other qualifications of the individual.

Prohibitions on Attorneys in Fact, Officers, and Directors

Background

Florida law does not currently provide express prohibitions on who can serve as an attorney in fact, officer, or director of a reciprocal insurer.

Effect of the Bill

The bill establishes that any person who serves as an attorney in fact, or as an officer, director, or manager of an attorney in fact, a member of a subscribers' advisory committee of a reciprocal insurer doing business in Florida, or an officer or director of any other insurer doing business in Florida, and served in that capacity within two years prior to the date such insurer or reciprocal insurer became insolvent, may not thereafter:

- Serve as an:
  - Attorney in fact;
  - An officer, director or manager of an attorney in fact;
  - A member of a subscribers' committee of a reciprocal insurer doing business in Florida; or
  - An officer or director of any other insurer doing business in Florida; or
- Have direct or indirect control over the selection or appointment of:
  - An attorney in fact;
  - An officer, director, or manager of an attorney in fact;
  - A member of the subscribers' advisory committee of a reciprocal insurer doing business in Florida; or
  - An officer or director of any insurer doing business in Florida.

However, the bill also provides that these prohibitions may be overcome if someone demonstrates that his or her personal actions or omissions did not significantly contribute to the insolvency of the insurer or reciprocal insurer.

Merger or Conversion

Background

Current law provides that a domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice and the approval of OIR of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.[53] Such a stock or mutual insurer is subject to the same capital or surplus requirements and have the same rights as a like domestic insurer transacting like kinds of insurance.[54]

OIR may not approve any plan for such merger or conversion which is inequitable to subscribers or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his or her interest in the reciprocal insurer, as determined in accordance with applicable law, and a reasonable length of time within which to exercise such right.[55]

Reinsurance of all or substantially all of the insurance in force of a domestic reciprocal insurer in another insurer is considered to be a merger for the purposes of these provisions.[56]

Effect of the Bill

The bill requires that all plans to merge a reciprocal insurer with another reciprocal insurer or to convert a reciprocal insurer to a stock or mutual insurer must be filed with OIR on forms adopted by the FSC and must contain all information that OIR reasonably requires to evaluate the merger or conversion.

The bill provides that an assessable reciprocal insurer may be converted to a nonassessable reciprocal insurer if all of the following conditions are met:

- the subscriber's advisory committee approves the conversion application;
- the attorney in fact submits the application on the required form; and
- OIR finds that the application meets the minimum statutory requirements.

If OIR approves the application, the assessable reciprocal insurer may be converted to a nonassessable reciprocal insurer by:

- extinguishing the contingent liability of subscribers under all policies in force in Florida at the time of the conversion;
- omitting contingent liability provisions in all policies delivery or issued in Florida after the conversion; and
- otherwise extinguishing the contingent liability of all subscribers.

However, if the reciprocal insurer is transacting insurance in another state that requires the issuance of policies with contingent liability provisions, the insurer may continue to issue policies with those provisions in the other state.

Additionally, if a reciprocal insurer's surplus becomes impaired, the insurer may no longer issue nonassessable policies or convert assessable policies to nonassessable policies.

The bill also prohibits a domestic stock insurer from being converted into a reciprocal insurer.

Rule-Making Authority

Background

Currently, the FSC does not have rule-making authority to administer ch. 629, F.S.

Effect of the Bill

[53] S. 629.291(1), F.S.
[54] S. 629.291(2), F.S.
[55] S. 629.201(3), F.S.
[56] S. 629.201(4), F.S.

The bill grants rule-making authority to the FSC to adopt, amend, and repeal rules pursuant to ch. 120, F.S., which are necessary to implement ch. 629, F.S.

Participation of Financial Institutions in Reinsurance and Insurance Exchanges

Background

Currently, subject to applicable laws relating to financial institutions and to any other applicable provision of the Florida Insurance Code, any financial institution or aggregation of such institutions may own or control, directly or indirectly, any insurer which is authorized or approved by OIR, which insurer transacts only reinsurance in this state and which actively engages in reinsuring risks located in this state.[57]

Additionally, subject to the same provisions described above, any financial institution or aggregation of such institutions may participate, directly or indirectly, as an underwriting member or as an investor in an underwriting member of any insurance exchange authorized in accordance with s. 629.401, F.S., which underwriting member transacts only aggregate or specific excess insurance over underlying self-insurance coverage for self-insurance organizations authorized under the Florida Insurance Code, for multiple-employer welfare arrangements, or for workers' compensation self-insurance trusts, in addition to any reinsurance the underwriting member may transact.[58]

Effect of the Bill

The bill eliminates a financial institution's, or aggregation of such institutions' participation as an underwriting member or an investor in an underwriting member of the insurance exchange authorized under 629.401, F.S., and described above, because the existence of that type of exchange is being eliminated by the bill.

Miscellaneous

Pursuant to the changes made by the bill, the bill relocates the following sections of ch. 629, F.S., and, where applicable, relocates the provisions elsewhere:

- S. 629.021, F.S., relating to "reciprocal insurer" defined;
- S. 629.061, F.S., relating to attorney;
- S. 629.261, F.S., relating to nonassessable policies; and

B. SECTION DIRECTORY:

Section 1. Amends s. 624.3161, F.S., relating to market conduct examinations.
Section 2. Amends s. 624.424, F.S., relating to annual statement and other information.
Section 3. Amends s. 624.4305, F.S., relating to nonrenewal of residential property insurance policies.
Section 4. Amends s. 624.46226, F.S., relating to public housing authority self-insurance funds; exemption for taxation and assessments.
Section 5. Amends s. 626.9201, F.S., relating to notice of cancellation and nonrenewal.
Section 6. Amends s. 627.062, F.S., relating to rate standards.
Section 7. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.
Section 8. Amends s. 628.011, F.S., relating to scope of part.
Section 9. Amends s. 628.061, F.S., relating to investigation of proposed organization.
Section 10. Amends s. 628.801, F.S., relating to insurance holding companies; registration; regulation.
Section 11. Amends s. 629.011, F.S., relating to "reciprocal insurance" defined.
Section 12. Repeals s. 629.021, F.S., relating to "reciprocal insurer" defined.
Section 13. Repeals s. 629.061, F.S., relating to attorney.
Section 14. Amends s. 629.081, F.S., relating to organization of reciprocal insurer.

[57] S. 624.45(1), F.S.
[58] S. 624.45(2), F.S.

Section 15. Amends s. 629.091, F.S., relating to certificate of authority.
Section 16. Creates s. 629.094, F.S., relating to continued eligibility for certificate of authority.
Section 17. Amends s. 629.101, F.S., relating to power of attorney.
Section 18. Creates s. 629.225, F.S., relating to acquisitions.
Section 19. Creates s. 629.227, F.S., relating to background information.
Section 20. Creates s. 629.229, F.S., relating to attorneys in fact, officers, and directors of insolvent reciprocal insurers or other insurers.
Section 21. Repeals s. 629.261, F.S., relating to nonassessable policies.
Section 22. Amends s. 629.291, F.S., relating to merger or conversion.
Section 23. Creates s. 629.525, F.S., relating to rulemaking authority.
Section 24. Amends s. 163.01, F.S., relating to Florida Interlocal Cooperation Act of 1969.
Section 25. Amends s. 626.9531, F.S., relating to identification of insurers, agents, and insurance contractors.
Section 26. 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:

The bill may have an indeterminate negative impact on state expenditures to the extent that OIR incurs additional costs related to licensing and regulating reciprocal insurers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The changes to the law regarding PHA self-insurance funds may have a positive impact on local government expenditures if the funds no longer have to purchase the same amount of excess insurance or reinsurance.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative impact on property insurers that incur additional administrative costs due to increasing reporting requirements from quarterly to monthly.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides authority for the FSC to adopt rules:

- To administer the statutory section regarding residential property insurers that are planning to nonrenew more than 10,000 residential property insurance policies within a 12-month period.
- For filing the annual enterprise risk report in accordance with the IHCS Regulation and Model Act as adopted by the NAIC in December 2020.
- To implement the statutory restrictions on the cancellation and nonrenewal of property insurance policies by surplus lines insurers following a hurricane.
- To adopt, amend, or repeal rules necessary to implement ch. 629, F.S., regarding reciprocal insurers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Added wind storm to the causes of loss for which a surplus lines insurer may not cancel a policy for 90 days after repair.
- Adds an insured's failure to respond within 30 days to a written inquiry by a surplus lines insurer regarding the status of repairs to the list of reasons why an insurer may cancel a policy with unrepaired damage.
- Required that the biographical statements required for certain individuals involved in the creation or acquisition of a reciprocal insurer provide a 20-year history rather than the 10-year history required in the bill as filed.
- Eliminated some provisions proposed by the bill, preserves certain current law, and makes other technical changes regarding reciprocal insurers to better streamline OIR's authority to license and regulate these types of insurers.
- Changed the effective date of the bill from July 1, 2025, to July 1, 2024.

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

A bill to be entitled

An act relating to insurance; amending s. 624.3161, F.S.; revising the entities for which the Office of Insurance Regulation is required to conduct market conduct examinations; amending s. 624.424, F.S.; requiring insurers and insurer groups to file a specified supplemental report on a monthly basis; requiring that such report include certain information for each zip code; amending s. 624.4305, F.S.; authorizing the Financial Services Commission to adopt rules relating to notice of nonrenewal of residential property insurance policies; amending s. 624.46226, F.S.; revising the requirements for public housing authority self-insurance funds; amending s. 626.9201, F.S.; prohibiting insurers from canceling or nonrenewing certain insurance policies under certain circumstances; providing exceptions; providing construction; authorizing the commission to adopt rules and the Commissioner of Insurance Regulation to issue orders; amending s. 627.062, F.S.; specifying requirements for rate filings if certain models are used; amending s. 627.351, F.S.; revising requirements for certain policies that are not subject to certain rate increase limitations; amending ss. 628.011 and 628.061, F.S.; conforming provisions to changes made

by the act; amending s. 628.801, F.S.; revising requirements for rules adopted for insurers that are members of an insurance holding company; deleting an obsolete date; authorizing the office to adopt rules; amending s. 629.011, F.S.; defining terms; repealing s. 629.021, F.S., relating to the definition of the term "reciprocal insurer"; repealing s. 629.061, F.S., relating to the term "attorney"; amending s. 629.081, F.S.; revising the procedure for persons to organize as a domestic reciprocal insurer; specifying requirements for the permit application; requiring that the application be accompanied by a specified fee; requiring that the office evaluate and grant or deny the permit application in accordance with specified provisions; removing the requirement that a specified declaration be acknowledged by an attorney; amending s. 629.091, F.S.; providing requirements for the application for a certificate of authority to operate as a domestic reciprocal insurer; requiring the office to grant the authorization for reciprocal insurers to issue certain policies under certain circumstances; prohibiting reciprocal insurers from issuing and renewing certain policies under a specified circumstance; requiring that certificates of authority be issued in the name of the reciprocal

insurer to its attorney in fact; creating s. 629.094, F.S.; requiring a domestic reciprocal insurer to meet certain requirements to maintain its eligibility for a certificate of authority; amending s. 629.101, F.S.; revising requirements for the power of attorney given by subscribers of a domestic reciprocal insurer to the attorney in fact; conforming provisions to changes made by the act; creating s. 629.225, F.S.; prohibiting persons from acquiring certain securities or ownership interests of certain attorneys in fact and controlling companies of certain attorneys in fact; providing an exception; authorizing certain persons to request that the office waive certain requirements; providing that the office may waive certain requirements if specified determinations are made; specifying the requirements of an application to the office relating to certain acquisitions; requiring that such application be accompanied by a specified fee; requiring that amendments be filed with the office under certain circumstances; specifying the manner in which the acquisition application must be reviewed; authorizing the office, and requiring the office if a request for a proceeding is filed, to conduct a proceeding within a specified timeframe to consider the appropriateness of such application;

requiring that certain time periods be tolled; requiring that written requests for a proceeding be filed within a certain timeframe; authorizing certain persons to take all steps to conclude the acquisition during the pendency of the proceeding or review period; requiring the office to order a proposed acquisition disapproved and that actions to conclude the acquisition be ceased under certain circumstances; prohibiting certain persons from making certain changes during the pendency of the office's review of an acquisition; providing an exception; defining the terms "material change in the operation of the attorney in fact" and "material change in the management of the attorney in fact"; requiring the office to approve or disapprove certain changes upon making certain findings; requiring that a proceeding be conducted within a certain timeframe; requiring that recommended orders and final orders be issued within a certain timeframe; specifying the circumstances under which the office may disapprove an acquisition; specifying that certain persons have the burden of proof; requiring the office to approve an acquisition upon certain findings; specifying that certain votes are not valid and that certain acquisitions are void; specifying that certain

provisions may be enforced by an injunction; creating a private right of action in favor of the attorney in fact or the controlling company to enforce certain provisions; providing that a certain demand upon the office is not required before certain legal actions; providing that the office is not a necessary party to certain actions; specifying the persons who are deemed designated for service of process and who have submitted to the administrative jurisdiction of the office; providing that approval by the office does not constitute a certain recommendation; providing that certain actions are unlawful; providing criminal penalties; providing a statute of limitations; authorizing a person to rebut a presumption of control by filing certain disclaimers; specifying the contents of such disclaimer; specifying that, after a disclaimer is filed, the attorney in fact is relieved of a certain duty; authorizing the office to order certain persons to cease acquisition of the attorney in fact or controlling company and divest themselves of any stock or ownership interest under certain circumstances; requiring the office to suspend or revoke the reciprocal certificate of authority under certain circumstances; specifying that the attorney in fact is deemed to be hazardous to its policyholders if

the reciprocal insurer is subject to suspension or revocation; authorizing the office to offer the reciprocal insurer the ability to cure any suspension or revocation under certain circumstances; providing applicability; creating s. 629.227, F.S.; specifying the information as to the background and identity of certain persons which must be furnished by such persons; creating s. 629.229, F.S.; prohibiting certain persons from serving in specified positions of reciprocal insurers or insurers under certain circumstances; amending s. 629.261, F.S.; removing provisions relating to certain authorizations for reciprocal insurers; amending s. 629.291, F.S.; providing that certain insurers that merge are governed by the insurance code; prohibiting domestic stock insurers from converting to reciprocal insurers; requiring that specified plans be filed with the office and that such plans contain certain information; authorizing the conversion of assessable reciprocal insurers to nonassessable reciprocal insurers under certain circumstances; providing certain procedures when certain reciprocal insurers convert; prohibiting a reciprocal insurer that becomes impaired from issuing or converting certain policies; providing applicability; creating s. 629.525, F.S.;

requiring the commission to adopt, amend, or repeal certain rules; amending ss. 163.01 and 626.9531, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (1) of section 624.3161, Florida Statutes, is amended to read:

624.3161 Market conduct examinations.—

(1) As often as it deems necessary, the office shall examine each licensed rating organization, each advisory organization, each group, association, carrier, as defined in s. 440.02, or other organization of insurers which engages in joint underwriting or joint reinsurance, the attorney in fact of each reciprocal insurer, and each authorized insurer transacting in this state any class of insurance to which ~~the provisions of~~ chapter 627 is ~~are~~ applicable. The examination must ~~shall~~ be for the purpose of ascertaining compliance by the person examined with the applicable provisions of chapters 440, 624, 626, 627, and 635.

Section 2. Paragraph (a) of subsection (10) of section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

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

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

1. Total number of policies in force at the end of each month.

2. Total number of policies canceled.

3. Total number of policies nonrenewed.

4. Number of policies canceled due to hurricane risk.

5. Number of policies nonrenewed due to hurricane risk.

6. Number of new policies written.

7. Total dollar value of structure exposure under policies that include wind coverage.

8. Number of policies that exclude wind coverage.

9. Number of claims open each month.

10. Number of claims closed each month.

11. Number of claims pending each month.

12. Number of claims in which either the insurer or insured invoked any form of alternative dispute resolution, and specifying which form of alternative dispute resolution was used.

Section 3. Section 624.4305, Florida Statutes, is amended to read:

624.4305 Nonrenewal of residential property insurance policies.—Any insurer planning to nonrenew more than 10,000 residential property insurance policies in this state within a 12-month period shall give notice in writing to the Office of Insurance Regulation for informational purposes 90 days before the issuance of any notices of nonrenewal. The notice provided to the office must set forth the insurer's reasons for such action, the effective dates of nonrenewal, and any arrangements made for other insurers to offer coverage to affected policyholders. The commission may adopt rules to administer this section.

Section 4. Paragraph (d) of subsection (1) of section 624.46226, Florida Statutes, is amended to read:

624.46226 Public housing authorities self-insurance funds; exemption for taxation and assessments.—

(1) Notwithstanding any other provision of law, any two or more public housing authorities in the state as defined in chapter 421 may form a self-insurance fund for the purpose of pooling and spreading liabilities of its members as to any one

or combination of casualty risk or real or personal property risk of every kind and every interest in such property against loss or damage from any hazard or cause and against any loss consequential to such loss or damage, provided the self-insurance fund that is created:

(d) Maintains a continuing program of excess insurance coverage and reinsurance ~~reserve evaluation~~ to protect the financial stability of the fund ~~in an amount and manner determined by a qualified and independent actuary~~. The program must, at a minimum~~, this program must~~:

1. Include a net retention in an amount and manner selected by the administrator, ratified by the governing body, and certified by a qualified actuary;

2. Include reinsurance or ~~Purchase~~ excess insurance from authorized insurance carriers or eligible surplus lines insurers; and~~.~~

3. Be certified by a qualified actuary as to the program's adequacy. This certification must be submitted simultaneously with the certifications required under paragraphs (b) and (c).

~~2. Retain a per-loss occurrence that does not exceed $350,000.~~

A for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in

its governance under s. 421.08(8) may join a self-insurance fund formed under this section in which such public housing authority participates. Such for-profit or not-for-profit corporation, limited liability company, or other similar business entity may join the self-insurance fund solely to insure risks related to public housing.

Section 5. Subsection (2) of section 626.9201, Florida Statutes, is amended to read:

626.9201 Notice of cancellation or nonrenewal.—

(2) An insurer issuing a policy providing coverage for property, casualty, surety, or marine insurance must give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days before the effective date of the cancellation or termination, including in the written notice the reasons for the cancellation or termination, except that:

(a) If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason for cancellation must be given. As used in this paragraph, the term "nonpayment of premium" means the failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy or an installment of such a premium, whether the premium or installment is payable directly to the insurer or its agent or indirectly under any plan for financing premiums or extension

of credit or the failure of the named insured to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also includes the failure of a financial institution to honor the check of an applicant for insurance which was delivered to a licensed agent for payment of a premium, even if the agent previously delivered or transferred the premium to the insurer. If a correctly dishonored check represents payment of the initial premium, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and, if the contract is void, any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full; ~~and~~

(b) If cancellation or termination occurs during the first 90 days during which the insurance is in force and if the insurance is canceled or terminated for reasons other than nonpayment, at least 20 days' written notice of cancellation or termination accompanied by the reason for cancellation or termination must be given, except if there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer; and~~.~~

(c)1. Upon a declaration of an emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of

Insurance Regulation, an insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency for 90 days after the dwelling or residential property has been repaired. A dwelling or residential property is deemed to be repaired when substantially completed and restored to the extent that the dwelling or residential property is insurable by another insurer that is writing policies in this state.

2. An insurer or agent may cancel or nonrenew such a policy before the repair of the dwelling or residential property:

a. Upon 10 days' notice for nonpayment of premium; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the claim;

(II) If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling or residential property;

(III) If the insurer or its agent has made a reasonable written inquiry to the insured as to the status of the repair and the insured has failed within 30 calendar days to provide information that is responsive to the inquiry to either the address or e-mail account designated by the insurer or its

agent; or

(IV) If the insurer has paid policy limits.

3. If the insurer elects to nonrenew a policy covering a dwelling or residential property that has been damaged, the insurer must provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the property has been repaired.

4. This paragraph does not prevent the insurer from canceling or nonrenewing the policy 90 days after the repair is completed for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for the limitations imposed in subparagraph 1.

5. The commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

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

627.062 Rate standards.—

(2) As to all such classes of insurance:

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

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

2. May use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models

found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable pursuant to s. 627.0628. If an averaged model is used under this section, the same averaged model must be used throughout this state. If a weighted average is used, the insurer must provide the office with a justification for using the weighted average which shows that the weighted average results in a rate that is reasonable, adequate, and fair.

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

Section 7. Paragraph (n) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are competitive. The corporation shall file its recommended rates

with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the

office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Twelve percent for 2023.

b. Thirteen percent for 2024.

c. Fourteen percent for 2025.

d. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. ~~The following~~ New or renewal personal lines policies that do not cover a primary residence ~~written on or after November 1, 2023,~~ are not subject to the rate increase limitations in subparagraph 5., but may not be charged more than 50 percent above, nor less than, the prior year's established

rate for the corporation~~:~~

~~a. Policies that do not cover a primary residence;~~

~~b. New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or~~

~~c. Subsequent renewals of those policies, including the new policies in sub-subparagraph b., under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631~~.

9. As used in this paragraph, the term "primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

Section 8. Section 628.011, Florida Statutes, is amended to read:

628.011 Scope of part.—This part applies only to domestic ~~stock~~ insurers, mutual insurers, and captive insurers, except that s. 628.341(2) applies also as to foreign and alien insurers.

Section 9. Section 628.061, Florida Statutes, is amended

to read:

628.061 Investigation of proposed organization.—In connection with any proposal to organize or incorporate a domestic insurer, the office shall make an investigation of:

(1) The character, reputation, financial standing, and motives of the organizers, incorporators, and subscribers organizing the proposed insurer or any attorney in fact.

(2) The character, financial responsibility, insurance experience, and business qualifications of its proposed officers, members of its subscribers' advisory committee, or officers of its attorney in fact.

(3) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, including the stockholders and directors of any attorney in fact.

Section 10. Subsections (1), (2), and (5) of section 628.801, Florida Statutes, are amended to read:

628.801 Insurance holding companies; registration; regulation.—

(1) An insurer that is authorized to do business in this state and that is a member of an insurance holding company shall, on or before April 1 of each year, register with the office and file a registration statement and be subject to regulation with respect to its relationship to the holding company as provided by law or rule. The commission shall adopt

rules establishing the information and statement form required for registration and the manner in which registered insurers and their affiliates are regulated. The rules apply to domestic insurers, foreign insurers, and commercially domiciled insurers, except for foreign insurers domiciled in states that are currently accredited by the NAIC. Except to the extent of any conflict with this code, the rules must include all requirements and standards of the Insurance Holding Company System Model Regulation and ss. 4 and 5 of the Insurance Holding Company System Regulatory Act ~~and the Insurance Holding Company System Model Regulation~~ of the NAIC, as adopted in December 2020 ~~2010~~. The commission may adopt subsequent amendments thereto if the methodology remains substantially consistent. The rules may include a prohibition on oral contracts between affiliated entities. Material transactions between an insurer and its affiliates must ~~shall~~ be filed with the office as provided by rule.

(2) ~~Effective January 1, 2015,~~ The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report on or before April 1. As used in this subsection, the term "ultimate controlling person" means a person who is not controlled by any other person. The report must, to the best of the ultimate controlling person's knowledge and belief, ~~must~~ identify the material risks within the insurance holding company system that could pose enterprise risk

to the insurer. The report must ~~shall~~ be filed with the lead state office of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC and is confidential and exempt from public disclosure as provided in s. 624.4212.

(a) An insurer may satisfy this requirement by providing the office with the most recently filed parent corporation reports that have been filed with the Securities and Exchange Commission which provide the appropriate enterprise risk information.

(b) The term "enterprise risk" means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer which, if not remedied promptly, are likely to have a materially adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in s. 624.4085 or would cause the insurer to be in a hazardous financial condition.

(c) The office may adopt rules for filing the annual enterprise risk report in accordance with the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the NAIC, as adopted in December 2020.

(5) ~~Effective January 1, 2015,~~ The failure to file a

registration statement, or a summary of the registration statement, or the enterprise risk filing report required by this section within the time specified for filing is a violation of this section.

Section 11. Section 629.011, Florida Statutes, is amended to read:

629.011 Definitions ~~"Reciprocal insurance" defined~~.~~—~~As used in this part, the term:

(1) "Affiliated person" of another person means any of the following:

(a) The spouse of the other person.

(b)1. The parents of the other person or their lineal descendants.

2. The parents of the other person's spouse or their lineal descendants.

(c) A person who directly or indirectly owns or controls, or holds with the power to vote, 10 percent or more of the outstanding voting securities of the other person.

(d) A person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with the power to vote, by the other person.

(e) A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person.

(f) A director, officer, trustee, partner, owner, manager, joint venturer, or employee, or another person who is performing duties similar to those of persons in such positions, of the other person.

(g) If the other person is an investment company, any investment adviser of such company or any member of an advisory board of such company.

(h) If the other person is an unincorporated investment company not having a board of directors, the depositor of such company.

(i) A person who has entered into an agreement, written or unwritten, to act in concert with the other person in acquiring, or limiting the disposition of:

1. Securities of an attorney in fact or controlling company that is a stock corporation; or

2. An ownership interest of an attorney in fact or controlling company that is not a stock corporation.

(2) "Attorney in fact" or "attorney" means the attorney in fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.

(3) "Controlling company" means a person, corporation, trust, limited liability company, association, or other entity owning, directly or indirectly, 10 percent or more of the voting securities of one or more attorneys in fact that are stock corporations, or 10 percent or more of the ownership interest of

one or more attorneys in fact that are not stock corporations.

(4) "Reciprocal insurance" means ~~is that resulting from~~ an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons.

(5) "Reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.

Section 12. Section 629.021, Florida Statutes, is repealed.

Section 13. Section 629.061, Florida Statutes, is repealed.

Section 14. Section 629.081, Florida Statutes, is amended to read:

629.081 Organization of reciprocal insurer.—

(1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer by applying ~~and make application~~ to the office for a permit to do so. A domestic reciprocal insurer may not be formed unless the persons so proposing have first received a permit from the office ~~a certificate of authority to transact insurance~~.

(2) The permit application, to be filed by the organizers or the proposed attorney in fact, must be in writing and made in

accordance with forms prescribed by the commission. In addition to any applicable requirements of s. 628.051 and other relevant statutes, the application must include all of the following ~~shall fulfill the requirements of and shall execute and file with the office, when applying for a certificate of authority, a declaration setting forth~~:

(a) The name of the proposed reciprocal insurer, which must be in accordance with s. 629.051.~~;~~

(b) The location of the insurer's principal office, which must ~~shall~~ be the same as that of the proposed attorney in fact and must ~~shall~~ be maintained within this state.~~;~~

(c) The kinds of insurance proposed to be transacted.~~;~~

(d) The names and addresses of the original 25 or more subscribers.~~;~~

(e) The proposed designation and appointment of the proposed attorney in fact and a copy of the proposed power of attorney.~~;~~

(f) The names and addresses of the officers and directors of the proposed attorney in fact, if a corporation, or of its members, if other than a corporation.~~;~~

(g) The background information as specified in s. 629.227 for all officers, directors, managers, and those in equivalent positions of the proposed attorney in fact as well as for any person with an ownership interest of 10 percent or more in the proposed attorney in fact.

(h) The articles of incorporation and bylaws, or equivalent documents, of the proposed attorney in fact, dated within the last year and appropriately certified.

(i) The proposed charter ~~powers~~ of the subscribers' advisory committee, and the names and terms of office of the members thereof, as well as the background information as specified in s. 629.227 for each proposed member.~~;~~

~~(h) That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;~~

(j)~~(i)~~ A copy of the proposed subscribers' agreement.~~;~~

~~(j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the office;~~

(k) ~~A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand; and~~

~~(l)~~ A copy of each policy, endorsement, and application form it then proposes to issue or use.

(l) Any other pertinent information and documents as reasonably requested by the office.

(3) The filing must be accompanied by the application fee required by s. 624.501(1)(a).

(4) The office shall evaluate and grant or deny the permit application in accordance with ss. 628.061, 628.071, and other relevant provisions of the code.

~~Such declaration shall be acknowledged by the attorney before an officer authorized to take acknowledgments.~~

Section 15. Section 629.091, Florida Statutes, is amended to read:

629.091 Reciprocal certificate of authority.—

(1) A domestic reciprocal insurer may seek a certificate of authority only after obtaining a permit.

(2) To apply for a certificate of authority as a domestic reciprocal insurer, the attorney in fact of an applicant who has previously received a permit from the office may file an application for a certificate of authority in accordance with forms prescribed by the commission which, in addition to applicable requirements of ss. 624.404, 624.411, 624.413, and other relevant statutes, consists of all of the following:

(a) Executed copies of any proposed or draft documents required as part of the permit application.

(b) A statement affirming that all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney in fact, be held in the name of the

insurer and for the purposes specified in the subscribers' agreement.

(c) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate that was filed with and approved by the office.

(d) A copy of the bond required under s. 629.121.

(e) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand.

(f) Such other pertinent information or documents as reasonably requested by the office.

(3) If the reciprocal insurer intends to issue nonassessable policies upon receipt of a certificate of authority and if the office determines that the reciprocal insurer meets the legal requirements to issue nonassessable policies, including the surplus requirements, the office shall grant the authorization. If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue or renew nonassessable policies or convert assessable policies to nonassessable policies, and s. 629.301 applies.

(4) The certificate of authority must ~~of a reciprocal insurer shall~~ be issued ~~to its attorney~~ in the name of the

reciprocal insurer to its attorney in fact.

Section 16. Section 629.094, Florida Statutes, is created to read:

629.094 Continued eligibility for certificate of authority.-In order to maintain its eligibility for a certificate of authority, a domestic reciprocal insurer must continue to meet all applicable conditions required for receiving the initial permit and certificate of authority under the insurance code and the rules adopted thereunder.

Section 17. Section 629.101, Florida Statutes, is amended to read:

629.101 Power of attorney in fact.—

(1) The rights and powers of the attorney of a reciprocal insurer are ~~shall be~~ as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth all of the following:

(a) The powers of the attorney.~~;~~

(b) That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged.~~;~~

(c) The general services to be performed by the attorney.~~;~~

(d) That the attorney has a fiduciary duty to the subscribers of the reciprocal insurer.

(e)~~(d)~~ The maximum amount to be deducted from advance

premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer.~~; and~~

(f)~~(e)~~ Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount may ~~shall be~~ not be less than 5 nor more than 10 times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder.~~;~~

(b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers.~~;~~

(c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee.~~; and~~

(d) Contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto must ~~shall~~ be reasonable and equitable, and no such power or agreement may ~~shall~~ be used or be effective in this state unless filed with the office.

Section 18. Section 629.225, Florida Statutes, is created to read:

629.225 Acquisitions.—

(1) A person may not, individually or in conjunction with an affiliated person of such person, directly or indirectly,

conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire 10 percent or more of the outstanding voting securities of an attorney in fact that is a stock corporation or of a controlling company of an attorney in fact that is a stock corporation; or conclude an acquisition of, or otherwise finally acquire, 10 percent or more of the ownership interest of an attorney in fact that is not a stock corporation or of a controlling company of an attorney in fact that is not a stock corporation, unless all of the following conditions are met:

(a)1. The person or affiliated person has filed with the office and sent to the principal office of the attorney in fact, any controlling company of the attorney in fact, the subscribers' advisory committee, and the domestic reciprocal insurer a letter of notification regarding the transaction or proposed transaction no later than 5 days after any form of tender offer or exchange offer is proposed, or no later than 5 days after the acquisition of the securities or ownership interest if a tender offer or exchange offer is not involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved.

2. The subscribers' advisory committee must provide the notification to the subscribers of the reciprocal insurer within

3 business days. Such notification must be provided on a form prescribed by the commission explaining what the notification is and letting the subscribers know of the filing deadlines for objecting to the acquisition.

(b) The person or affiliated person has filed with the office an application, signed under oath and prepared on forms prescribed by the commission, which contains the information specified in subsection (3). The application must be completed and filed within 30 days after any form of tender offer or exchange offer is proposed, or after the acquisition of the securities if a tender offer or exchange offer is not involved.

(c) The office has approved the tender offer or exchange offer, or acquisition if a tender offer or exchange offer is not involved.

(2) The person or affiliated person filing the notice required in paragraph (1)(a) may additionally request the office to waive the requirements of paragraph (1)(b), provided that there is no change in the ultimate controlling shareholders and no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties acquire any direct or indirect interest in the attorney in fact. The office may waive the filing required in paragraph (1)(b) if it determines that in fact there is no change in the ultimate controlling shareholders and no change in the ownership percentages of the ultimate controlling shareholders, and no

unaffiliated parties will acquire any direct or indirect interest in the attorney in fact.

(3) The application to be filed with the office and furnished to the attorney in fact must contain all of the following information and any additional information as the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the reciprocal insurer's subscribers and of the public:

(a) The identity and background information specified in s. 629.227 of:

1. Each person by whom, or on whose behalf, the acquisition is to be made; and

2. Any person who controls, directly or indirectly, such other person, including each director, officer, trustee, partner, owner, manager, or joint venturer, or another person performing duties similar to those of persons in such positions, for the person.

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

(c) Any plans or proposals that such persons may have made to liquidate the attorney in fact or controlling company, to sell any of their assets or merge or consolidate them with any person, or to make any other major change in their business or corporate structure or management.

(d) The nature and the extent of the controlling interest which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the controlling interest is to be acquired of an attorney in fact or controlling company which is not a stock corporation.

(e) The number of shares or other securities that the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired.

(f) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the attorney in fact or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(4) The filing must be accompanied by the fee required under s. 624.501(1)(a).

(5) If any material change occurs in the facts provided in the application filed with the office pursuant to this section, or the background information required under s. 629.227, an amendment specifying such changes must be filed immediately with

the office, and a copy of the amendment must be sent to the principal office of the attorney in fact and to the principal office of the controlling company.

(6)(a) The acquisition application must be reviewed in accordance with chapter 120. The office may, on its own initiative, or, if requested to do so in writing by a substantially affected person, shall conduct a proceeding to consider the appropriateness of the proposed filing. Time periods for purposes of chapter 120 are tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the office within 10 days after the date on which notice of the filing is given, or 10 days after the date on which notice of the filing is sent to the subscribers by the subscribers' advisory committee, whichever is later. During the pendency of the proceeding or review period by the office, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition as long as the acquisition's becoming final is conditioned upon obtaining office approval. However, at any time that the office finds that an immediate danger to the public health, safety, and welfare of the reciprocal insurer's subscribers exists, the office shall immediately order, pursuant to s. 120.569(2)(n), the proposed acquisition disapproved and any further steps to conclude the acquisition ceased.

(b) During the pendency of the office's review of any acquisition subject to this section, the acquiring person may not make any material change in the operation of the attorney in fact or controlling company unless the office has specifically approved the change, and the acquiring person may not make any material change in the management of the attorney in fact unless advance written notice of the change in management is furnished to the office. As used in this paragraph, the term "material change in the operation of the attorney in fact" means a transaction that disposes of or obligates 5 percent or more of the capital and surplus of the attorney in fact or of any domestic reciprocal insurer. The term "material change in the management of the attorney in fact" means any change in management involving officers or directors of the attorney in fact or any person of the attorney in fact or controlling company having authority to dispose of or obligate 5 percent or more of the attorney in fact's capital or surplus. The office must approve a material change in operations if it finds the applicable provisions of subsection (7) have been met. The office may disapprove a material change in management if it finds that the applicable provisions of subsection (7) have not been met, and, in such case, the attorney in fact shall promptly change management as acceptable to the office.

(c) If a request for a proceeding is filed, the proceeding must be conducted within 60 days after the date the written

request for a proceeding is received by the office. A recommended order must be issued within 20 days after the date of the close of the proceedings. A final order must be issued within 20 days after the date of the recommended order or, if exceptions to the recommended order are filed, within 20 days after the date the exceptions are filed.

(7) The office may disapprove any acquisition subject to this section by any person, or any affiliated person of such person, who:

(a) Willfully violates this section;

(b) In violation of an order issued by the office pursuant to subsection (12), fails to divest himself or herself of any stock or ownership interest obtained in violation of this section or fails to divest himself or herself of any direct or indirect control of such stock or ownership interest, within 25 days after such order; or

(c) In violation of an order issued by the office pursuant to subsection (12), acquires an additional stock or ownership interest in an attorney in fact or controlling company or direct or indirect control of such stock or ownership interest, without complying with this section.

(8) The person filing the application required by this section has the burden of proof. The office must approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed application

if no proceeding is conducted, that:

(a) The financial condition of the acquiring person will not jeopardize the financial stability of the attorney in fact or prejudice the interests of the reciprocal insurer's subscribers or the public.

(b) Any plan or proposal that the acquiring person has made:

1. To liquidate the attorney in fact, sell its assets, or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; or

2. To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the attorney in fact,

is fair and free of prejudice to the reciprocal insurer's subscribers or to the public.

(c) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the attorney in fact indicate that the acquisition is in the best interest of the reciprocal insurer's subscribers and in the public interest.

(d) The natural persons for whom background information is required to be furnished pursuant to this section have such

backgrounds as to indicate that it is in the best interests of the reciprocal insurer's subscribers and in the public interest to permit such persons to exercise control over the attorney in fact.

(e) The directors and officers, if such attorney in fact or controlling company is a stock corporation, or the trustees, partners, owners, managers, joint venturers, or other persons performing duties similar to those of persons in such positions, if such attorney in fact or controlling company is not a stock corporation, to be employed after the acquisition have sufficient insurance experience and ability to ensure reasonable promise of successful operation.

(f) The management of the attorney in fact after the acquisition will be competent and trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the attorney in fact not hazardous to the insurance-buying public.

(g) The management of the attorney in fact after the acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or otherwise acted in bad faith with respect thereto.

(h) The acquisition is not likely to be hazardous or prejudicial to the reciprocal insurer's subscribers or to the

public.

(i) The effect of the acquisition would not substantially lessen competition in the line of insurance for which the reciprocal insurer is licensed or certified in this state or would not tend to create a monopoly therein.

(9) A vote by the stockholder of record, or by any other person, of any security acquired in contravention of this section is not valid. Any acquisition contrary to this section is void. Upon the petition of the attorney in fact, the controlling company, or the reciprocal insurer, the circuit court for the county in which the principal office of the attorney in fact is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce this section. There is a private right of action in favor of the attorney in fact or controlling company to enforce this section. A demand upon the office that it perform its functions is not required as a prerequisite to any suit by the attorney in fact or controlling company against another person, and in no case is the office deemed a necessary party to any action by the attorney in fact or controlling company to enforce this section. Any person who makes or proposes an acquisition requiring the filing of an application pursuant to this section, or who files such an application, is deemed thereby to have designated the Chief Financial Officer, or his or her assistant or deputy or another person in charge of

his or her office, as such person's agent for service of process under this section and is deemed thereby to have submitted himself or herself to the administrative jurisdiction of the office and to the jurisdiction of the circuit court.

(10) Any approval by the office under this section does not constitute a recommendation by the office of the tender offer or exchange offer, or the acquisition if a tender offer or exchange offer is not involved. It is unlawful for a person to represent that the office's approval constitutes a recommendation. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this subsection is 5 years.

(11) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the attorney in fact as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the attorney in fact is relieved of any duty to register or report

under this section which may arise out of the attorney in fact's relationship with the person unless the office disallows the disclaimer.

(12) If the office determines that any person or any affiliated person of such person has acquired 10 percent or more of the outstanding voting securities of an attorney in fact or controlling company that is a stock corporation, or 10 percent or more of the ownership interest of an attorney in fact or controlling company that is not a stock corporation, without complying with this section, the office may order that the person and any affiliated person of such person cease acquisition of the attorney in fact or controlling company and, if appropriate, divest itself of any stock or ownership interest acquired in violation of this section.

(13)(a) The office shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of the reciprocal insurer whose attorney in fact or controlling company is acquired in violation of this section.

(b) If a reciprocal insurer is subject to suspension or revocation pursuant to paragraph (a), any other reciprocal insurer using the same attorney in fact is also subject to suspension or revocation. In such case, the office may offer any affected reciprocal insurer, through its subscriber representatives, the ability to cure any suspension or revocation by procuring another attorney in fact acceptable to

the office or by taking any other action agreed to by the office.

(14) This section applies to domestic reciprocal insurers and the attorney in fact of domestic reciprocal insurers. This section does not apply to any acquisition of voting securities or ownership interest of an attorney in fact or of a controlling company by any person who is the owner of a majority of the voting securities or ownership interest with the approval of the office under this section or s. 629.091.

Section 19. Section 629.227, Florida Statutes, is created to read:

629.227 Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to s. 629.081 or s. 629.225 must include, but need not be limited to, all of the following:

(1) A sworn biographical statement, on forms adopted by the commission, which must include, but need not be limited to, the following information:

(a) Occupations, positions of employment, and offices held during the past 20 years, including the principal business and address of any business, corporation, or organization where each occupation, position of employment, or office occurred.

(b) Whether, at any time during such 20-year period, the person was convicted of any crime other than a traffic violation.

(c) Whether, during such 20-year period, the person has been the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and the disposition of the proceeding.

(d) Whether, during such 20-year period, the person has been the subject of any proceeding under the federal Bankruptcy Act.

(e) Whether, during such 20-year period, any person or other business or organization in which the person was a director, officer, trustee, partner, owner, manager, or other official has been the subject of any proceeding under the federal Bankruptcy Act, either during the time of that person's tenure with the business or organization or within 12 months thereafter.

(f) Whether, during such 20-year period, the person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details as to any such event.

(g) Whether, during such 20-year period, the person has served as the attorney in fact, a subscribers' advisory committee member, or any other manager or officer of a reciprocal insurer or insurer that became insolvent or had its

certificate of authority suspended or revoked.

(2) Fingerprints of each person.

(3) An authorization for release of information in regard to the investigation of such person's background.

(4) Any additional information that the office deems necessary to determine the character, experience, ability, and other qualifications of the person, or affiliated person of such person, for the protection of the reciprocal insurer's subscribers and of the public.

Section 20. Section 629.229, Florida Statutes, is created to read:

629.229 Attorneys in fact, officers, and directors of insolvent reciprocal insurers or other insurers.—A person who served as an attorney in fact, or as an officer, director, or manager of an attorney in fact, a member of a subscribers' advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state, and who served in that capacity within the 2-year period before the date the insurer or reciprocal insurer became insolvent, for an insolvency that occurs on or after July 1, 2024, may not thereafter:

(1) Serve as an attorney in fact, or as an officer, director, or manager of an attorney in fact; a member of a subscribers' advisory committee of a reciprocal insurer doing business in this state; or an officer or director of any other

insurer doing business in this state; or

(2) Have direct or indirect control over the selection or appointment of an attorney in fact, or of an officer, director, or manager of an attorney in fact; or a member of the subscribers' advisory committee of a reciprocal insurer doing business in this state; or an officer or director of any insurer doing business in this state, through contract or trust or by operation of law,

unless the person demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Section 21. Section 629.261, Florida Statutes, is amended to read:

629.261 Nonassessable policies.—Upon the impairment of the surplus of a nonassessable reciprocal insurer, the office shall revoke the authorization issued under s. 629.091(3) or s. 629.291(5).

~~(1) If a reciprocal insurer has a surplus as to policyholders required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the office shall issue its certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions~~

~~imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.~~

~~(2) Upon impairment of such surplus, the office shall forthwith revoke the certificate.~~ Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but, after such revocation, no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

~~(3) The office shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it; except that, if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.~~

Section 22. Subsections (1), (2), and (4) of section 629.291, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

629.291 Merger or conversion.—

(1) A ~~domestic~~ reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice, and subject to ~~the~~ approval by ~~of~~ the office of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer, to be thereafter governed by the applicable sections of the Florida Insurance Code. However, a domestic stock insurer may not convert to a reciprocal insurer.

(2) A plan to merge a reciprocal insurer with another reciprocal insurer or for conversion of the reciprocal insurer to a stock or mutual insurer must be filed with the office on forms adopted by the office and must contain such information as the office reasonable requires to evaluate the transaction ~~Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance~~.

(4) Reinsurance of all or substantially all of the insurance in force of a domestic reciprocal insurer in another insurer is ~~shall be~~ deemed to be a merger for the purposes of this section.

(5)(a) An assessable reciprocal insurer may convert to a nonassessable reciprocal insurer if:

1. The subscribers' advisory committee approves the conversion;

2. The attorney in fact submits the application for conversion on the required application form; and

3. The office finds that the application for conversion meets the minimum statutory requirements.

(b) If the office approves the application for conversion, the assessable reciprocal insurer may convert to a nonassessable reciprocal insurer by:

1. Extinguishing the contingent liability of subscribers under all policies then in force in this state;

2. Omitting contingent liability provisions in all policies delivered or issued in this state after the conversion; and

3. Otherwise extinguishing the contingent liability of all of its subscribers. However, if the reciprocal insurer is transacting insurance as an authorized insurer in another state and that state's laws require the insurer to issue policies with contingent liability provisions, the insurer may issue contingent liability policies in that other state.

(c) If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue nonassessable policies or convert assessable policies to nonassessable policies, and s. 629.301 applies.

Section 23. Section 629.525, Florida Statutes, is created to read:

629.525 Rulemaking authority.—The commission shall adopt,

amend, or repeal rules pursuant to chapter 120 which are necessary to implement this chapter.

Section 24. Paragraph (h) of subsection (3) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(3) As used in this section:

(h) "Local government liability pool" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~ or any self-insurance program created pursuant to s. 768.28(16), formed and controlled by counties or municipalities of this state to provide liability insurance coverage for counties, municipalities, or other public agencies of this state, which pool may contract with other parties for the purpose of providing claims administration, processing, accounting, and other administrative facilities.

Section 25. Subsection (3) of section 626.9531, Florida Statutes, is amended to read:

626.9531 Identification of insurers, agents, and insurance contracts.—

(3) For the purposes of this section, the term "risk bearing entity" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~, a commercial self-insurance fund as defined in s. 624.462, a group self-insurance fund as defined in s. 624.4621, a local government self-insurance fund as defined in s. 624.4622, a self-insured public utility as defined in s.

624.46225, or an independent educational institution self-insurance fund as defined in s. 624.4623. For the purposes of this section, the term "risk bearing entity" does not include an authorized insurer as defined in s. 624.09.

Section 26. This act shall take effect July 1, 2024.

COMMERCE COMMITTEE

CS/HB 1611 by Stevenson
Insurance

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Stevenson (Line 175): The amendment:

- establishes standards for cancellations and nonrenewals of personal residential and commercial residential property insurance policies by both admitted and surplus lines insurers when property has been damaged by a coverage peril.
- allows the Insurance Commissioner discretion in the event of wide-spread significant flooding, caused by a hurricane or other natural event, to issue an order preventing admitted and surplus lines insurers from canceling or nonrenewing personal residential or commercial residential property insurance policies covering dwellings or residential properties within certain zip codes for a specific period of time.
- adds roofing contractor to the list of authorized inspectors that an insurer may approve to conduct the inspection of a roof for determining its remaining useful life.
- makes technical changes to the bill sections regarding reciprocal insurers.
- provides an updated effective date.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 175-1255 and insert:

(10)(a) By January 1, 2025, and by the first of each month thereafter, each insurer or insurer group doing business in this state shall file on a monthly ~~quarterly~~ basis ~~in conjunction with financial reports required by paragraph (1)(a)~~ a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report must ~~shall~~ include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property

lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report must ~~shall~~ include the following information for each zip code ~~county on a monthly basis~~:

1. Total number of policies in force at the end of each month.

2. Total number of policies canceled.

3. Total number of policies nonrenewed.

4. Number of policies canceled due to hurricane risk.

5. Number of policies nonrenewed due to hurricane risk.

6. Number of new policies written.

7. Total dollar value of structure exposure under policies that include wind coverage.

8. Number of policies that exclude wind coverage.

9. Number of claims open each month.

10. Number of claims closed each month.

11. Number of claims pending each month.

12. Number of claims in which either the insurer or insured invoked any form of alternative dispute resolution, and specifying which form of alternative dispute resolution was used.

Section 3. Section 624.4305, Florida Statutes, is amended to read:

624.4305 Nonrenewal of residential property insurance policies.—Any insurer planning to nonrenew more than 10,000 residential property insurance policies in this state within a

12-month period shall give notice in writing to the Office of Insurance Regulation for informational purposes 90 days before the issuance of any notices of nonrenewal. The notice provided to the office must set forth the insurer's reasons for such action, the effective dates of nonrenewal, and any arrangements made for other insurers to offer coverage to affected policyholders. The commission may adopt rules to administer this section.

Section 4. Effective upon this act becoming a law, paragraph (d) of subsection (1) of section 624.46226, Florida Statutes, is amended to read:

624.46226 Public housing authorities self-insurance funds; exemption for taxation and assessments.—

(1) Notwithstanding any other provision of law, any two or more public housing authorities in the state as defined in chapter 421 may form a self-insurance fund for the purpose of pooling and spreading liabilities of its members as to any one or combination of casualty risk or real or personal property risk of every kind and every interest in such property against loss or damage from any hazard or cause and against any loss consequential to such loss or damage, provided the self-insurance fund that is created:

(d) Maintains a continuing program of excess insurance coverage and reinsurance ~~reserve evaluation~~ to protect the financial stability of the fund ~~in an amount and manner~~

~~determined by a qualified and independent actuary~~. The program must, at a minimum~~, this program must~~:

1. Include a net retention in an amount and manner selected by the administrator, ratified by the governing body, and certified by a qualified actuary;

2. Include reinsurance or ~~Purchase~~ excess insurance from authorized insurance carriers or eligible surplus lines insurers; and~~.~~

3. Be certified by a qualified actuary as to the program's adequacy. This certification must be submitted simultaneously with the certifications required under paragraphs (b) and (c).

~~2. Retain a per-loss occurrence that does not exceed $350,000.~~

A for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8) may join a self-insurance fund formed under this section in which such public housing authority participates. Such for-profit or not-for-profit corporation, limited liability company, or other similar business entity may join the self-insurance fund solely to insure risks related to public housing.

Section 5. Subsection (2) of section 626.9201, Florida Statutes, is amended to read:

626.9201 Notice of cancellation or nonrenewal.—

(2) An insurer issuing a policy providing coverage for property, casualty, surety, or marine insurance must give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days before the effective date of the cancellation or termination, including in the written notice the reasons for the cancellation or termination, except that:

(a) If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason for cancellation must be given. As used in this paragraph, the term "nonpayment of premium" means the failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy or an installment of such a premium, whether the premium or installment is payable directly to the insurer or its agent or indirectly under any plan for financing premiums or extension of credit or the failure of the named insured to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also includes the failure of a financial institution to honor the check of an applicant for insurance which was delivered to a licensed agent for payment of a premium, even if the agent previously delivered or transferred the premium to the insurer. If a correctly dishonored check represents payment of the initial premium, the

contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and, if the contract is void, any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full; ~~and~~

(b) If cancellation or termination occurs during the first 90 days during which the insurance is in force and if the insurance is canceled or terminated for reasons other than nonpayment, at least 20 days' written notice of cancellation or termination accompanied by the reason for cancellation or termination must be given, except if there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer; and~~.~~

(c)1. Notwithstanding subparagraph 2., an insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged by a covered peril until the earlier of the completion of repairs or the expiration of one subsequent renewal of the policy that was in force at the time of the loss.

2. An insurer or agent may cancel or nonrenew such a policy prior to the repair of the dwelling or residential property:

a. Upon 10 days' notice:

(I) For nonpayment of premium; or

(II) If the named insured no longer has an insurable interest in the property; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the claim;

(II) If the insurer or its agent has made a reasonable written inquiry to the insured as to the status of the repair and the insured has failed within 30 calendar days to provide information that is responsive to the inquiry to the address or e-mail account designated by the insurer or its agent; or

(III) If the insurer has paid policy limits under a personal residential property insurance policy for a loss to the insured dwelling that was damaged, or policy limits under a commercial residential property insurance policy for a loss to each insured structure that was damaged.

3. If the insurer elects to nonrenew a policy after the expiration of the time in subparagraph 1., the insurer must provide notice in accordance with subsection (1).

4. This paragraph does not prevent the insurer from canceling or nonrenewing the policy after the repair is completed for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for subparagraph 1.

5. For purposes of this paragraph:

a. A structure is deemed to be repaired when substantially completed and restored to the extent that it is insurable by:

(I) Another authorized insurer writing policies in this state if the structure is currently insured by an authorized insurer; or

(II) Another authorized or eligible surplus lines insurer writing policies in this state if the structure is currently insured by an eligible surplus lines insurer.

b. The term "insurer" means an authorized insurer or an eligible surplus lines insurer.

c. The term "damage" includes, but is not limited to, flood damage related to a hurricane if flood is a covered peril under the personal residential or commercial residential property insurance policy.

6. The commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

7. In the event of wide-spread significant flooding, as determined by the Commissioner of Insurance Regulation, caused by a hurricane or other natural event, the Commissioner of Insurance Regulation may issue an order preventing insurers from canceling or nonrenewing personal residential or commercial residential property insurance policies covering dwellings or residential properties located within zip codes, as determined by the Commissioner of Insurance Regulation, directly affected

by such flooding. If a claim is made while such an order is in effect, the insurer may not cancel or nonrenew personal residential or commercial residential property insurance policies covering dwellings or residential properties until the earlier of the completion of repairs or the expiration of one subsequent renewal of the policy that was in force at the time of the loss, even if the personal residential or commercial residential property insurance policies do not cover the peril of flood. An order issued pursuant to this subparagraph may remain in effect for an initial period of 90 days and may be renewed for subsequent 90-day periods, not to exceed a total of 270 days. The subparagraph only applies to coverage periods and does not alter coverage otherwise provided by any insurance policy.

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

627.062 Rate standards.—

(2) As to all such classes of insurance:

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

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

2. May use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection

Methodology to be accurate or reliable pursuant to s. 627.0628. If an averaged model is used under this section, the same averaged model must be used throughout this state. If a weighted average is used, the insurer must provide the office with an actuarial justification for using the weighted average which shows that the weighted average results in a rate that is reasonable, adequate, and fair.

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

Section 7. Paragraph (n) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are competitive. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide

any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates

under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Twelve percent for 2023.

b. Thirteen percent for 2024.

c. Fourteen percent for 2025.

d. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. ~~The following~~ New or renewal personal lines policies that do not cover a primary residence ~~written on or after November 1, 2023,~~ are not subject to the rate increase limitations in subparagraph 5., but may not be charged more than 50 percent above, nor less than, the prior year's established rate for the corporation~~:~~

~~a. Policies that do not cover a primary residence;~~

~~b. New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or~~

~~c. Subsequent renewals of those policies, including the new policies in sub-subparagraph b., under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631~~.

9. As used in this paragraph, the term "primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

Section 8. Paragraph (e) of subsection (2) of section 627.4133, Florida Statutes, is amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment

building, or other policy covering a residential structure or its contents:

(e)1. Notwithstanding subparagraph 2., an insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged by a covered peril until the earlier of the completion of repairs or the expiration of one subsequent renewal of the policy that was in force at the time of the loss. ~~An authorized insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state:~~

~~a. For a period of 90 days after the dwelling or residential property has been repaired, if such property has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation.~~

~~b. Until the earlier of when the dwelling or residential property has been repaired or 1 year after the insurer issues the final claim payment, if such property was damaged by any covered peril and sub-subparagraph a. does not apply.~~

2. ~~However,~~ An insurer or agent may cancel or nonrenew such a policy prior to the repair of the dwelling or residential property:

a. Upon 10 days' notice:

(I) For nonpayment of premium; or

(II) If the named insured no longer has an insurable interest in the property; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the claim;

(II) If the insurer or its agent has made a reasonable written inquiry to the insured as to the status of the repair and the insured has failed within 30 calendar days to provide information that is responsive to the inquiry to the address or e-mail account designated by the insurer or its agent ~~If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling~~; or

(III) If the insurer has paid policy limits under a personal residential property insurance policy for a loss to the insured dwelling that was damaged, or policy limits under a commercial residential property insurance policy for a loss to each insured structure that was damaged.

3. If the insurer elects to nonrenew a policy after the expiration of the time in subparagraph 1., the insurer must provide notice in accordance with subsection (2) ~~covering a property that has been damaged, the insurer shall provide at least 90 days' notice to the insured that the insurer intends to~~

~~nonrenew the policy 90 days after the dwelling or residential property has been repaired~~.

4. ~~Nothing in~~ This paragraph does not ~~shall~~ prevent the insurer from canceling or nonrenewing the policy after the repair is completed ~~90 days after the repairs are complete~~ for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for ~~the limitations of~~ subparagraph 1. ~~The Financial Services Commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.~~

5.~~4.~~ This paragraph shall also apply to personal residential and commercial residential policies covering property that was damaged as the result of Hurricane Ian or Hurricane Nicole.

6. ~~5.~~ For purposes of this paragraph:

a. A structure is deemed to be repaired when substantially completed and restored to the extent that it is insurable by:

(I) Another authorized insurer writing policies in this state if the structure is currently insured by an authorized insurer; or

(II) Another authorized or eligible surplus lines insurer writing policies in this state if the structure is currently insured by an eligible surplus lines insurer.

b. The term "insurer" means an authorized insurer or an eligible surplus lines insurer.

c. Except for subparagraph 5., the term "damage" includes, but is not limited to, flood damage related to a hurricane if flood is a covered peril under the personal residential or commercial residential property insurance policy.

7. In the event of wide-spread significant flooding, as determined by the Commissioner of Insurance Regulation, caused by a hurricane or other natural event, the Commissioner of Insurance Regulation may issue an order preventing insurers from canceling or nonrenewing personal residential or commercial residential property insurance policies covering dwellings or residential properties located within zip codes, as determined by the Commissioner of Insurance Regulation, directly affected by such flooding. If a claim is made while such an order is in effect, the insurer may not cancel or nonrenew personal residential or commercial residential property insurance policies covering dwellings or residential properties until the earlier of the completion of repairs or the expiration of one subsequent renewal of the policy that was in force at the time of the loss, even if the personal residential or commercial residential property insurance policies do not cover the peril of flood. An order issued pursuant to this subparagraph may remain in effect for an initial period of 90 days and may be renewed for subsequent 90-day periods, not to exceed a total of 270 days. The subparagraph only applies to coverage periods and

does not alter coverage otherwise provided by any insurance policy.

7. The commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

Section 9. Paragraph (a) of subsection (5) of section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(5)(a) As used in this subsection, the term "authorized inspector" means an inspector who is approved by the insurer and who is:

1. A home inspector licensed under s. 468.8314;

2. A building code inspector certified under s. 468.607;

3. A general, building, or residential contractor licensed under s. 489.111 or a roofing contractor;

4. A professional engineer licensed under s. 471.015;

5. A professional architect licensed under s. 481.213; or

6. Any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete a general inspection of a residential structure insured with a homeowner's insurance policy.

Section 10. Section 628.011, Florida Statutes, is amended to read:

628.011 Scope of part.—This part applies only to domestic ~~stock~~ insurers, mutual insurers, and captive insurers, except that s. 628.341(2) applies also as to foreign and alien insurers.

Section 11. Section 628.061, Florida Statutes, is amended to read:

628.061 Investigation of proposed organization.—In connection with any proposal to organize or incorporate a domestic insurer, the office shall make an investigation of:

(1) The character, reputation, financial standing, and motives of the organizers, incorporators, and subscribers organizing the proposed insurer or any attorney in fact.

(2) The character, financial responsibility, insurance experience, and business qualifications of its proposed officers, members of its subscribers' advisory committee, or officers of its attorney in fact.

(3) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, including the stockholders and directors of any attorney in fact.

Section 12. Subsections (1), (2), and (5) of section 628.801, Florida Statutes, are amended to read:

628.801 Insurance holding companies; registration; regulation.—

(1) An insurer that is authorized to do business in this state and that is a member of an insurance holding company shall, on or before April 1 of each year, register with the office and file a registration statement and be subject to regulation with respect to its relationship to the holding company as provided by law or rule. The commission shall adopt rules establishing the information and statement form required for registration and the manner in which registered insurers and their affiliates are regulated. The rules apply to domestic insurers, foreign insurers, and commercially domiciled insurers, except for foreign insurers domiciled in states that are currently accredited by the NAIC. Except to the extent of any conflict with this code, the rules must include all requirements and standards of the Insurance Holding Company System Model Regulation and ss. 4 and 5 of the Insurance Holding Company System Regulatory Act ~~and the Insurance Holding Company System Model Regulation~~ of the NAIC, as adopted in December 2020 ~~2010~~. The commission may adopt subsequent amendments thereto if the methodology remains substantially consistent. The rules may include a prohibition on oral contracts between affiliated entities. Material transactions between an insurer and its affiliates must ~~shall~~ be filed with the office as provided by rule.

(2) ~~Effective January 1, 2015,~~ The ultimate controlling person of every insurer subject to registration shall also file

an annual enterprise risk report on or before April 1. As used in this subsection, the term "ultimate controlling person" means a person who is not controlled by any other person. The report must, to the best of the ultimate controlling person's knowledge and belief, ~~must~~ identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must ~~shall~~ be filed with the lead state office of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC and is confidential and exempt from public disclosure as provided in s. 624.4212.

(a) An insurer may satisfy this requirement by providing the office with the most recently filed parent corporation reports that have been filed with the Securities and Exchange Commission which provide the appropriate enterprise risk information.

(b) The term "enterprise risk" means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer which, if not remedied promptly, are likely to have a materially adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in s. 624.4085 or would cause the insurer to be in a hazardous financial condition.

(c) The office may adopt rules for filing the annual enterprise risk report in accordance with the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the NAIC, as adopted in December 2020.

(5) ~~Effective January 1, 2015,~~ The failure to file a registration statement, or a summary of the registration statement, or the enterprise risk filing report required by this section within the time specified for filing is a violation of this section.

Section 13. Section 629.011, Florida Statutes, is amended to read:

629.011 Definitions ~~"Reciprocal insurance" defined~~.—As used in this part, the term:

(1) "Affiliated person" of another person means any of the following:

(a) The spouse of the other person.

(b)1. The parents of the other person or their lineal descendants.

2. The parents of the other person's spouse or their lineal descendants.

(c) A person who directly or indirectly owns or controls, or holds with the power to vote, 10 percent or more of the outstanding voting securities of the other person.

(d) A person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with the power to vote, by the other person.

(e) A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person.

(f) A director, officer, trustee, partner, owner, manager, joint venturer, or employee, or another person who is performing duties similar to those of persons in such positions, of the other person.

(g) If the other person is an investment company, any investment adviser of such company or any member of an advisory board of such company.

(h) If the other person is an unincorporated investment company not having a board of directors, the depositor of such company.

(i) A person who has entered into an agreement, written or unwritten, to act in concert with the other person in acquiring, or limiting the disposition of:

1. Securities of an attorney in fact or controlling company that is a stock corporation; or

2. An ownership interest of an attorney in fact or controlling company that is not a stock corporation.

(2) "Attorney in fact" or "attorney" means the attorney in fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.

(3) "Controlling company" means a person, corporation, trust, limited liability company, association, or other entity owning, directly or indirectly, 10 percent or more of the voting securities of one or more attorneys in fact that are stock corporations, or 10 percent or more of the ownership interest of one or more attorneys in fact that are not stock corporations.

(4) "Reciprocal insurance" means ~~is that resulting from~~ an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons.

(5) "Reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.

Section 14. Section 629.021, Florida Statutes, is repealed.

Section 15. Section 629.061, Florida Statutes, is repealed.

Section 16. Section 629.081, Florida Statutes, is amended to read:

629.081 Organization of reciprocal insurer.—

(1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer by applying ~~and make application~~ to the office for a permit to do so. A domestic reciprocal insurer may not be formed unless the persons so proposing have first received a permit from the office ~~a certificate of authority to transact insurance~~.

(2) The permit application, to be filed by the organizers or the proposed attorney in fact, must be in writing and made in accordance with forms prescribed by the commission. In addition to any applicable requirements of s. 628.051 and other relevant statutes, the application must include all of the following ~~shall fulfill the requirements of and shall execute and file with the office, when applying for a certificate of authority, a declaration setting forth~~:

(a) The name of the proposed reciprocal insurer, which must be in accordance with s. 629.051.~~;~~

(b) The location of the insurer's principal office, which must ~~shall~~ be the same as that of the proposed attorney in fact and must ~~shall~~ be maintained within this state.~~;~~

(c) The kinds of insurance proposed to be transacted.~~;~~

(d) The names and addresses of the original 25 or more subscribers.~~;~~

(e) The proposed designation and appointment of the proposed attorney in fact and a copy of the proposed power of attorney.~~;~~

(f) The names and addresses of the officers and directors of the proposed attorney in fact, if a corporation, or of its members, if other than a corporation.~~;~~

(g) The background information as specified in s. 629.227 for all officers, directors, managers, and those in equivalent positions of the proposed attorney in fact as well as for any person with an ownership interest of 10 percent or more in the proposed attorney in fact.

(h) The articles of incorporation and bylaws, or equivalent documents, of the proposed attorney in fact, dated within the last year and appropriately certified.

(i) The proposed charter ~~powers~~ of the subscribers' advisory committee, and the names and terms of office of the members thereof, as well as the background information as specified in s. 629.227 for each proposed member.~~;~~

~~(h) That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;~~

(j)~~(i)~~ A copy of the proposed subscribers' agreement.~~;~~

~~(j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the~~

~~policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the office;~~

(k) ~~A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand; and~~

~~(l)~~ A copy of each policy, endorsement, and application form it then proposes to issue or use.

(l) Any other pertinent information and documents as reasonably requested by the office.

(3) The filing must be accompanied by the application fee required by s. 624.501(1)(a).

(4) The office shall evaluate and grant or deny the permit application in accordance with ss. 628.061, 628.071, and other relevant provisions of the code.

~~Such declaration shall be acknowledged by the attorney before an officer authorized to take acknowledgments.~~

Section 17. Section 629.091, Florida Statutes, is amended to read:

629.091 Reciprocal certificate of authority.—

(1) A domestic reciprocal insurer may seek a certificate of authority only after obtaining a permit.

(2) To apply for a certificate of authority as a domestic reciprocal insurer, the attorney in fact of an applicant who has previously received a permit from the office may file an

application for a certificate of authority in accordance with forms prescribed by the commission which, in addition to applicable requirements of ss. 624.404, 624.411, 624.413, and other relevant statutes, consists of all of the following:

(a) Executed copies of any proposed or draft documents required as part of the permit application.

(b) A statement affirming that all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney in fact, be held in the name of the insurer and for the purposes specified in the subscribers' agreement.

(c) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate that was filed with and approved by the office.

(d) A copy of the bond required under s. 629.121.

(e) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand.

(f) Such other pertinent information or documents as reasonably requested by the office.

(3) If the reciprocal insurer intends to issue nonassessable policies upon receipt of a certificate of

authority and if the office determines that the reciprocal insurer meets the legal requirements to issue nonassessable policies, including the surplus requirements, the office shall grant the authorization to issue nonassessable policies.

(4) The certificate of authority must ~~of a reciprocal insurer shall~~ be issued ~~to its attorney~~ in the name of the reciprocal insurer to its attorney in fact.

Section 18. Section 629.094, Florida Statutes, is created to read:

629.094 Continued eligibility for certificate of authority.-In order to maintain its eligibility for a certificate of authority, a domestic reciprocal insurer must continue to meet all applicable conditions required for receiving the initial permit and certificate of authority under the insurance code and the rules adopted thereunder.

Section 19. Section 629.101, Florida Statutes, is amended to read:

629.101 Power of attorney.—

(1) The rights and powers of the attorney in fact of a reciprocal insurer are ~~shall be~~ as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth all of the following:

(a) The powers of the attorney in fact.~~;~~

(b) That the attorney in fact is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged.~~,~~

(c) The place where the office of the attorney in fact is maintained.

(d)~~(c)~~ The general services to be performed by the attorney in fact.~~,~~

(e) That the attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer.

(f)~~(d)~~ The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney in fact and the general items of expense in addition to losses~~,~~ to be paid by the insurer.~~; and~~

(g)~~(e)~~ Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount may ~~shall be~~ not be less than 5 nor more than 10 times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) Provide for the right of substitution of the attorney in fact and revocation of the power of attorney and rights thereunder.~~,~~

(b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers.~~,~~

(c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee.~~; and~~

(4)~~(d)~~ The power of attorney must contain other lawful provisions deemed advisable.

(5)~~(4)~~ The terms of any power of attorney or agreement collateral thereto must ~~shall~~ be reasonable and equitable, and ~~no~~ such power or agreement may not ~~shall~~ be used or be effective in this state unless filed with the office.

Section 20. Section 629.225, Florida Statutes, is created to read:

629.225 Acquisitions.—

(1) A person may not, individually or in conjunction with an affiliated person of such person, directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire 10 percent or more of the outstanding voting securities of an attorney in fact that is a stock corporation or of a controlling company of an attorney in fact that is a stock corporation; or conclude an acquisition of, or otherwise finally acquire, 10 percent or more of the ownership interest of an attorney in fact that is not a stock corporation or of a controlling company of an attorney in fact that is not a stock corporation, unless all of the following conditions are met:

(a)1. The person or affiliated person has filed with the office and sent to the principal office of the attorney in fact,

any controlling company of the attorney in fact, the subscribers' advisory committee, and the domestic reciprocal insurer a letter of notification regarding the transaction or proposed transaction no later than 5 days after any form of tender offer or exchange offer is proposed, or no later than 5 days after the acquisition of the securities or ownership interest if a tender offer or exchange offer is not involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved.

2. The subscribers' advisory committee must provide the notification to the subscribers of the reciprocal insurer within 3 business days. Such notification must be provided on a form prescribed by the commission explaining what the notification is and letting the subscribers know of the filing deadlines for objecting to the acquisition.

(b) The person or affiliated person has filed with the office an application, signed under oath and prepared on forms prescribed by the commission, which contains the information specified in subsection (3). The application must be completed and filed within 30 days after any form of tender offer or exchange offer is proposed, or after the acquisition of the securities if a tender offer or exchange offer is not involved.

(c) The office has approved the tender offer or exchange offer, or acquisition if a tender offer or exchange offer is not involved.

(2) The person or affiliated person filing the notice required in paragraph (1)(a) may additionally request the office to waive the requirements of paragraph (1)(b), provided that there is no change in the ultimate controlling shareholders and no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties acquire any direct or indirect interest in the attorney in fact. The office may waive the filing required in paragraph (1)(b) if it determines that in fact there is no change in the ultimate controlling shareholders and no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties will acquire any direct or indirect interest in the attorney in fact.

(3) The application to be filed with the office and furnished to the attorney in fact must contain all of the following information and any additional information as the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the reciprocal insurer's subscribers and of the public:

(a) The identity and background information specified in s. 629.227 of:

1. Each person by whom, or on whose behalf, the acquisition is to be made; and

2. Any person who controls, directly or indirectly, such other person, including each director, officer, trustee, partner, owner, manager, or joint venturer, or another person performing duties similar to those of persons in such positions, for the person.

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

(c) Any plans or proposals that such persons may have made to liquidate the attorney in fact or controlling company, to sell any of their assets or merge or consolidate them with any person, or to make any other major change in their business or corporate structure or management.

(d) The nature and the extent of the controlling interest which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the controlling interest is to be acquired of an attorney in fact or controlling company which is not a stock corporation.

(e) The number of shares or other securities that the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired.

(f) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the attorney in fact or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(4) The filing must be accompanied by the fee required under s. 624.501(1)(a).

(5) If any material change occurs in the facts provided in the application filed with the office pursuant to this section, or the background information required under s. 629.227, an amendment specifying such changes must be filed immediately with the office, and a copy of the amendment must be sent to the principal office of the attorney in fact and to the principal office of the controlling company.

(6)(a) The acquisition application must be reviewed in accordance with chapter 120. The office may, on its own initiative, or, if requested to do so in writing by a substantially affected person, shall conduct a proceeding to consider the appropriateness of the proposed filing. Time periods for purposes of chapter 120 are tolled during the pendency of the proceeding. Any written request for a proceeding

must be filed with the office within 10 days after the date on which notice of the filing is given, or 10 days after the date on which notice of the filing is sent to the subscribers by the subscribers' advisory committee, whichever is later. During the pendency of the proceeding or review period by the office, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition as long as the acquisition's becoming final is conditioned upon obtaining office approval. However, at any time that the office finds that an immediate danger to the public health, safety, and welfare of the reciprocal insurer's subscribers exists, the office shall immediately order, pursuant to s. 120.569(2)(n), the proposed acquisition disapproved and any further steps to conclude the acquisition ceased.

(b) During the pendency of the office's review of any acquisition subject to this section, the acquiring person may not make any material change in the operation of the attorney in fact or controlling company unless the office has specifically approved the change, and the acquiring person may not make any material change in the management of the attorney in fact unless advance written notice of the change in management is furnished to the office. As used in this paragraph, the term "material change in the operation of the attorney in fact" means a transaction that disposes of or obligates 5 percent or more of

the capital and surplus of the attorney in fact or of any domestic reciprocal insurer. The term "material change in the management of the attorney in fact" means any change in management involving officers or directors of the attorney in fact or any person of the attorney in fact or controlling company having authority to dispose of or obligate 5 percent or more of the attorney in fact's capital or surplus. The office must approve a material change in operations if it finds the applicable provisions of subsection (7) have been met. The office may disapprove a material change in management if it finds that the applicable provisions of subsection (7) have not been met, and, in such case, the attorney in fact shall promptly change management as acceptable to the office.

(c) If a request for a proceeding is filed, the proceeding must be conducted within 60 days after the date the written request for a proceeding is received by the office. A recommended order must be issued within 20 days after the date of the close of the proceedings. A final order must be issued within 20 days after the date of the recommended order or, if exceptions to the recommended order are filed, within 20 days after the date the exceptions are filed.

(7) The office may disapprove any acquisition subject to this section by any person, or any affiliated person of such person, who:

(a) Willfully violates this section;

(b) In violation of an order issued by the office pursuant to subsection (12), fails to divest himself or herself of any stock or ownership interest obtained in violation of this section or fails to divest himself or herself of any direct or indirect control of such stock or ownership interest, within 25 days after such order; or

(c) In violation of an order issued by the office pursuant to subsection (12), acquires an additional stock or ownership interest in an attorney in fact or controlling company or direct or indirect control of such stock or ownership interest, without complying with this section.

(8) The person filing the application required by this section has the burden of proof. The office must approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed application if no proceeding is conducted, that:

(a) The financial condition of the acquiring person will not jeopardize the financial stability of the attorney in fact or prejudice the interests of the reciprocal insurer's subscribers or the public.

(b) Any plan or proposal that the acquiring person has made:

1. To liquidate the attorney in fact, sell its assets, or merge or consolidate it with any person, or to make any other

major change in its business or corporate structure or management; or

2. To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the attorney in fact, is fair and free of prejudice to the reciprocal insurer's subscribers or to the public.

(c) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the attorney in fact indicate that the acquisition is in the best interest of the reciprocal insurer's subscribers and in the public interest.

(d) The natural persons for whom background information is required to be furnished pursuant to this section have such backgrounds as to indicate that it is in the best interests of the reciprocal insurer's subscribers and in the public interest to permit such persons to exercise control over the attorney in fact.

(e) The directors and officers, if such attorney in fact or controlling company is a stock corporation, or the trustees, partners, owners, managers, joint venturers, or other persons performing duties similar to those of persons in such positions, if such attorney in fact or controlling company is not a stock corporation, to be employed after the acquisition have

sufficient insurance experience and ability to ensure reasonable promise of successful operation.

(f) The management of the attorney in fact after the acquisition will be competent and trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the attorney in fact not hazardous to the insurance-buying public.

(g) The management of the attorney in fact after the acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or otherwise acted in bad faith with respect thereto.

(h) The acquisition is not likely to be hazardous or prejudicial to the reciprocal insurer's subscribers or to the public.

(i) The effect of the acquisition would not substantially lessen competition in the line of insurance for which the reciprocal insurer is licensed or certified in this state or would not tend to create a monopoly therein.

(9) A vote by the stockholder of record, or by any other person, of any security acquired in contravention of this section is not valid. Any acquisition contrary to this section is void. Upon the petition of the attorney in fact, the controlling company, or the reciprocal insurer, the circuit

court for the county in which the principal office of the attorney in fact is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce this section. There is a private right of action in favor of the attorney in fact or controlling company to enforce this section. A demand upon the office that it perform its functions is not required as a prerequisite to any suit by the attorney in fact or controlling company against another person, and in no case is the office deemed a necessary party to any action by the attorney in fact or controlling company to enforce this section. Any person who makes or proposes an acquisition requiring the filing of an application pursuant to this section, or who files such an application, is deemed thereby to have designated the Chief Financial Officer, or his or her assistant or deputy or another person in charge of his or her office, as such person's agent for service of process under this section and is deemed thereby to have submitted himself or herself to the administrative jurisdiction of the office and to the jurisdiction of the circuit court.

(10) Any approval by the office under this section does not constitute a recommendation by the office of the tender offer or exchange offer, or the acquisition if a tender offer or exchange offer is not involved. It is unlawful for a person to represent that the office's approval constitutes a recommendation. A person who violates this subsection commits a

felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this subsection is 5 years.

(11) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the attorney in fact as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the attorney in fact is relieved of any duty to register or report under this section which may arise out of the attorney in fact's relationship with the person unless the office disallows the disclaimer.

(12) If the office determines that any person or any affiliated person of such person has acquired 10 percent or more of the outstanding voting securities of an attorney in fact or controlling company that is a stock corporation, or 10 percent or more of the ownership interest of an attorney in fact or controlling company that is not a stock corporation, without complying with this section, the office may order that the

person and any affiliated person of such person cease acquisition of the attorney in fact or controlling company and, if appropriate, divest itself of any stock or ownership interest acquired in violation of this section.

(13)(a) The office shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of the reciprocal insurer whose attorney in fact or controlling company is acquired in violation of this section.

(b) If a reciprocal insurer is subject to suspension or revocation pursuant to paragraph (a), any other reciprocal insurer using the same attorney in fact is also subject to suspension or revocation. In such case, the office may offer any affected reciprocal insurer, through its subscriber representatives, the ability to cure any suspension or revocation by procuring another attorney in fact acceptable to the office or by taking any other action agreed to by the office.

(14) This section applies to domestic reciprocal insurers and the attorney in fact of domestic reciprocal insurers. This section does not apply to any acquisition of voting securities or ownership interest of an attorney in fact or of a controlling company by any person who is the owner of a majority of the voting securities or ownership interest with the approval of the office under this section or s. 629.091.

Section 21. Section 629.227, Florida Statutes, is created to read:

629.227 Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to s. 629.081 or s. 629.225 must include, but need not be limited to, all of the following:

(1) A sworn biographical statement, on forms adopted by the commission, which must include, but need not be limited to, the following information:

(a) Occupations, positions of employment, and offices held during the past 20 years, including the principal business and address of any business, corporation, or organization where each occupation, position of employment, or office occurred.

(b) Whether, at any time during such 20-year period, the person was convicted of any crime other than a traffic violation.

(c) Whether, during such 20-year period, the person has been the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and the disposition of the proceeding.

(d) Whether, during such 20-year period, the person has been the subject of any proceeding under the federal Bankruptcy Act.

(e) Whether, during such 20-year period, any person or other business or organization in which the person was a

director, officer, trustee, partner, owner, manager, or other official has been the subject of any proceeding under the federal Bankruptcy Act, either during the time of that person's tenure with the business or organization or within 12 months thereafter.

(f) Whether, during such 20-year period, the person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details as to any such event.

(g) Whether, during such 20-year period, the person has served as the attorney in fact, a subscribers' advisory committee member, or any other manager or officer of a reciprocal insurer or insurer that became insolvent or had its certificate of authority suspended or revoked.

(2) A full set of fingerprints of each person, which must be submitted to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing as described in s. 624.34. Fees for state and federal fingerprint processing shall

be borne by the person. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e).

(3) An authorization for release of information in regard to the investigation of such person's background.

(4) Any additional information that the office deems necessary to determine the character, experience, ability, and other qualifications of the person, or affiliated person of such person, for the protection of the reciprocal insurer's subscribers and of the public.

Section 22. Section 629.229, Florida Statutes, is created to read:

629.229 Attorneys in fact, officers, and directors of insolvent reciprocal insurers or other insurers.—A person who served as an attorney in fact, or as an officer, director, or manager of an attorney in fact, a member of a subscribers' advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state, and who served in that capacity within the 2-year period before the date the insurer or reciprocal insurer became insolvent, for an insolvency that occurs on or after July 1, 2024, may not thereafter:

(1) Serve as an attorney in fact, or as an officer, director, or manager of an attorney in fact; a member of a subscribers' advisory committee of a reciprocal insurer doing

business in this state; or an officer or director of any other insurer doing business in this state; or

(2) Have direct or indirect control over the selection or appointment of an attorney in fact, or of an officer, director, or manager of an attorney in fact; or a member of the subscribers' advisory committee of a reciprocal insurer doing business in this state; or an officer or director of any insurer doing business in this state, through contract or trust or by operation of law,

unless the person demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Section 23. Section 629.261, Florida Statutes, is amended to read:

629.261 Nonassessable policies.—Upon the impairment of the surplus of a nonassessable reciprocal insurer, the office shall revoke the authorization issued under s. 629.091(3) or s. 629.291(5). Upon the revocation of the authority to issue nonassessable policies, the reciprocal insurer may no longer issue or renew nonassessable policies or convert assessable policies to nonassessable policies and the provisions of s. 629.301 apply.

~~(1) If a reciprocal insurer has a surplus as to policyholders required of a domestic stock insurer authorized to~~

~~transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the office shall issue its certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.~~

~~(2) Upon impairment of such surplus, the office shall forthwith revoke the certificate.~~ Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but, after such revocation, no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

~~(3) The office shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it; except that, if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the~~

~~contingent liability applicable to policies theretofore in force in such state.~~

Section 24. Subsections (1), (2), and (4) of section 629.291, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

629.291 Merger or conversion.—

(1) A ~~domestic~~ reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice, and subject to ~~the~~ approval by ~~of~~ the office of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer, to be thereafter governed by the applicable sections of the Florida Insurance Code. However, a domestic stock insurer may not convert to a reciprocal insurer.

(2) A plan to merge a reciprocal insurer with another reciprocal insurer or for conversion of the reciprocal insurer to a stock or mutual insurer must be filed with the office on forms adopted by the office and must contain such information as the office reasonable requires to evaluate the transaction ~~Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance~~.

(4) Reinsurance of all or substantially all of the insurance in force of a domestic reciprocal insurer in another

insurer is ~~shall be~~ deemed to be a merger for the purposes of this section.

(5)(a) An assessable reciprocal insurer may convert to a nonassessable reciprocal insurer if:

1. The subscribers' advisory committee approves the conversion;

2. The attorney in fact submits the application for conversion on the required application form; and

3. The office finds that the application for conversion meets the minimum statutory requirements.

(b) If the office approves the application for conversion, the assessable reciprocal insurer may convert to a nonassessable reciprocal insurer by:

1. Extinguishing the contingent liability of subscribers under all policies then in force in this state;

2. Omitting contingent liability provisions in all policies delivered or issued in this state after the conversion; and

3. Otherwise extinguishing the contingent liability of all of its subscribers. However, if the reciprocal insurer is transacting insurance as an authorized insurer in another state and that state's laws require the insurer to issue policies with contingent liability provisions, the insurer may issue contingent liability policies in that other state.

Section 25. 629.525, Florida Statutes, is created to read:

629.525 Rulemaking authority.—The commission shall adopt, amend, or repeal rules pursuant to chapter 120 which are necessary to implement this chapter.

Section 26. Paragraph (h) of subsection (3) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(3) As used in this section:

(h) "Local government liability pool" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~ or any self-insurance program created pursuant to s. 768.28(16), formed and controlled by counties or municipalities of this state to provide liability insurance coverage for counties, municipalities, or other public agencies of this state, which pool may contract with other parties for the purpose of providing claims administration, processing, accounting, and other administrative facilities.

Section 27. Subsection (3) of section 626.9531, Florida Statutes, is amended to read:

626.9531 Identification of insurers, agents, and insurance contracts.—

(3) For the purposes of this section, the term "risk bearing entity" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~, a commercial self-insurance fund as defined in s. 624.462, a group self-insurance fund as defined in s. 624.4621, a local government self-insurance fund as defined in

s. 624.4622, a self-insured public utility as defined in s. 624.46225, or an independent educational institution self-insurance fund as defined in s. 624.4623. For the purposes of this section, the term "risk bearing entity" does not include an authorized insurer as defined in s. 624.09.

Section 28. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2024.

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

Remove lines 14-154 and insert:

authority self-insurance funds; amending s. 626.9201, F.S.; prohibiting eligible surplus lines insurers from canceling and nonrenewing policies covering dwellings and residential properties damaged by hurricanes and wind losses within certain timeframes; providing exceptions to prohibitions against insurers' policy cancellations and nonrenewals within certain timeframes; providing definitions; authorizing the Financial Services Commission to adopt rules and the Commissioner of Insurance Regulation to issue orders; amending s. 627.062, F.S.; specifying requirements for rate filings if certain models are used; amending s.

627.351, F.S.; revising requirements for certain policies that are not subject to certain rate increase limitations; amending s. 627.4133, F.S.; prohibiting insurers from canceling and nonrenewing policies covering dwellings and residential properties damaged by covered perils within certain timeframes; revising exceptions to prohibitions against insurers' policy cancellations and nonrenewals within certain timeframes; revising conditions under which a structure is deemed to be repaired; revising the definition of the term "insurer" to include eligible surplus lines insurers; defining the term "damage"; amending s. 627.7011, F.S.; revising the definition of the term "authorized inspector" to include licensed roofing contractors for the purpose of homeowners' insurance policies; amending ss. 628.011 and 628.061, F.S.; conforming provisions to changes made by the act; amending s. 628.801, F.S.; revising requirements for rules adopted for insurers that are members of an insurance holding company; deleting an obsolete date; authorizing the office to adopt rules; amending s. 629.011, F.S.; defining terms; repealing s. 629.021, F.S., relating to the definition of the term "reciprocal insurer"; repealing s. 629.061, F.S., relating to attorney; amending s. 629.081, F.S.;

revising the procedure for persons to organize as a domestic reciprocal insurer; specifying requirements for the permit application; requiring that the application be accompanied by a specified fee; requiring that the office evaluate and grant or deny the permit application in accordance with specified provisions; removing the requirement that a specified declaration be acknowledged by an attorney; amending s. 629.091, F.S.; providing requirements for the application for a certificate of authority to operate as a domestic reciprocal insurer; requiring the office to grant the authorization for reciprocal insurers to issue nonassessable policies under certain circumstances; requiring that certificates of authority be issued in the name of the reciprocal insurer to its attorney in fact; creating s. 629.094, F.S.; requiring a domestic reciprocal insurer to meet certain requirements to maintain its eligibility for a certificate of authority; amending s. 629.101, F.S.; revising requirements for the power of attorney given by subscribers of a domestic reciprocal insurer to the attorney in fact; conforming provisions to changes made by the act; creating s. 629.225, F.S.; prohibiting persons from acquiring certain securities or ownership interests of certain attorneys in fact

and controlling companies of certain attorneys in fact; providing an exception; authorizing certain persons to request that the office waive certain requirements; providing that the office may waive certain requirements if specified determinations are made; specifying the requirements of an application to the office relating to certain acquisitions; requiring that such application be accompanied by a specified fee; requiring that amendments be filed with the office under certain circumstances; specifying the manner in which the acquisition application must be reviewed; authorizing the office, and requiring the office if a request for a proceeding is filed, to conduct a proceeding within a specified timeframe to consider the appropriateness of such application; requiring that certain time periods be tolled; requiring that written requests for a proceeding be filed within a certain timeframe; authorizing certain persons to take all steps to conclude the acquisition during the pendency of the proceeding or review period; requiring the office to order a proposed acquisition disapproved and that actions to conclude the acquisition be ceased under certain circumstances; prohibiting certain persons from making certain changes during the pendency of the office's review of

an acquisition; providing an exception; defining the terms "material change in the operation of the attorney in fact" and "material change in the management of the attorney in fact"; requiring the office to approve or disapprove certain changes upon making certain findings; requiring that a proceeding be conducted within a certain timeframe; requiring that recommended orders and final orders be issued within a certain timeframe; specifying the circumstances under which the office may disapprove an acquisition; specifying that certain persons have the burden of proof; requiring the office to approve an acquisition upon certain findings; specifying that certain votes are not valid and that certain acquisitions are void; specifying that certain provisions may be enforced by an injunction; creating a private right of action in favor of the attorney in fact or the controlling company to enforce certain provisions; providing that a certain demand upon the office is not required before certain legal actions; providing that the office is not a necessary party to certain actions; specifying the persons who are deemed designated for service of process and who have submitted to the administrative jurisdiction of the office; providing that approval by the office does not

constitute a certain recommendation; providing that certain actions are unlawful; providing criminal penalties; providing a statute of limitations; authorizing a person to rebut a presumption of control by filing certain disclaimers; specifying the contents of such disclaimer; specifying that, after a disclaimer is filed, the attorney in fact is relieved of a certain duty; authorizing the office to order certain persons to cease acquisition of the attorney in fact or controlling company and divest themselves of any stock or ownership interest under certain circumstances; requiring the office to suspend or revoke the reciprocal certificate of authority under certain circumstances; specifying that the attorney in fact is deemed to be hazardous to its policyholders if the reciprocal insurer is subject to suspension or revocation; authorizing the office to offer the reciprocal insurer the ability to cure any suspension or revocation under certain circumstances; providing applicability; creating s. 629.227, F.S.; specifying the information as to the background and identity of certain persons which must be furnished by such persons; creating s. 629.229, F.S.; prohibiting certain persons from serving in specified positions of reciprocal insurers or insurers under certain

circumstances; amending s. 629.261, F.S.; removing provisions relating to certain authorizations for reciprocal insurers; prohibiting reciprocal insurers from issuing or renewing nonassessable policies or converting assessable policies to nonassessable policies under certain circumstances; providing applicability; amending s. 629.291, F.S.; providing that certain insurers that merge are governed by the insurance code; prohibiting domestic stock insurers from converting to reciprocal insurers; requiring that specified plans be filed with the office and that such plans contain certain information; authorizing the conversion of assessable reciprocal insurers to nonassessable reciprocal insurers under certain circumstances; providing certain procedures when certain reciprocal insurers convert; authorizing reciprocal insurers to issue contingent liability policies in another state under certain circumstances; creating s. 629.525, F.S.; requiring the commission to adopt, amend, or repeal certain rules; amending ss. 163.01 and 626.9531, F.S.; conforming provisions to changes made by the act; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1647 Local Regulation of Nonconforming and Unsafe Structures
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Roach
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1526

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Wright	Anstead
2) State Affairs Committee	15 Y, 5 N	Mwakyanjala	Williamson
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

A building permit must be obtained from the local government to demolish any building. Some local governments in Florida have placed additional requirements or restrictions on obtaining such permits for buildings deemed historic.

The bill creates the "Resiliency and Safe Structures Act," which allows demolition of certain buildings under certain conditions, and provides that:

- The provisions do not apply to any structure that is:
  - A single-family home,
  - Individually listed on the National Register of Historic Places,
  - A contributing structure or building within a historic district which was listed in the National Register of Historic Places before January 1, 2000, or
  - On a barrier island in a municipality with a population of less than 10,000 with at least six city blocks not located in zones V, VE, AO, or AE, as identified in the Flood Insurance Rate Map.
- A local government may not prohibit, restrict, or prevent, for any reason other than public safety, the demolition of any structure seaward of the coastal construction control line and is also a:
  - Nonconforming structure, which is a structure that does not conform to the base flood elevation requirements for new construction issued by the National Flood Insurance Program for the applicable flood zone;
  - Structure determined to be unsafe by the local building official; or
  - Structure ordered to be demolished by the local government.
- A local government may only administratively review an application for a demolition permit for such a structure for compliance with the Building Code, the Fire Prevention Code, and any regulation applicable to a similarly situated parcel, and may not impose additional local land development regulations or public hearings on an applicant for such a demolition permit.
- A local government must authorize replacement structures to be developed to the maximum height and overall building size authorized by local development regulations.
- A local government may not do any of the following:
  - Limit the development potential of replacement structures below the maximum development potential allowed by local development regulations.
  - Require replication or preservation of elements of a demolished structure.
  - Impose additional regulatory or building requirements on replacement structures or development applications not otherwise applicable to a similarly situated parcel in the same zoning district.
- A local government may not adopt or enforce a law that in any way limits application of the bill's provisions.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on state government. *See* Fiscal Comments.

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code. In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work and a study was commissioned to make recommendations. In 1998, the Legislature adopted the 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.[1] The current edition of the Building Code is the eighth edition, which is referred to as the 2023 Florida Building Code.[2]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (FBCA). The FBCA provides 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.[3]

A local enforcement agency is an agency of local government with jurisdiction to make inspections of buildings and to enforce the Building Code.[4]

Building code administrators are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within Department of Business and Professional Regulation (DBPR).[5] A building code administrator, also known as a building official, is a local government employee or a person contracted by a local government who supervises Building Code activities, including plans review, enforcement, and inspection.[6]

Demolition Permits

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[7]

Section 553.79(26), F.S., provides that a local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish his or her single-family residential structure provided that:[8]

- Such structure is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency (FEMA) for the purpose of participating in the National Flood Insurance Program.

[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, 4, https://www.floridabuilding.org/fbc/commission/FAC_Report_0206r3.pdf (last visited Jan. 27, 2024).
[2] Florida Building Commission, Homepage, https://floridabuilding.org/c/default.aspx (last visited Jan. 27, 2024).
[3] *See* s. 553.72(1), F.S.
[4] S. 553.71(5), F.S.
[5] *See* Ss. 120.569, 120.57(1)-(2), 468.605, 468.606, and 468.621, F.S.
[6] S. 468.603(2), F.S.
[7] S. 553.79(1), F.S.
[8] S. 553.79(26)(a), F.S.

- The lowest finished floor elevation of such structure is at or below base flood elevation as established by the Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher.
- Such permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.

An application for such a demolition permit may only be reviewed administratively for compliance with the Building Code, the Florida Fire Prevention Code, and the Life Safety Code, or local amendments thereto, and any regulations applicable to a similarly situated parcel. Applications may not be subject to any additional local land development regulations or public hearings. A local government may not penalize a private property owner for a demolition that is in compliance with the demolition permit.[9]

If a single-family residential structure is demolished pursuant to a demolition permit, a local government may not impose additional regulatory or building requirements on the new, replacement single-family residential structure on the site of the demolished structure that would not otherwise be applicable to a similarly situated vacant parcel.[10] However, a local law, ordinance, or regulation may restrict demolition permits for a:[11]

- Structure designated on the National Register of Historic Places;
- Privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or
- Privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.

Permits for Property with a Historic Designation

The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. In order to be listed on the register the owner of the property must not object.[12] The Department of the Interior issues advisory guidelines for a building that must undergo preservation, rehabilitation, restoration, or reconstruction and still retain historic status.[13]

Additionally, some local governments in Florida have adopted land development regulations that designate certain older buildings to be historic. These local governments have placed restrictions on property owners from obtaining permits for the demolition of older buildings that the local government has deemed historic. Below are examples of such regulations:

- Requiring a special demolition permit process.[14]
- Requiring new construction on the site of the demolished structure to be subject to certain architectural regulations, related to:[15]
    - The colors, pattern, and trim used in the building's façade.
    - The design of the roof.
    - The proportions and relationships between doors and windows.

Proponents of these land development regulations argue that these regulations are needed to protect Florida's history and preserve Florida's character and architectural style.[16] Opponents of these regulations argue that these older buildings are damaged, do not meet the Building Code's minimum

[9] S. 553.73(26)(b), F.S.
[10] S. 553.79(26)(c), F.S.
[11] S. 553.79(26)(d), F.S.
[12] National Park Service, *What is the National Register of Historic Places*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Jan. 27, 2024); National Park Service, *How to List a Property*, https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm (last visited Jan. 27, 2024).
[13] National Park Service, *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, https://www.nps.gov/orgs/1739/secretary-standards-treatment-historic-properties.htm (last visited Jan. 29. 2024); 36 C.F.R. Parts 67 and 68.
[14] Sec. 54-71., 54-125., Town of Palm Beach Code of Ordinances.
[15] Sec. 54-122., Town of Palm Beach Code of Ordinances.
[16] Miami Herald Editorial Board, *Historic-home teardowns risk washing away Miami Beach's character in a flood of cash*, Miami Herald (Jan. 11, 2022), https://www.miamiherald.com/article257198932.html (last visited Jan. 27, 2024).

flood elevation requirements, which can make them dangerous and can be demolished for new structures or buildings that meet the requirements of the current Building Code.[17]

There appear to be conflicts[18] in some areas related to whether older buildings that may be unsafe should be demolished or be given time to be rehabilitated. Some argue that policies related to demolition are having an effect on affordable housing.[19]

Unsafe Structures

Under the Florida Building Code, Existing Building, 8th Edition, buildings, structures or equipment must be deemed unsafe if they are:[20]

- Unsanitary;
- Deficient due to inadequate means of egress facilities or inadequate light and ventilation;
- A fire hazard;
- Structures or have individual structural members that are dangerous, meaning:
    - The building or structure has collapsed, has partially collapsed, has moved off its foundation, or lacks the necessary support of the ground.
    - There exists a significant risk of collapse, detachment or dislodgement of any portion, member, appurtenance or ornamentation of the building or structure under permanent, routine or frequent loads; under actual loads already in effect; or under wind, rain, flood or other environmental loads when such loads are imminent.
- Otherwise dangerous to human life or the public welfare;
- Involved in illegal or improper occupancy or inadequate maintenance; or
- Vacant and not secured against entry.

Various local governments across the state impose additional regulations regarding what deems a structure unsafe and what happens when a structure is deemed unsafe.

National Flood Insurance Program

The National Flood Insurance Program (NFIP), which was created by the passage of the National Flood Insurance Act of 1968,[21] is administered by the Federal Emergency Management Agency (FEMA) and provides homeowners, business owners, and renters in flood-prone areas the ability to purchase flood insurance protection from the federal government.[22] The general purpose of the NFIP is both to offer primary flood insurance to properties with significant flood risk and to reduce flood risk through the adoption of floodplain management standards. Participation in the NFIP is voluntary.[23] Within participating communities, the federal government makes flood insurance available throughout the community.[24] To join, a community must complete an application, adopt a resolution of intent to

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[17] Pedro Portal, *Miami Beach older homes demolished in part because of 'flood requirements'*, Miami Herald (Jan. 9, 2022), https://www.miamiherald.com/news/business/real-estate-news/article257166737.html (last visited Jan. 27, 2024); CBS Miami, *Miami Beach Waterfront Home Of Notorious Prohibition-Era Gangster Al Capone Slated For Demolition*, https://www.cbsnews.com/miami/news/miami-beach-waterfront-home-of-notorious-prohibition-era-gangster-al-capone-slated-for-demolition/ (last visited Jan. 27, 2024).

[18] In November 2022, news reports indicated that there were "dozens of ongoing lawsuits that have recently been filed between property owners and the City of Miami over attempts to demolish their properties. WLRN Miami | South Florida, *After Surfside, Miami changes rules to fast-track demolition. Affordable housing is in the crosshairs*, December 5, 2022, https://www.wlrn.org/housing/2022-12-05/after-surfside-miami-changes-rules-to-fast-track-demolition-affordable-housing-is-in-the-crosshairs (last visited Jan. 27, 2024).

[19] In 2022, approximately "48 buildings were demolished by city order, including 30 residential properties. In 2019, 52 buildings were demolished by order of the city." *Id*.

[20] § 202, FBC, Existing Building (2023 8th Ed.).

[21] FEMA, *50 Years of the NFIP*, *available at* https://www.fema.gov/sites/default/files/2020-05/NFIP_50th_Final_8.5x11_Regional_Printable.pdf (last visited Jan. 27, 2024).

[22] Benefits.gov, *National Flood Insurance Program (NFIP)*, *available at* https://www.benefits.gov/benefit/435 (last visited Jan. 27, 2024)

[23] FEMA, *Participation in the NFIP*, https://www.fema.gov/glossary/participation-nfip#:~:text=Participation%20in%20the%20National%20Flood%20Insurance%20Program%20%28NFIP%29,of%20intent%20to%20participate%20and%20cooperate%20with%20FEMA%3B (last visited Jan. 27, 2024).

[24] *Id.*

participate and cooperate with FEMA, and adopt and submit a floodplain management ordinance that meets or exceeds the minimum NFIP criteria.[25]

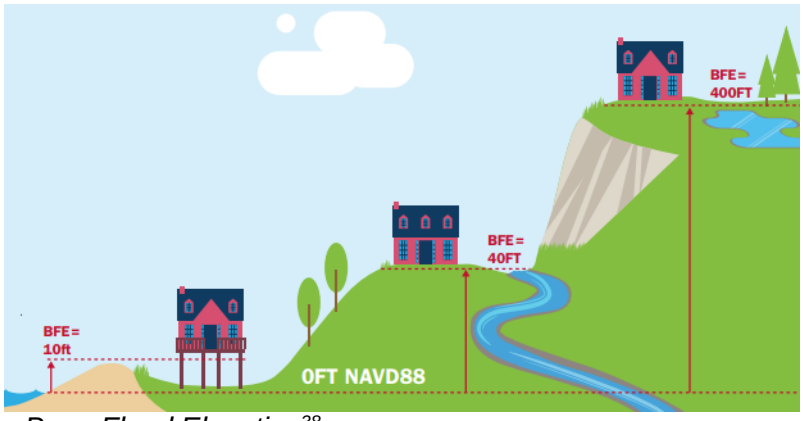
In coordination with participating communities, FEMA develops flood maps called Flood Insurance Rate Maps (FIRMs) that depict the community's flood risk and floodplain.[26] While FEMA is largely responsible for the creation of the FIRM, the community itself must pass the map into its local regulations in order for the map to be effective.[27] An area of specific focus on the FIRM is the Special Flood Hazard Area (SFHA).[28] The SFHA is intended to distinguish the flood risk zones that have a chance of flooding during a one-in-100 year flood or greater frequency. This means that properties in the SFHA have a risk of 1 percent or greater risk of flooding every year[29] (and at least a 26 percent chance of flooding over the course of a 30-year mortgage).[30] In a community that participates in the NFIP, owners of properties in the mapped SFHA are required to purchase flood insurance as a condition of receiving a federally backed mortgage.[31]

Base Flood Elevation

A base flood is a flood that has a 1 percent chance of occurring during any given year.[32] The base flood elevation (BFE) is how high floodwater is likely to rise during a one-percent-annual-chance flood event (base flood).[33] BFEs are measured from a reference point called North American Vertical Datum of 1988 (NAVD88),[34] which is approximately equal to sea level, and vary widely across geographies.[35] The BFE represents the minimum elevation of construction allowed by the NFIP.[36] The relationship between the BFE and a structure's elevation determines the flood insurance premium.[37]

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[25] *Id.*
[26] Congressional Research Service, *Introduction to the National Flood Insurance Program* (Jan. 25, 2024), https://crsreports.congress.gov/product/pdf/R/R44593 (last visited Jan. 27, 2024).
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] FEMA, *Coastal Hazards & Flood Mapping: A Visual Guide*, 6, https://www.fema.gov/sites/default/files/documents/fema_coastal-glossary.pdf (last visited Jan. 27, 2024).
[31] Congressional Research Service, *Introduction to the National Flood Insurance Program* at 10. Such lenders include federal agency lenders, such as the Department of Veterans Affairs, government-sponsored enterprises Fannie Mae, Freddie Mac, and federally regulated lending institutions, such as banks covered by the Federal Deposit Insurance Corporation (FDIC) or the Office of the Comptroller of the Currency. *Id.*
[32] FEMA, *supra* note 29.
[33] *Id.*
[34] "A 'geodetic reference system' is used to precisely describe the location of a specific point on the Earth and is composed of latitude, longitude, and elevation. Its basis is composed of a geoid and a reference ellipsoid — two mathematical representations of the Earth's surface — along with base points to which the latitude, longitude and elevation of all other points in the system are referenced. These base points are known as 'datums'. The latitude-longitude base point is known as a horizontal datum, and the elevation base point is known as a vertical datum. Vertical datums are used to establish the elevation of monitoring locations, reference points and natural features such as lake levels and floodplains, as well as for bridges and levies. The currently accepted vertical datum is the North American Vertical Datum of 1988 (NAVD88), which was formally adopted in 1992. It consists of a leveling network that applies to the entire North American continent and which is affixed to a single origin point in Quebec, Canada." Coastal & Heartland National Estuary Partnership, University of South Florida Water Institute, *NAVD88 Datum*, Coastal & Heartland National Estuary Partnership Water Atlas, https://chnep.wateratlas.usf.edu/library/learn-more/learnmore.aspx?toolsection=lm_navd88 (last visited Jan. 27, 2024).
[35] FEMA, *supra* note 29.
[36] *See* FEMA, *Residential Buildings with Basements*, https://www.fema.gov/floodplain-management/manage-risk/residential-buildings-basements#:~:text=Since%201971%2C%20the%20National%20Flood%20Insurance%20Program%20%28NFIP%29,Zones%20only%29%20to%20the%20Base%20Flood%20Elevation%20%28BFE%29 (last visited Jan. 27, 2024).
[37] *See* Pinellas County, *Construction in a Floodplain*, Sept. 13, 2022, https://pinellas.gov/construction-in-a-floodplain/ (last visited Jan. 27, 2024).



Base Flood Elevation[38]

Zones

Within the FIRMS or Flood Hazard Boundary Maps are designated zones, which are geographical areas that reflect the severity or type of flooding in the area.[39] Designated zones include:[40]

- V: Coastal areas with a 1 percent or greater chance of flooding and an additional hazard associated with storm waves. These areas have a 26 percent chance of flooding over the life of a 30-year mortgage. No base flood elevations are shown within these zones.
- VE: Coastal areas with a 1 percent or greater chance of flooding and an additional hazard associated with storm waves. These areas have a 26 percent chance of flooding over the life of a 30-year mortgage. Base flood elevations derived from detailed analyses are shown at selected intervals within these zones.
- AO: River or stream flood hazard areas, and areas with a 1 percent or greater chance of shallow flooding each year, usually in the form of sheet flow, with an average depth ranging from one to three feet. These areas have a 26 percent chance of flooding over the life of a 30-year mortgage. Average flood depths derived from detailed analyses are shown within these zones.
- AE: The base floodplain where base flood elevations are provided. AE Zones are now used on new format FIRMs instead of A1-A30 Zones.

Flood maps along the coasts show areas at high risk of flooding within the coastal SFHA. The coastal SFHA has three flood hazard zones: Zones V and VE (which are unique to coastal areas), AE, and AO. Zones V and VE, also known as a Coastal High Hazard Area, is where wave action and fast-moving water can cause extensive damage during a base flood event.[41]

New Construction Requirements in Coastal Flood Hazard Zones

When a community is participating in the NFIP, FEMA places requirements on any new construction built in flood hazard areas. Generally, new construction in flood-prone areas must be:[42]

- Designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- Constructed with materials resistant to flood damage.
- Constructed by methods and practices that minimize flood damages.
- Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

[38] FEMA, *supra* note 29.
[39] FEMA, *Glossary,* https://www.fema.gov/about/glossary (last visited Jan. 27, 2024).
[40] *Id.*
[41] *Id.*
[42] 44 C.F.R. § 60.3(a)(3)

Specific conditions for new construction in coastal flood hazard zones include requiring all new construction to:[43]

- Be located landward of the reach of mean high tide.
- Be elevated on pilings and columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level.
- Be elevated on pilings and columns so that the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components.
- Have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. Such space may be used only for parking of vehicles, building access, or storage.

When an NFIP-participating structure, in an SFHA, has "substantial damage"[44] for which the total cost of repairs is 50 percent or more of the structure's market value before a disaster occurred, regardless of the cause of damage, the structure must undergo a "substantial improvement" and be brought into compliance with current local floodplain-management regulations and the Building Code. The decision and specific metrics used to determine if a structure is substantially damaged is made by the local government.[45]

For example, the City of Naples determined that a substantial improvement means any combination of repair, reconstruction, rehabilitation, addition, or improvement of a building or structure taking place during a one-year period from the date of permit issuance, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. Substantial improvement does not include:[46]

- Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

Coastal Construction Control Line

The Department of Environmental Protection (DEP) regulates coastal construction to protect Florida's beaches and dunes from imprudent construction that can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access.[47] Coastal construction is defined as any work or activity likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes.[48]

Section 161.053, F.S., defines the "coastal construction control line" (CCCL) as the portion of the beach-dune system that is subject to severe fluctuations caused by 100-year storm[49] surge, storm

[43] 44 C.F.R. § 60.3(e)(3)-(5)
[44] 44 C.F.R. § 59.1
[45] FEMA, *FACT SHEET: "Substantial Damage" – What Does it Mean?*, December 2, 2019, https://www.fema.gov/press-release/20210318/fact-sheet-substantial-damage-what-does-it-mean (last visited Jan. 27, 2024).
[46] Sec. 16-112., City of Naples Ordinances.
[47] S. 161.053(1)(a), F.S.
[48] S. 161.021(6), F.S.
[49] A 100-year storm is a shore-incident hurricane or any other storm with accompanying wind, wave, and storm surge intensity that has a one percent chance of being equaled or exceeded in any given year. S. 161.053, F.S.; Rr. 62B-33.005(1) and 62B-33.002(41), F.A.C.; DEP, *The Homeowner's Guide to the Coastal Construction Control Line Program* (2017), 3, *available at* https://floridadep.gov/sites/default/files/Homeowner%27s%20Guide%20to%20the%20CCCL%20Program%206_2012%20%28002%29_0.pdf (last visited Jan. 27, 2024).

waves, or other forces such as wind, wave, or water level changes. Seaward of the CCCL, new construction and improvements to existing structures generally require a CCCL permit from DEP.[50]

Due to the potential environmental impacts and greater risk of hazards from wind and flood, the standards for construction seaward of the CCCL are often more stringent than those that apply to the rest of the coastal building zone.[51] Permit applicants must show that the proposed project will not result in a significant adverse impact.[52] CCCLs are set by DEP on a countywide basis and are currently established for the majority of Florida's coast.[53]

The "mean high-water line" is the point on the shore that marks the average height of the high waters over a 19-year period.[54] The mean high-water line is generally the boundary between the publicly owned shore (the land alternately covered and uncovered by the tide) and the dry sand above the line, which may be privately owned.[55] Generally, construction is prohibited within 50 feet of the mean high-water line, known as the 50-foot setback.[56] Any structures below the mean high-water line that are determined by DEP to serve no public purpose; to endanger human life, health, or welfare; or to be undesirable or unnecessary must be adjusted, altered, or removed.[57]

Above the mean high-water line is the "seasonal high-water line," which accounts for variations in the local mean high water, such as spring tides that occur twice per month.[58] The seasonal high-water line is used to create 30-year erosion projections of long-term shoreline recession based on historical measurements.[59] DEP makes 30-year erosion projections of the location of the seasonal high-water line on a site-specific basis upon receipt of a CCCL permit application.[60] With certain exceptions, DEP and local governments may not issue CCCL permits for the construction of major structures that are seaward of the 30-year erosion projection.[61]

Effect of the Bill

The bill creates the "Resiliency and Safe Structures Act" (act), and provides the following definitions:

- "CCCL" means the boundary established under s. 161.053, F.S.
- "Law" means any statute, ordinance, rule, regulation, policy, resolution, code enforcement order, agreement, or other governmental act.
- "Local government" means a municipality, county, special district, or any other political subdivision of the state.
- "Nonconforming structure" means a structure or building that does not conform to the base flood elevation requirements for new construction issued by the National Flood Insurance Program (NFIP) for the applicable flood zone.
- "Replacement structure" means a new structure or building built on a property where a structure or building was demolished or will be demolished in accordance with this section.

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[50] S. 161.053, F.S.; Chs. 62B-33 and 62B-34, F.A.C.; DEP, *supra* note 48; DEP, *ASK - Have Questions about the Coastal Construction Control Line (CCCL)?*, *available at* https://floridadep.gov/rcp/coastal-construction-control-line/content/ask-have-questions-about-coastal-construction-control (last visited Jan. 27, 2024).
[51] Ch. 62B-33, F.A.C.
[52] R. 62B-33.005, F.A.C
[53] S. 161.053(2), F.S.; DEP Geospatial Open Data, Coastal Construction Control Lines (CCCL), https://geodata.dep.state.fl.us/datasets/4674ee6d93894168933e99aa2f14b923_2/explore?location=28.136793%2C-81.915502%2C8.56 (last visited Jan. 27, 2024).
[54] S. 177.27(14), (15), F.S.
[55] Ss. 161.052(1), 161.151(3), 161.161(3)-(5), 161.191, and 177.28, F.S. Where an "erosion control line" is established, it serves as the mean high-water line when it is landward of the existing mean high-water line, and all lands seaward of a recorded erosion control line are deemed to be vested in the state.
[56] R. 62B-33.002(17), F.A.C.
[57] S. 161.061, F.S.
[58] S. 161.053(5)(a)2., F.S., defines "seasonal high-water line" to mean the line formed by the intersection of the rising shore and the elevation of 150 percent of the local mean tidal range above local mean high water; NOAA, *What Are Spring and Neap Tides?*, *available at* https://oceanservice.noaa.gov/facts/springtide.html (last visited Jan. 27, 2024).
[59] Ch. 62B-33.024, F.A.C.
[60] *Id*.
[61] S. 161.053(5), F.S.; DEP, *supra* note 48.

The bill applies to any structure or building on a property in which all or a portion of such property is seaward of the CCCL and the structure or building is:

- A nonconforming structure;
- A structure or building determined to be unsafe by a local building official; or
- A structure or building ordered to be demolished by a local government with proper jurisdiction.

The bill does not apply to any of the following structures or buildings:

- A structure or building individually listed in the National Register of Historic Places.
- A single-family home.
- A contributing structure or building within a historic district which was listed in the National Register of Historic Places before January 1, 2000.
- A structure or building located on a barrier island in a municipality with a population of less than 10,000 according to the most recent decennial census and which has at least six city blocks that are not located in zones V, VE, AO, or AE, as identified in the FIRM issued by FEMA.

The bill prohibits a local government from prohibiting, restricting, or preventing the demolition of any structure or building to which the bill applies for any reason other than public safety. A local government may only administratively review an application for a demolition permit sought pursuant to the bill for compliance with the Building Code, the Florida Fire Prevention Code, and the Life Safety Code, or local amendments thereto, and any regulation applicable to a similarly situated parcel. The local government may not impose additional local land development regulations or public hearings on an applicant for a permit under the bill.

The bill requires a local government to authorize replacement structures for qualifying buildings to which the bill applies to be developed to the maximum height and overall building size authorized by local development regulations for a similarly situated parcel within the same zoning district. A local government may not do any of the following:

- Limit, for any reason, the development potential of replacement structures below the maximum development potential allowed by local development regulations for a similarly situated parcel within the same zoning district.
- Require replication of a demolished structure.
- Require the preservation of any elements of a demolished structure.
- Impose additional regulatory or building requirements on replacement structures which would not otherwise be applicable to a similarly situated vacant parcel located in the same zoning district.
- Impose additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel within the same zoning district.

The bill requires that development applications submitted for replacement structures for qualifying buildings to which the bill applies must be processed in accordance with the process outlined in local land development regulations, including any required public hearings in front of the local historic board. However, a local government may not impose additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel within the same zoning district.

The bill provides that if any of the bill's provisions are held invalid in their application, the invalidity does not affect other provisions or applications of the bill which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

The bill does not apply to or affect demotion processes for single-family homes under s. 553.79(26), F.S.

The bill provides that a local government may not adopt or enforce a law that in any way limits the demolition of an applicable structure or that limits the development of a replacement structure in violation of the bill. A local government may not penalize an owner or a developer of a replacement structure for a demolition pursuant to this section or otherwise enact laws that defeat the intent of this section. Any local government ordinance, resolution, or regulation contrary to this section is void.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Creates s. 553.8991, F.S., relating to demolition of certain buildings and structures.
Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There may be an increase in demolition permits, which may create an increase in permit revenue.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more structures to be demolished and new structures to be built in their places, which would increase development.

D. FISCAL COMMENTS:

Local governments may have to expend funds to process a possible increase in demolition permits. The amount local governments will have to spend, if any, is indeterminate. However, local governments are permitted by state law to collect fees to cover the cost of their expenses to enforce the Building Code, which includes reviewing building permit applications.

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:

The Florida Constitution defines a special law as a special or local law.[62] As explained by case law:

> [A] special law is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when

[62] Art X, s. 12(g), Fla. Const.

> classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the State, or one that purports to operate within classified territory when classification is not permissible or the classification is illegal.[63]

Additionally, art. III, s. 10 of the Florida Constitution provides:

> No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

Even though the Supreme Court of Florida has recognized that the Legislature has wide discretion in establishing statutory classification schemes,[64] "[a] statute is invalid if 'the descriptive technique is employed merely for identification rather than classification.'"[65] In determining whether the class of persons regulated by a statute is open so as to make the statute a general law as opposed to a special law that requires enactment in accordance with state constitutional provisions, the question "is not whether it is imaginable or theoretically possible that the law might be applied to others, but whether it is reasonable to expect that it will."[66] A general law may contain a classification if that scheme is reasonable and bears a reasonable relation to the purpose of the legislation.[67]

The bill provides an exemption for a structure or building located on a barrier island in a municipality with a population of less than 10,000 according to the most recent decennial census and which has at least six city blocks that are not located in zones V, VE, AO, or AE, as identified in the FIRM issued by FEMA. Due to the narrowness of this exemption and the particularity in which it may apply, this exemption may be a special act.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[63] *Lawnwood Medical Ctr. Inc. v. Seeger, M.D.*, 959 So. 2d 1222 (Fla. 1st DCA 2007), *aff'd by* 990 So. 2d 503 (Fla. 2008). *See also R.J. Reynolds Tobacco Co. v. Hall*, 67 So.3d 1084 (Fla. 1st DCA 2011) rev. den. 67 So.3d 1050 (Fla. 2011); *Humana Med. Plan, Inc., v. State*, 898 So.2d 1040 (Fla. 1st DCA 2005); *Schrader v. Fla. Keys Aqueduct Auth*., 840 So.2d 1050 (Fla.2003); *Fla Dep't of Bus. Reg. v. Classic Mile, Inc.* 541 So.2d 1155 (Fla. 1989); *Pinellas Cnty. Dept. of Consumer Affairs v. Castle*, 392 So.2d 1292 (Fla. 1980); *Pinellas Cnty. Veterinary Med. Soc'y, Inc. v. Chapman*, 224 So.2d 307 (Fla.1969); *State ex rel. Gray v. Stoutamire*, 131 Fla. 698 (1938).

[64] *Dep't of Business Regulation v. Classic Mile, Inc.*, 541 So. 2d 1155 (Fla. 1989); *Shelton v. Reeder*, 121 So. 2d 145 (Fla. 1960).

[65] *City of Miami v. McGrath*, 824 So. 2d 143, 150 (Fla. 2002), citing *West Flagler Kennel Club, Inc. v. Florida State Racing Commission,* 153 So. 2d 5 (Fla.1963).

[66] *Dep't of Bus & Prof'l Regulation v. Gulfstream Park Racing Ass'n*, 912 So. 2d 616, 621 (Fla. 1st DCA 2005), *aff'd sub nom. Florida Dep't of Bus. & Prof'l Regulation v. Gulfstream Park Racing Ass'n,*, 967 So. 2d 802 (Fla. 2007) ; *Ocala Breeders' Sales Co., Inc. v. Fla. Gaming Centers, Inc.*, 731 So. 2d 21, 793 So. 2d 899 (Fla. 2001); *Fla Dep't of Bus. Reg. v. Classic Mile, Inc.* 541 So.2d 1155 (Fla. 1989); *Lewis v. Mathis*, 345 So.2d 1066 (Fla.1977); *State ex rel. Landis v. Harris,* 120 Fla. 555 (Fla. 1935) (definition of "classification").

[67] *Metropolitan Dade County v. Golden Nugget Group*, 448 So. 2d 515, 520 (Fla. 3rd DCA 1984), *aff'd* 464 So. 2d 535 (Fla. 1985) (finding that where the purpose of a law applicable only to those counties listed in s. 125.011(1), F.S., was related to the general tourism industry, the classification was sufficient for the court to find the law was not an improper special law); *Homestead Hospital v. Miami-Dade County*, 829 So. 2d 259, 260-263 (Fla. 3rd DCA 1992) (finding a law based on the classification in s. 125.011(1), F.S., was a special law because other provisions made clear the law could only apply to Miami-Dade County). *See also License Acquisitions, LLC v. Debary Real Estate Holdings, LLC,* 155 So. 3d 1137 (Fla. 2014).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute provides a severability provision and removes a retroactivity provision.

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

A bill to be entitled

An act relating to local regulation of nonconforming and unsafe structures; creating s. 553.8991, F.S.; providing a short title; defining terms; providing applicability; prohibiting local governments from prohibiting, restricting, or preventing the demolition of certain structures and buildings unless necessary for public safety; prohibiting local governments from imposing additional local land development regulations or public hearings on permit applicants; authorizing a local government to administratively review an application for a demolition permit only for a specified purpose; requiring a local government to authorize replacement structures to be developed in accordance with certain regulations; prohibiting local governments from taking certain actions regarding replacement structures; requiring development applications to be processed in a specified manner; providing for severability; preempting regulation of the demolition or development of certain structures and buildings to the state under certain circumstances; prohibiting a local government from penalizing an owner or a developer for taking certain actions taken under this act; providing an effective date.

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

Section 1. Section 553.8991, Florida Statutes, is created to read:

553.8991 Resiliency and Safe Structures Act.—

(1) SHORT TITLE.—This section may be cited as the "Resiliency and Safe Structures Act."

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

(a) "Coastal construction control line" means the boundary established under s. 161.053.

(b) "Law" means any statute, ordinance, rule, regulation, policy, resolution, code enforcement order, agreement, or other governmental act.

(c) "Local government" means a municipality, county, special district, or any other political subdivision of the state.

(d) "Nonconforming structure" means a structure or building that does not conform to the base flood elevation requirements for new construction issued by the National Flood Insurance Program for the applicable flood zone.

(e) "Replacement structure" means a new structure or building built on a property where a structure or building was demolished or will be demolished in accordance with this section.

(3) QUALIFYING STRUCTURES AND BUILDINGS.—

(a) Subject to paragraph (b), this section applies to any structure or building on a property in which all or a portion of such property is seaward of the coastal construction control line and the structure or building is:

1. A nonconforming structure;

2. A structure or building determined to be unsafe by a local building official; or

3. A structure or building ordered to be demolished by a local government that has proper jurisdiction.

(b) This section does not apply to any of the following structures or buildings:

1. A structure or building individually listed in the National Register of Historic Places.

2. A single-family home.

3. A contributing structure or building within a historic district which was listed in the National Register of Historic Places before January 1, 2000.

4. A structure or building located on a barrier island in a municipality with a population of less than 10,000 according to the most recent decennial census and which has at least six city blocks that are not located in zones V, VE, AO, or AE, as identified in the Flood Insurance Rate Map issued by the Federal Emergency Management Agency.

(4) RESTRICTIONS ON DEMOLITION PROHIBITED.—A local

government may not prohibit, restrict, or prevent the demolition of any structure or building identified in paragraph (3)(a) for any reason other than public safety. A local government may only administratively review an application for a demolition permit sought under this section for compliance with the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code, or local amendments thereto, and any regulation applicable to a similarly situated parcel. The local government may not impose additional local land development regulations or public hearings on an applicant for a permit under this section.

(5) RESTRICTIONS ON REDEVELOPMENT PROHIBITED.—A local government shall authorize replacement structures for qualifying buildings identified in paragraph (3)(a) to be developed to the maximum height and overall building size authorized by local development regulations for a similarly situated parcel within the same zoning district. A local government may not do any of the following:

(a) Limit, for any reason, the development potential of replacement structures below the maximum development potential allowed by local development regulations for a similarly situated parcel within the same zoning district.

(b) Require replication of a demolished structure.

(c) Require the preservation of any elements of a demolished structure.

(d) Impose additional regulatory or building requirements

on replacement structures which would not otherwise be applicable to a similarly situated vacant parcel located in the same zoning district.

(e) Impose additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel within the same zoning district.

(6) DEVELOPMENT APPLICATIONS.—Development applications submitted for replacement structures for qualifying buildings identified in paragraph (3)(a) must be processed in accordance with the process outlined in local land development regulations including any required public hearings in front of the local historic board. However, a local government may not impose additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel within the same zoning district.

(7) SEVERABILITY.—If any provision of this section or its application is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(8) PREEMPTION.—A local government may not adopt or enforce a law that in any way limits the demolition of a structure identified in paragraph (3)(a) or that limits the development of a replacement structure in violation of subsection (5). A local government may not penalize an owner or

a developer of a replacement structure for a demolition pursuant to this section or otherwise enact laws that defeat the intent of this section. Any local government law contrary to this section is void.

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

COMMERCE COMMITTEE

CS/HB 1647 by Rep. Roach
Local Regulation of Nonconforming and Unsafe Structures

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Roach (lines 116-120):

- Provides a retroactivity provision.
- Provides that the retroactivity provision does not apply to demolition procedures for single-family homes.
- Removes a severability provision.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 116-120 and insert:

(7) APPLICATION AND CONSTRUCTION.— This section applies retroactively to any law adopted contrary to this section or its intent and must be liberally construed to effectuate its intent. This section does not apply to or affect s. 553.79(26).

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

Remove line 19 and insert:
providing for retroactive application; preempting regulation of

PCS for HB 229

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 229 Public Service Commission Rules
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Bauldree	Hamon

SUMMARY ANALYSIS

The role of the Florida Public Service Commission (PSC) is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner. The PSC is funded through a trust fund, primarily deriving revenues from regulatory assessment fees (RAFs), which are fees imposed by the PSC on the entities which it regulates. The RAFs applicable to each regulated industry are capped by statute and may be adjusted by the PSC under that cap. Since the PSC must establish the rate of each RAF by rule, the PSC must go through the rulemaking process required under Florida law.

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms. An agency begins the rulemaking process by filing a notice of rule development that must indicate the subject, purpose and effect, legal authority for and preliminary text of the proposed rule, if any. Notices are published by the Department of State in the Florida Administrative Register. The agency then must publish a notice of proposed rule providing certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. If the projected impact of the proposed rule will exceed $1 million in the aggregate for the five-year period after the rule is implemented, the rule cannot go into effect until ratified by the Legislature.

Under current law, for the 2023-2024 state fiscal year only, rules adopted by the PSC to implement statutes that include its authority to administer and set the rates for RAFs are exempted from the SERC and rule ratification requirements, but the exemption expires on July 1, 2024.

The bill exempts rules adopted by the PSC to implement statutes that include its authority to administer and set the rates for RAFs from the legislative ratification requirement. This exemption expires on July 1, 2028. The bill does not extend the current one-year exemption from the SERC requirement for such rules.

The bill has no fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[1] The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner. In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[2]

The Legislature annually sets the PSC's budget,[3] however, the PSC does not receive any funding from Florida's General Revenue Fund. Instead, the PSC is funded through the Florida Public Service Regulatory Trust Fund,[4] primarily deriving revenues from regulatory assessment fees (RAFs), which are credited to the trust fund and withdrawn in accordance with the PSC's budget.[5]

Regulatory Assessment Fees

RAFs are fees imposed by the PSC on the entities which it regulates. Florida law requires the PSC to impose RAFs by rule to fund its operations.[6] The PSC rules establishing RAFs are industry specific and implement ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S. Under current law, rules establishing RAFs must meet certain requirements:

- RAFs cannot exceed a maximum rate established by statute for each industry;[7]
- RAFs for each industry must be sufficient to cover the PSC's cost to regulate the entities in that industry;[8] and
- RAFs imposed on one industry cannot be used to offset the cost of regulating any other industry.[9]

RAFs are specific to each entity the PSC regulates and are generally calculated based on gross operating revenues derived from intrastate business, excluding sales for resale between certain specified types of entities.[10] However, regardless of gross operating revenue, entities in most regulated industries must pay a minimum annual regulatory assessment fee specific to that industry.[11]

Since the PSC must establish the rate of each RAF by rule, the PSC must go through the rulemaking process required under Florida law.

[1] S. 350.001, F.S.
[2] Florida Public Service Commission, http://www.psc.state.fl.us/about (last visited November 7, 2023).
[3] *See* s. 350.113, F.S.
[4] S. 350.113, F.S.
[5] Florida Public Service Commission (PSC), "Agency Analysis of 2024 House Bill 229," p. 1 (November 6, 2023).
[6] *Id.*
[7] *See* ss. 364.336, 366.14, 367.145, and 368.109, F.S.; PSC *supra* note 5.
[8] *See* s. 350.113(3), F.S.; PSC, "Agency Analysis," *supra* note 5.
[9] *E.g.*, s. 367.145(3), F.S.; PSC, "Agency Analysis," *supra* note 5.
[10] *See* Rules 25-4.0161, -6.0131, -7.0131, -7.101, and -30.120, F.A.C.
[11] *See* Rules 25-4.0161, -6.0131, -7.0131, and -30.120, F.A.C.

Agency Rulemaking and Rule Ratification

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.[12] The effect of an agency statement determines whether it meets the statutory definition of a rule, regardless of how the agency characterizes the statement.[13] If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.[14]

Rulemaking authority is delegated by the Legislature[15] by law authorizing an agency to "adopt, develop, establish, or otherwise create"[16] a rule. If an agency statement meets the definition of a rule, the agency does not have discretion whether to engage in rulemaking.[17] To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.[18] The grant of rulemaking authority itself need not be specific or detailed.[19] The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[20] A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, could be ruled unconstitutional if it allows the agency to make the law.[21] Because of this constitutional limitation on delegated rulemaking, the Legislature must include minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.[22]

Statement of Estimated Regulatory Costs

An agency begins the rulemaking process by filing a notice of rule development that must indicate the subject, purpose and effect, legal authority for and preliminary text of the proposed rule, if any.[23] Notices are published by the Department of State in the Florida Administrative Register.[24] The agency then must publish a notice of proposed rule providing certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule.[25]

A SERC must be prepared if the proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 within one year of implementation of the rule.[26] Preparation of a SERC also is triggered when a substantially

[12] S. 120.52(16), F.S.; *Florida Dep't of Fin.l Servs. v. Capital Collateral Reg'l Counsel-Middle Region,* 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[13] *Dep't of Admin. v. Harvey*, 356 So. 2d 323, 325 (Fla. 1st DCA 1977)
[14] *McDonald v. Dep't of Banking & Fin.*, 346 So. 2d 569, 581 (Fla. 1st DCA 1977), articulated this principle subsequently cited in numerous cases. *See State of Florida, Dep't of Admin. v. Stevens,* 344 So. 2d 290 (Fla. 1st DCA 1977); *Dep't of Admin. v. Harvey*, 356 So. 2d 323 (Fla. 1st DCA 1977); *Balsam v. Dep't of Health & Rehab. Servs.*, 452 So. 2d 976, 977–978 (Fla. 1st DCA 1984); *Dep't of Transp. v. Blackhawk Quarry Co.*, 528 So. 2d 447, 450 (Fla. 5th DCA 1988), rev. den. 536 So. 2d 243 (Fla. 1988); *Dep't of Natural Res. v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1st DCA 1991); *Dep't of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5th DCA 1996); *Volusia County School Board v. Volusia Homes Builders Ass'n*, 946 So. 2d 1084 (Fla. 5th DCA 2007); *Florida Dep't of Financial Servs. v. Capital Collateral Reg'l Counsel*, 969 So. 2d 527 (Fla. 1st DCA 2007); *Coventry First, LLC v. State of Florida, Office of Ins. Reg.*, 38 So. 3d 200 (Fla. 1st DCA 2010).
[15] *SW. Florida Water Mgmt. Dist. v. Save the Manatee Club, Inc.,* 773 So. 2d 594 (Fla. 1st DCA 2000).
[16] S. 120.52(17), F.S.
[17] S. 120.54(1)(a), F.S.
[18] Ss. 120.52(8) & 120.536(1), F.S.
[19] *Save the Manatee Club, Inc.,* 773 So. 2d at 599.
[20] *Sloban v. Florida Bd. of Pharmacy,* 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Askew v. Cross Keys Waterways*, 372 So. 2d 913, 918-919 (Fla. 1978); Board *of Trustees of the Internal Improvement Trust Fund v. Day Cruise Ass'n,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[21] *Conner v. Joe Hatton, Inc.,* 216 So. 2d 209 (Fla.1968).
[22] *Sarasota County. v. Barg*, 302 So. 2d 737 (Fla. 1974).
[23] S. 120.54(2)(a), F.S.
[24] S. 120.55(1)(b), F.S.
[25] S. 120.54(3)(a)1., F.S.
[26] S. 120.54(3)(b)1., F.S.

affected person submits a good faith written proposal for a lower cost regulatory alternative which substantially accomplishes the objectives of the law being implemented.[27] The SERC must provide an economic analysis projecting the proposed rule's effect on specified aspects of the state's economy, including a potential increase in regulatory costs and the rule's potential impact over the five-year period after the rule goes into effect.[28] Each SERC must discuss the proposed rule's likely adverse impact on economic growth, private-sector job creation or employment, and private-sector investment; the likely adverse impact on business competitiveness,[29] productivity, or innovation;[30] and whether the proposed rule is likely to increase regulatory costs, including any transactional costs.[31] If the analysis shows the projected impact of the proposed rule will exceed $1 million in the aggregate for the five-year period after the rule is implemented, the rule cannot go into effect until ratified by the Legislature.[32]

Legislative Ratification

Current law distinguishes between a rule being "adopted" and becoming enforceable or "effective."[33] A rule must be filed for adoption before it may go into effect.[34] As a rule subject to ratification becomes effective only if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification. A rule requiring legislative ratification must be submitted to the President of the Senate and the Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session.[35]

Exemptions to the legislative ratification requirement have been made for certain rules, including adoption of federal standards,[36] triennial updates of the Florida Building Code[37] and the Florida Fire Prevention Code,[38] the adjustment of tolls by the Florida Department of Transportation,[39] and certain rules pertaining to nutrient pollution in Florida waters.[40] The exemption to ratification for adoption of federal standards was implemented as consistent with existing rulemaking policy.[41] The exemptions for updates of the Florida Building Code and the Florida Fire Prevention Code, and the adjustment of tolls, were adopted because the respective statutory procedures for such updates and adjustments ensured sufficient legislative oversight and public participation sufficient to test the economic impacts of the proposed changes.[42] In 2013, certain rulemaking by the Department of Environmental Regulation establishing specific requirements for nutrients in Florida waters was exempted from the ratification requirement because of the extensive public interaction between the Clean Water Act[43] and Florida-developed standards.[44]

Rules adopted by the PSC pertaining to rates, charges, terms, and conditions of utility pole attachments,[45] including attachments to a utility pole made redundant by subsequent replacement,[46]

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[27] S. 120.541(1)(a), F.S.
[28] S. 120.541(2)(a), F.S.
[29] This factor includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[30] S. 120.541(2)(a)2., F.S.
[31] S. 120.541(2)(a)3., F.S.
[32] S. 120.541(3), F.S.
[33] S. 120.54(3)(e)6, F.S. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.
[34] S. 120.54(3)(e)6, F.S.
[35] S. 120.541(3), F.S.
[36] S. 120.541(4)(a), F.S. *See* s. 120.54(6), F.S.
[37] S. 120.541(4)(b), F.S., for amendments expressly authorized by s. 553.73, F.S. *See also* s. 120.80(16)(d), F.S.
[38] S. 120.541(4)(c), F.S., for amendment expressly authorized by s. 633.202, F.S. *See also* s. 120.80(17), F.S.
[39] S. 120.80(18), F.S.
[40] Ch. 2013-71, ss. 2, 4, Laws of Fla.; ch. 2012-3, s. 1(1), Laws of Fla.
[41] *See* s. 120.54(6), F.S.
[42] *See* "Final Bill Analysis for CS/CS/CS/HB 993 & HB 7239 (2011)," pp. 7-11, at https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0993z1.RRS.DOCX&DocumentType=Analysis&BillNumber=0993&Session=2011 (last visited January 30, 2024).
[43] 33 U.S.C. Sec. 1251, et. seq
[44] *See* "Final Bill Analysis for CS/HB 7115," p.7, at https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7115z.ANRS.DOCX&DocumentType=Analysis&BillNumber=7115&Session=2013 (last visited January 30, 2024).
[45] S. 366.04(8), F.S.
[46] S. 366.97, F.S.

are exempt from the SERC and rule ratification requirements.[47] For the 2023-2024 state fiscal year only, rules adopted by the PSC to implement ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S.,[48] are exempted from the SERC and rule ratification requirements, but the exemption expires on July 1, 2024.[49] These sections provide the PSC's authority to administer and set rates for RAFs.

Effect of Proposed Changes

The bill exempts rules adopted by the PSC to implement ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S., from the legislative ratification requirement in s. 120.541(3), F.S. These sections provide the PSC's authority to administer and set rates for RAFs. This exemption expires on July 1, 2028. Because the PSC's budget is set by the Legislature, the PSC will not be able to withdraw additional RAF revenue from the trust fund without Legislative approval.

The bill does not extend the current one-year exemption from the SERC requirement for such rules.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 120.80, F.S., relating to exceptions and special requirements for rulemaking.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Public Service Commission indicates no fiscal impact.[50]

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

[47] S. 120.80(13)(g)1., F.S.
[48] As discussed above, the PSC rules establishing RAFs implement ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S.
[49] S. 120.80(13)(g)2., F.S. *See* ch. 2023-240, s. 51, Laws of Fla.
[50] PSC, "Agency Analysis," *supra* note 5 at p. 3.

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill exempts from the legislative rule ratification requirement in s. 120.541(3), F.S., rulemaking by the PSC under ss. 350.113, 364.336, 366.14, 367.145, and 368.109, F.S. The exemption expires July 1, 2028.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to Public Service Commission rules; amending s. 120.80, F.S.; changing the expiration and revising the scope of an exemption from certain provisions relating to statements of estimated regulatory costs for certain rules adopted by the Public Service Commission; providing an effective date.

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

Section 1. Paragraph (g) of subsection (13) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(13) FLORIDA PUBLIC SERVICE COMMISSION.—

(g)1. Rules adopted by the Florida Public Service Commission to implement ss. 366.04(8) and (9) and 366.97 are not subject to s. 120.541.

2. ~~For the 2023-2024 fiscal year,~~ Rules adopted by the Florida Public Service Commission to implement ss. 350.113, 364.336, 366.14, 367.145, and 368.109 are not subject to s. 120.541(3) ~~s. 120.541~~. This subparagraph expires July 1, 2028 ~~2024~~.

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

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

PCS for CS/HB 939

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 939 Consumer Protection
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes changes related to consumer protection, including:

- **Form 1099-K Reporting Requirements:** third-party settlement organizations, like PayPal or Apple Pay, that conduct transactions involving a payee with a Florida address must create a method for payees to identify transactions for goods and services and report that information to the Florida Department of Revenue.
- **Bad Faith Termination of Account Access by Financial Institutions:** allows a customer or member of a financial institution who reasonably believes a financial institution has restricted account access in bad faith to file a complaint with the Office of Financial Regulation.
- **Protection of Specified Adults:** allows a financial institution to delay a disbursement or transaction from an account of a vulnerable adult for a specified time period if the financial institution suspects financial exploitation of such vulnerable adult.
- **Contracts for Roof Repairs Following Emergencies:** requires that a contractor that enters into a contract to replace or repair the roof of a residential property during a declared state of emergency by the Governor include specific language in the contract that allows the property owner to cancel the contract by the earlier of ten days following execution or the official start date that the work on the roof will commence; the property owner must send notice of cancellation by certified mail or another form that provides proof of mailing.
- **Depository Institutions:** expands the definition of depository institution in commercial financing disclosure law.
- **Continuing Education Requirements for Certified Public Accountants:** requires that the certified public accountant (CPA) that prepares the audit that an insurer submits to the Office of Insurance Regulation as part of its annual report must have completed at least four hours of insurance-related continuing education during each two-year continuing education cycle.
- **Public Adjusters:** requires that public adjusters' contracts for property and casualty claims contain the license numbers of the public adjusting firms by which they are employed.
- **Notice of Change in Policy Terms:** requires that the renewal notice sent to the named insured containing changes in policy terms must be presented in bold type face of not less than 14 points.
- **Short-term Health Insurance:** updates the disclosures that must be provided to a purchaser of a short-term plan; also requires that purchasers of short-term plans receive the required disclosures in writing or electronically, and sign them.
- **Loss Assessment Coverage:** establishes that a claim resulting from a loss assessment is considered to have occurred on the date that condominium association sends a loss assessment notice to a unit owner.
- **Fireworks Safety Standards:** updates the state standards for outdoor display of fireworks to the current edition of the National Fire Protection Association 1123, Code for Fireworks Displays.

The bill has no impact on local government revenues or expenditures or state revenues. It may have an indeterminate negative impact on state expenditures, and a positive or negative 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:

Form 1099-K Reporting Requirements

Background

Section 6050W of the Internal Revenue Code requires certain entities to file a return each year providing information about payments made by credit card or third-party merchants.[1] The return is Form 1099-K, and is required to be filed for each calendar year on or before the last day of February of the year following the transactions.[2]

Reportable transactions include any transaction where the payment method is a payment card (credit card, debit card, or similar) or a third-party payment system (like PayPal or Apple Pay). The return is filed by the payment settlement entity (e.g., a bank, credit card company, or payment platform like PayPal) and a copy is provided to dealers who have payment card transactions (credit card sales) of any amount, or who have third-party payment transactions (e.g., PayPal) in excess of $20,000 over more than 200 transactions.[3] These sales should be included in the payee's gross income on their tax returns for the year.

Some states require payment settlement entities to submit a copy of any Form 1099-K related to sales in that state or for residents of that state, if the IRS already requires the Form 1099-K to be filed. Examples include Alabama,[4] Tennessee,[5] North Carolina,[6] and New York.[7]

Since 2020, entities required to file Form 1099-K with the federal government must also file a copy with the Florida Department of Revenue (DOR) electronically within 30 days of filing the federal return.[8] The copy can be either the exact information filed on the full federal return, or a copy of the information limited to participating payees with an address in Florida.[9]

Effect of the Bill

The bill provides that for the purposes of complying with a reporting requirement to the Florida Department of Revenue, third-party settlement organizations that conduct transactions involving a participating payee with an address in Florida to create a method for payees to identify whether their transactions are for goods and services or personal purposes. This will allow taxable transactions related to goods and services to be readily identifiable and help avoid overpayment or underpayment of taxes. The information submitted to DOR in Form 1099-K must be limited to transactions identified for goods and services.

Bad Faith Termination of Account Access by Financial Institutions

Background

Financial Institutions Codes

[1] 26 U.S. Code s. 6050W.
[2] https://www.irs.gov/forms-pubs/about-form-1099-k (last visited Jan. 15, 2024).
[3] https://www.irs.gov/businesses/understanding-your-form-1099-k (last visited Jan. 15, 2024).
[4] https://www.revenue.alabama.gov/new-1099-k-filing-requirement/ (last visited Jan. 15, 2024).
[5] https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales16-01.pdf (last visited Jan. 15, 2024).
[6] https://www.ncdor.gov/file-pay/guidance-information-reporting#payment-settlement-entity-(1099k) (last visited Jan. 15, 2024).
[7] https://www.tax.ny.gov/bus/multi/reporting_requiremts.htm (last visited Jan. 15, 2024).
[8] s. 212.134(1), F.S.
[9] *Id.*

Florida's Financial Institutions Codes are codified under Title XXXVIII of the Florida Statutes.[10] The Financial Institutions Codes apply to all state-authorized and state-chartered financial institutions and to the enforcement of all laws relating to state-authorized and state-chartered financial institutions.[11] The Financial Institutions Codes define the term "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.[12]

A primary purpose of the Financial Institutions Codes is to provide for and promote the safe and sound conduct of the financial services industry in Florida.[13] The specific chapters under the Financial Institutions Codes are:

- Ch. 655, F.S. – Financial Institutions Generally
- Ch. 657, F.S. – Credit Unions
- Ch. 658, F.S. – Banks and Trust Companies
- Ch. 660, F.S. – Trust Business
- Ch. 662, F.S. – Family Trust Companies
- Ch. 663, F.S. – International Banking
- Ch. 665, F.S. – Associations
- Ch. 667, F.S. – Savings Banks

Office of Financial Regulation

The Office of Financial Regulation (OFR) is the regulatory authority for Florida's financial services industry.[14] OFR reports to the Financial Services Commission (Commission) which is made up of the Governor and the members of the Florida Cabinet: the Chief Financial Officer (CFO), Attorney General (AG), and Agriculture Commissioner.[15] OFR enforces and administers the Financial Institutions Codes; is responsible for supervising banks, credit unions, savings associations, and international bank agencies; and licenses and regulates non-depository finance companies and the securities industry.[16]

Bank Secrecy Act

The federal Bank Secrecy Act (BSA)[17] establishes reporting, recordkeeping, and related requirements for federal and state-chartered[18] financial institutions to help detect and prevent money laundering.[19] Specifically, the BSA and other anti-money laundering regulations (BSA/AML) require financial institutions to, among other things, keep records of cash purchases of negotiable instruments and file reports of cash transactions exceeding $10,000 (daily aggregate amount).[20]

Under the BSA/AML laws, financial institutions must also:

- establish effective BSA compliance programs;
- establish effective customer due diligence systems and monitoring programs;

[10] S. 655.005(1)(k), F.S.
[11] S. 655.001(1), F.S.
[12] S. 655.005(i), F.S.
[13] S. 655.001(2), F.S.
[14] Office of Financial Regulation (OFR), *About Our Agency*, https://flofr.gov/sitePages/AboutOFR.htm (last visited Dec. 4, 2023).
[15] *Id.*
[16] Department of Financial Services, *Financial Services Commission*, https://www.myfloridacfo.com/about/about-dfs/commission (last visited Dec. 4, 2023). *See also*, s. 655.012, F.S.
[17] 31 U.S.C. § 5311 et seq.
[18] *See*, 12 C.F.R. § 326.8 (sets forth requirements for state-chartered banks to establish and maintain procedures to ensure and monitor their compliance with the BSA). *See also*, 12 C.F.R. § 353 (establishes requirements for state-chartered banks to file a suspicious activity report under certain circumstances).
[19] U.S. Treasury Financial Crimes Enforcement Network, *FinCEN's Legal Authorities*, https://www.fincen.gov/resources/fincens-legal-authorities (last visited Dec. 6, 2023).
[20] *Id.*

- screen against Office of Foreign Assets Control lists and other government lists;
- establish an effective suspicious activity monitoring and reporting process; and
- develop risk-based anti-money laundering programs.[21]

The U.S. Office of the Comptroller of Currency regularly conducts examinations of national banks, federal branches, federal savings associations, and agencies of foreign banks in the U.S. to determine compliance with BSA/AML laws.[22]

SUSPICIOUS ACTIVITY REPORTS

In addition to the other requirements under the BSA/AML laws, financial institutions are also required to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.[23] These types of reports are known as "suspicious activity reports" (SAR) and are filed with the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury, using FinCEN's BSA E-filing system.[24]

Under this requirement, a financial institution is required to file an SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing an SAR.[25] For instances where no suspect was identified on the date of the incident requiring the filing, a financial institution may delay filing an SAR for an additional 30 calendar days to identify a suspect.[26] However, in no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.[27]

Federal Trade Commission Act

Section 5 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 45, prohibits "unfair or deceptive acts or practices in or affecting commerce."[28] The prohibition applies to all persons engaged in commerce, including state-chartered banks.[29] The Board of Governors of the Federal Reserve System have authority under federal law[30] to take appropriate action when unfair or deceptive acts or practices are discovered, regardless of state authorities having primary responsibility for enforcing state statutes against unfair or deceptive acts or practices.[31]

Under the FTC Act, an act or practice is considered unfair if it:
- Causes or is likely to cause substantial injury to consumers;
- Cannot be reasonably avoided by consumers; and
- Is not outweighed by countervailing benefits to consumers or to competition.[32]

According to the Board of Governors of the Federal Reserve System, there may be circumstances in which an act or practice violates section 5 of the FTC Act even though the institution is in technical compliance with other applicable laws, such as the BSA/AML laws.[33] Moreover, the policies behind the BSA/AML laws could arguably outweigh a finding that a financial institution committed an unfair act under section 5 of the FTC Act.

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[21] U.S. Office of the Comptroller of the Currency, *Bank Secrecy Act*, https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html (last visited Dec. 5, 2023).
[22] *Id*.
[23] U.S. Treasury Financial Crimes Enforcement Network, *supra* note 19.
[24] U.S. Office of the Comptroller of the Currency, *Suspicious Activity Report Program*, https://www.occ.treas.gov/publications-and-resources/forms/sar-program/index-sar-program.html (last visited Dec. 5, 2023).
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] Board of Governors of the Federal Reserve System (Board of Governors), Division of Consumer and Community Affairs, *Federal Trade Commission Act* (last updated Dec. 2016), p. 1, https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf (last visited Feb. 6, 2024).
[29] *Id.*
[30] Section 8 of the Federal Deposit Insurance Act, 12 U.S.C.A. § 1811, et seq.
[31] Board of Governors, Division of Consumer and Community Affairs, *supra* note 28, p. 1.
[32] *Id.*
[33] *Id.* at 7.

Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act

The purpose of the Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act[34] (Act), s. 655.50, F.S., is to require submission to OFR of certain reports and the maintenance of certain records of customers, accounts, and transactions involving currency or monetary instruments or suspicious activities if:[35]

- such reports and records deter using financial institutions to conceal, move, or provide proceeds obtained from or intended for criminal or terrorist activities; or
- such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

The Act requires financial institutions to designate and retain a BSA/AML compliance officer, which is defined as an officer that is responsible for the development and implementation of the financial institution's policies and procedures for complying with the requirements of the Act and BSA/AML laws.[36] Any change in a financial institution's BSA/AML compliance officer must be reported to OFR.[37]

Additionally, the Act requires financial institutions to maintain:[38]

- full and complete records of all financial transactions, including all records required by the BSA/AML laws, for a minimum of 5 years;
- a copy of all reports filed with OFR as required under the Act for a minimum of 5 years after submission of the report; and
- a copy of all records of exemption for each qualified business customer[39] for a minimum of 5 calendar years after termination of exempt status of such customer.

The Act also requires financial institutions to keep a record of each financial transaction which involves currency or other monetary instrument that has a value greater than $10,000, involves the proceeds of specified unlawful activity, or is designed to evade the reporting requirements of the Act or other state or federal laws, or which the financial institution reasonably believes is suspicious activity.[40]

A financial institution, or officer, employee, or agent thereof, which files a report in good faith pursuant to the Act is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.[41]

OFR ENFORCEMENT

In addition to any other powers conferred by the Financial Institutions Codes, OFR may bring an action in court to enforce or administer the Act, as well as issue and serve upon any person an order of removal if OFR determines such person is violating, has violated, or is about to violate any provisions of the Act or any similar state or federal law.[42]

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[34] S. 655.50, F.S.
[35] S. 655.50(2), F.S.
[36] S. 655.50(4), F.S.
[37] *Id*.
[38] S. 655.50(8), F.S.
[39] *See*, 31 U.S.C. § 5313(e), providing that the U.S. Secretary of Treasury (Secretary) may exempt a depository institution from BSA/AML reporting requirements for transactions between the institution and a "qualified business customer" (QBC) of the institution on the basis of information submitted to the Secretary. QBC is defined as a business that:

- maintains a transaction account at the depository institution;
- frequently engages in transactions with the institution which are subject to BSA/AML reporting requirements; and
- meets criteria which the Secretary determines is sufficient to ensure the purposes of the BSA/AML laws are carried out without requiring a report for such transactions.

[40] S. 655.50(5), F.S.
[41] S. 655.50(5)(c), F.S.
[42] Ss. 655.50(9)(a)-(c), F.S.

OFR may also impose and collect an administrative fine against any person found to have violated any provision of the Act or similar state or federal law in an amount up to $10,000 per day for each willful violation or $500 per day for each negligent violation.[43]

VIOLATIONS OF THE ACT

A person who willfully violates the Act commits a misdemeanor of the first degree,[44] unless the violation involves financial transactions of certain amounts, in which case the criminal penalties vary by first, second, and third-degree felonies depending on the amount and timing of such transactions. [45] In addition to the criminal penalties, a person who violates the Act may be subject to a fine of up to $250,000 or twice the value of the financial transaction, whichever is greater, and a subsequent violation could result in a fine up to $500,000 or quintuple the value of the financial transaction, whichever is greater.[46]

A person or financial institution who violates the Act may also be liable for a civil penalty of not more than the greater of the value of the financial transaction involved or $25,000.[47]

Effects of Banks' Termination of Account Access

In 2022, banks filed over 1.8 million SARs, which is a 50% increase in two years.[48] Multiple SARs often result in a financial institution terminating, suspending, or otherwise restricting a customer's account access.[49] A New York Times study of over 500 cases of financial institutions "dropping" their customers, including interviews with current and former bank industry staffers, revealed the negative effects of a bank's decision to remove a customer's account access:

> Individuals can't pay their bills on time. Banks often take weeks to send them their balances. While the institutions close their credit cards, their credit scores suffer. Upon cancellation, small businesses often struggle to make payroll – and must explain to vendors and partners that they don't have a bank account for the time being… [And] once customers have moved on, they don't know whether there is a black mark somewhere on their permanent records that will cause a repeat episode at another bank. If the bank has filed an SAR, it isn't legally allowed to tell you, and the federal government prosecutes only a small fraction of the people whom the banks document in their SARs.[50]

As a result, customers do not know why they were ever under suspicion.[51] Interviews with individuals who had lost access to their accounts revealed behaviors that may have caused their banks to "drop" them.[52] Specifically, a few of the interviews revealed the following:[53]

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[43] S. 655.50(9)(d), F.S.
[44] S. 655.50(10)(a), F.S.
[45] S. 655.50(10)(b), F.S. *See also*, s. 775.082, F.S. A person who willfully violates or knowingly causes another to violate the Act and the violation involves financial transactions of certain amounts:
- financial transactions totaling or exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree;
- financial transactions totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree; or
- financial transactions totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree.

[46] S. 655.50(10)(c), F.S.
[47] Ss. 655.50(10)(d)-(e), F.S.
[48] Ron Lieber and Tara Seigel Bernard, *Why Banks Are Suddenly Closing Down Customer Accounts*, Thomson Reuters (Nov. 5, 2023), https://www.nytimes.com/2023/11/05/business/banks-accounts-close-suddenly.html?unlocked_article_code=1.8Uw.udoQ.0cmUgCSuo6eS&smid=nytcore-android-share (last visited Dec. 5, 2023).
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*

- Unusual Cash Deposits: When a bar owner's weekly cash deposits fell just below the federal currency reporting thresholds, the bank closed the bar's account and the personal checking and credit card accounts of the owner and his spouse.
- A Marijuana Connection: A married couple's accounts at a bank were shut down after the husband started receiving direct deposits from a cannabis company that had recently acquired his employer.
- Criminal History: A man who had served 5 years in prison for stealing a car from a dealership and using a counterfeit bill (among other crimes) had his accounts shut down at three different banks. His personal banker from the third bank hinted it was because of his criminal record.

Qualified Public Depositories

Unless a specific exemption applies, state and local governments must deposit public funds in a bank or savings association that has been designated as a qualified public depository (QPD) under the Florida Security for Public Deposits Act (FSPD).[54]

To be designated as a QPD by the CFO, a bank, savings bank, or savings association must:
- Have a federal or state charter;
- Have authority to accept deposits in Florida;
- Have its principal place of business in Florida, or a branch office in Florida;
- Have deposit insurance pursuant to the Federal Deposit Insurance Act;[55]
- Have procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- Annually attest to the CFO that the QPD has not engaged in an "unsafe and unsound practice" by denying or cancelling services based on environmental, social, or governance factors, as required by s. 280.025, F.S.; and
- Meet all the requirements of ch. 280, F.S., relating to security for public deposits.[56]

Under the FSPD, a QPD may be suspended or disqualified or both if the CFO determines that the QPD has engaged in certain activities that are listed in s. 280.051, F.S.

Additionally, if the CFO finds that one or more grounds exist for the suspension or disqualification of a QPD, the CFO may, in lieu of suspension or disqualification, impose an administrative penalty upon the QPD.[57] Specifically, with respect to any knowing and willful violation by the QPD of a lawful order or rule, the CFO may impose a penalty not exceeding $1,000 for each violation.[58] Currently, only failure to timely file the attestation required under s. 280.025, F.S., is deemed a knowing and willful violation by a QPD.[59]

Effect of the Bill

Complaints by Customers or Members of a Financial Institution Alleging Bad Faith

The bill amends Florida's Financial Institutions Codes to allow a customer or member of a financial institution who reasonably believes that a financial institution has terminated, suspended, or taken similar action restricting access to the customer's or member's account in bad faith to file, within 30 calendar days of such action, a complaint with OFR alleging a violation of proposed s. 655.49, F.S. Such complaint is barred if not timely filed.

The bill requires OFR, by July 1, 2024, to make available on its website information necessary for a customer or member of a financial institution to file a complaint with OFR pursuant to the bill's provisions.

[54] S. 280.01, F.S. The Florida Security for Public Deposits Act is codified under ch. 280, F.S.
[55] 12 U.S.C.A. Ch. 16.
[56] S. 280.02(26), F.S.
[57] S. 280.054(1), F.S.
[58] S. 280.054(1)(b), F.S.
[59] *Id.*

If a financial institution's termination, suspension, or similar action restricting account access was due to any of the following, the bill's provisions do not apply:

- The customer or member initiated the access change themselves;
- There was a lack of activity in the account; or
- The property is presumed unclaimed pursuant to ch. 717, F.S.[60]

TERMINATION-OF-ACCESS REPORT

Upon OFR's receipt of a complaint filed by a customer or member, within 30 calendar days, OFR must notify the financial institution that a complaint has been filed. Within 30 calendar days of the financial institution receiving notice from OFR, the financial institution must file with OFR a termination-of-access report containing such information as the commission requires by rule.

OFR INVESTIGATION AND DETERMINATION

Within 90 calendar days after receiving the termination-of-access report, OFR must investigate the financial institution's action and determine whether the action was taken in bad faith as substantiated by competent and substantial evidence that was known or should have been known to the financial institution at the time of the termination, suspension, or similar action.

Within 30 calendar days after making a bad faith determination, OFR must report to the AG and the CFO such bad faith termination, suspension, or similar action. The report to the AG must describe the findings of the investigation, provide a summary of the evidence, and state whether the financial institution violated the Financial Institutions Codes. Upon reporting to the AG, OFR must also send a copy of the report to the aggrieved customer or member by certified mail, return receipt requested.

The bill provides that a financial institution's termination, suspension, or similar action restricting a customer's or member's account access in bad faith (as determined by OFR), or a financial institution's failure to cooperate in an investigation conducted pursuant to proposed s. 655.49, F.S. (including, without limitation, failure to timely file a termination-of-access report), constitutes a violation of Florida's Financial Institutions Codes and subjects the financial institution to the applicable sanctions and penalties provided therein.

The bill requires OFR to provide any filed termination-of-access report, and any information contained therein, to any federal, state, or local law enforcement or prosecutorial agency, and any federal or state agency responsible for the regulation or supervision of financial institutions, if the provision of such report is otherwise required by law.

PRIVATE CAUSE OF ACTION

The bill provides a private cause of action to the aggrieved customer or member against the financial institution that, pursuant to a finding by OFR, acted in bad faith in terminating, suspending, or taking similar action restricting account access. The aggrieved customer or member may recover damages in any court of competent jurisdiction, together with costs and reasonable attorney fees to be assessed by the court.

To recover damages, however, the customer or member must establish that, beyond a reasonable doubt, the financial institution acted in bad faith in terminating, suspending, or taking similar action restricting access to the customer's or member's account. The bill provides that OFR's determination that the financial institution has acted in bad faith does not, in and of itself, establish beyond a

[60] Ch. 717, F.S. is the Florida Disposition of Unclaimed Property Act (FDUP Act). Unclaimed property is a financial asset that is unknown or lost, or has been left inactive, unclaimed, or abandoned by its owner. Under the FDUP Act, unclaimed property is held by business or government entities (known as "holders") for a set period of time, usually 5 years. If the holder is unable to locate the owner, re-establish contact, and return the asset, it is reported and remitted to the Florida Department of Financial Services' Division of Unclaimed Property. *See*, Florida Department of Financial Services, Division of Unclaimed Property, *About*, https://fltreasurehunt.gov/UP-Web/sitePages/About.jsp (last visited Dec. 5, 2023).

reasonable doubt that the financial institution acted in bad faith in the termination, suspension, or similar action restricting account access.

The bill provides that a customer's or member's failure to initiate a cause of action within 12 months of OFR making a bad faith determination shall bar recovery of any filed claims thereafter.

Qualified Public Depositories

The bill also amends the list of activities that are grounds for suspension or disqualification or both for a QPD. Specifically, the bill provides that a QPD who is found by OFR to have acted in bad faith when terminating, suspending, or taking similar action restricting a customer's or member's account, or who has failed to cooperate in an investigation conducted pursuant to proposed s. 655.49, F.S. (including, without limitation, failing to timely file a termination-of-access report), is grounds for suspension or disqualification or both.

The bill provides that, with respect to administrative penalties imposed in lieu of suspension or disqualification, a QPD's bad faith termination, suspension, or similar action restricting a customer's or member's account access (as determined by OFR), or a QPD's failure to cooperate in an investigation conducted pursuant to proposed s. 655.49, F.S. (including, without limitation, failure to timely file a termination-of-access report), are each deemed a knowing and willful violation by the QPD.

Protection of Specified Adults

Background

Elder Population in Florida

As the country's "baby-boom" population reaches retirement age and life expectancy increases, the nation's elder population is projected to increase from 54.1 million in 2019[61] to 80.8 million by 2040.[62] Florida has long been a destination state for senior citizens and has the second highest percentage of senior residents in the nation.[63] In 2022, Florida had an estimated 4.7 million people age 65 and older, approximately 21percent of the state's population.[64] By 2030, this number is projected to increase to 5.9 million, meaning the elderly will make up approximately one quarter of the state's population and will account for most of the state's growth.[65]

Adult Protective Services Act

The Adult Protective Services Act, ch. 415, F.S. (Act), codifies Florida's laws relating to the protection of vulnerable adults. The Act defines "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability, or brain damage, or the infirmities of aging.[66] The term implicitly includes elderly persons, but also incorporates disabled adults and other adults whom the Legislature has determined to be at risk of abuse, neglect, and exploitation, and in need of protective services.[67]

[61] U.S. Census Bureau, *65 and Older Population Grows Rapidly as Baby Boomers Age* (June 25, 2020), Release Number: CB20-99, https://www.census.gov/newsroom/press-releases/2020/65-older-population-grows.html (last visited Jan. 10, 2024).
[62] U.S. Department of Health and Human Services Administration on Aging, *2020 Profile of Older Americans* (May 2021), https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/2020ProfileOlderAmericans.Final_.pdf (last visited Jan. 10, 2024)
[63] *Id.*
[64] U.S. Census Bureau, *Quick Facts – Florida,* https://www.census.gov/quickfacts/fact/table/FL# (last visited Jan. 10, 2024).
[65] [65] Florida Office of Economic & Demographic Research, *Florida Population by Age Group.* Available at http://edr.state.fl.us/Content/population-demographics/data/pop_census_day-2020.pdf (last visited Jan. 10, 2024).
[66] S. 415.102(28), F.S.
[67] S. 415.101(2), F.S.

The Department of Children and Families (DCF) protects vulnerable adults from abuse, neglect, and exploitation through mandatory reporting and investigation of suspected abuse pursuant to the Act.[68] In 2022, DCF received 30,581 reports of abuse, neglect, or exploitation of persons aged 60 or older.[69]

Financial Abuse in Elder Populations

Elder populations are particularly vulnerable to abuse and exploitation due to risk factors associated with aging, such as physical and mental infirmities and social isolation.[70] Common types of elderly abuse include neglect, physical abuse, psychological abuse, and financial abuse.[71] Up to 5 million older Americans are abused every year, and the annual loss by victims of financial abuse is estimated to be at least $36.5 billion.[72]

Financial abuse occurs when someone takes or misuses another person's money or property for the benefit of someone other than that person.[73] For example, neighbors, caregivers, professionals, and even family or friends may take money without permission, fail to repay the money they owe, charge too much for services, or not even do what they were paid to do.[74]

Financial Scams

Fraudulent scams that target elderly individuals are on the rise.[75] The most common fraudulent scams targeting these populations include:

- ***Government impersonation scams***, in which scammers call unsuspecting older adults and pretend to be from the Internal Revenue Service, Social Security Administration, or Medicare. They may say the older adult has unpaid taxes and threaten arrest if they do not pay immediately. Alternatively, the scammers may say Social Security or Medicare benefits will be cut off if the older adult does not provide personal identifying information, which can later be used to commit identity theft.[76]
- ***Sweepstakes scams***, in which scammers call an older adult to tell them have won a lottery or prize of some kind. If the older adult wants to claim their winnings, the older adult must send money, cash, or gift cards to cover supposed taxes and processing fees, or the older adult must send their bank account information to receive the alleged winnings.[77]
- ***Computer tech support scams***, which prey on older people's lack of knowledge about computers and cybersecurity. A pop-up message or blank screen usually appears on a computer or phone, telling the user their device is damaged and needs fixing. When the older person calls the support number for help, the scammer may either request remote access to the older person's computer and/or demand they pay a fee to have it repaired.[78]
- ***"Grandparent" scams***, in which a scammer calls a would-be grandparent and says something along the lines of: "Hi, Grandma, do you know who this is?" When the unaware grandparent guesses the name of the grandchild the scammer most sounds like, the scammer is able to instantly secure their trust. The fake grandchild then asks for money to solve some urgent financial problem (such as overdue rent, car repairs, or jail bond).[79]

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[68] *Id.*
[69] Email from Tarah Yeager, Gubernatorial Fellow, Department of Children and Families, Re: APS Statistics Info Request (March 22, 2023). On file with the Health and Human Services Committee.
[70] U.S. Department of Justice, *About Elder Abuse,* https://www.justice.gov/elderjustice/about-elder-abuse (last visited Jan. 10, 2024)..
[71] U.S. Department of Justice, *Types of Elder Abuse*, https://www.justice.gov/elderjustice/about-elder-abuse (last visited Jan. 10, 2024).
[72] National Council on Aging, *Get the Facts on Elder Abuse*, https://www.ncoa.org/article/get-the-facts-on-elder-abuse (last visited Jan. 10, 2024).
[73] Consumer Financial Protection Bureau, Reporting Elder Financial Abuse, https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/reporting-elder-financial-abuse-guide/ (last visited Jan. 10, 2024).
[74] *Id.*
[75] U.S. Department of Justice: Office of Victims of Crime, *National Elder Fraud Hotline*, https://ovc.ojp.gov/program/stop-elder-fraud/providing-help-restoring-hope#financial-scams-and-abuses-that-target-older-people-are-happenin (last visited Jan. 29, 2024).
[76] National Council on Aging, *supra* note 72.
[77] *Id.*
[78] *Id.*
[79] *Id.*

In 2022, there were 88,262 complaints of fraud from people aged 60 years or older, resulting in $3.1 billion in losses.[80] This was a 82.35percent increase in losses compared to 2021.[81] Financial scams are devastating to many older adults and can leave them in a vulnerable position, with limited ability to recover their losses.[82]

Florida's Laws Regarding Books and Records of Financial Institutions

Under Florida law, the books and records of a financial institution are confidential and shall be made available for inspection and examination only:

- To OFR or its duly authorized representative;
- To any person duly authorized to act for the financial institution;
- To any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured financial institution;
- With respect to an international banking corporation or international trust entity, to the home-country supervisor of the international banking corporation or international trust entity, provided certain conditions are met;
- As compelled by legislative subpoena as provided by law;
- As compelled by a court of competent jurisdiction, pursuant to a subpoena issued pursuant to certain rules,[83] or pursuant to a subpoena issued in accordance with state or federal law;[84]
- Pursuant to a subpoena, to any federal or state law enforcement or prosecutorial instrumentality authorized to investigate suspected criminal activity;
- As authorized pursuant to the board of directors of the financial institution;
- As otherwise provided by law.[85]

A person who willfully violates the provisions of Florida law described above relating to unlawful disclosure of confidential information is guilty of a felony of the third degree, punishable as provided by Florida's criminal laws.[86]

Effect of the Bill

The bill amends the Act to create definitions for the following terms:

- "Financial exploitation" means the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a specified adult; or any or omission by a person,

[80] Federal Bureau of Investigation Internet Crime Complaint Center, *2022 Internet Crime Report*, https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3Report.pdf (last visited Jan. 10, 2024). *See also*, National Council on Aging, *supra* note 72.
[81] *Id.*
[82] National Council on Aging, *supra* note 72.
[83] Specifically, the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, or the Federal Rules of Civil Procedure. *See* s. 655.059(1)(e), F.S.
[84] Before the production of the books and records of a financial institution under these circumstances, the party seeking production must reimburse the financial institution for the reasonable costs and fees incurred in compliance with the production. If the parties disagree regarding the amount of reimbursement, the party seeking the records may request the court or agency having jurisdiction to set the amount of reimbursement.
[85] S. 655.059(1), F.S. *See* s. 655.059(2) for a list of other persons that are authorized by Florida law to inspect the books and records of a financial institution.
[86] S. 655.059(1)(c), F.S. The specific provisions of Florida's criminal laws under which a person may be punished for a violation includes ss. 755.802, 755.083, and 755.084, F.S.

including through the use of a power of attorney, guardianship, or conservatorship of a specified adult, to:
    - Obtain control over the specified adult's money, assets, or property through deception, intimidation, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property; or
    - Divert the specified adult's money, assets, or property to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property.
- "Financial institution" means a state financial institution or a federal financial institution as those terms are defined under s. 655.005(1), F.S.[87]
- "Specified adult" means a natural person 70 years of age or older, or a vulnerable adult as defined in s. 415.102, F.S.[88]
- "Trusted contact" means a natural person 18 years of age or older whom the account owner has expressly identified and recorded in a financial institution's books and records as the person who may be contacted about the account.

The bill provides that if a financial institution reports suspected financial exploitation of a specified adult pursuant to s. 415.1034, F.S.,[89] it may delay a disbursement or transaction from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if two conditions are met. First, the financial institution must immediately initiate an internal review of the facts and circumstances that caused the employee of the financial institution to report the suspected financial exploitation.

Second, not later than 3 business days after the date on which the delay was first placed, the financial institution must:

- Notify in writing all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided for the account, with the exception of any party an employee of the financial institution reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected financial exploitation of the specified adult (the notice, which may be provided electronically, must provide the reason for the delay); and
- Create and maintain for at least 5 years after the date of the delayed disbursement or transaction a written or electronic record of the delayed disbursement or transaction that includes, at a minimum, the following information:
    - The date on which the delay was first placed;
    - The name and address of the specified adult;
    - The business location of the financial institution;
    - The name and title of the employee who reported suspected financial exploitation of the specified adult pursuant to s. 415.1034, F.S.;[90] and
    - The facts and circumstances that caused the employee to report suspected financial exploitation.

The financial institution must make the required information available for review upon request by DCF, any law enforcement agency conducting an investigation under s. 417.104, F.S., or any state or federal agency with regulatory authority over the financial institution. This proposed requirement appears to

[87] S. 655.005(1) defines "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq. "State financial institution" means a state-chartered or state-organized financial institution, and "federal financial institution" means a federally or nationally chartered or organized financial institution. *See* ss. 655.005(1)(h), (i), and (w), F.S.

[88] S. 415.102, F.S., defines "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

[89] S. 415.1034, F.S., relates to mandatory reporting of abuse, neglect, or exploitation of vulnerable adults, and other mandatory reports of death.

[90] S. 415.104, F.S., relates to protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults, and the transmittal of records to state attorneys pursuant to such investigations.

eliminate the necessity for a subpoena under certain circumstances.[91] While law enforcement is generally required to obtain a subpoena to access books and records,[92] the bill requires financial institutions to make these records available for review by law enforcement agencies that are engaged in an investigation under s. 417.104, F.S., regardless of whether the law enforcement agency has a subpoena or search warrant.[93]

The bill provides that a delay on a disbursement or transaction expires 5 business days after the date on which the delay was first placed. However, the financial institution may extend the delay for up to 7 additional calendar days if the financial institution's review of the available facts and circumstances continues to support the reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted.

The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. However, a financial institution is not prevented from terminating a delay after communicating with the parties authorized to transact business on the account and any trusted contact on the account.

Before placing a delay on ***any*** disbursement or transaction pursuant to the bill, a financial institution must:

- Develop training policies or programs reasonably designed to educate employees on issues pertaining to financial exploitation of specified adults;
- Conduct training for all employees at least annually and maintain a written record of all trainings conducted; and
- Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

The bill provides that, absent a reasonable belief of financial exploitation, a financial institution's obligations to parties authorized to transact business on an account or any trusted contact named on such account are not otherwise altered. Further, the bill does not create new rights for or impose new obligations on financial institutions under other applicable law.

The bill also provides legislative intent.

Contracts for Roof Repairs Following Emergencies

Background

The Florida Office of Insurance Regulation (OIR) reported a significant increase in the number of roof damage claims, many of which include litigation.[94] These roof damage claims include claims made by residential property owners after being solicited to file an insurance claim that they may not otherwise have filed but for the promise of a new roof at no cost to the property owner.[95] As such, the Legislature limited certain insurance practices by contractors and unlicensed persons acting on their behalf.[96]

A contractor may not enter into a contract with a residential property owner to repair or replace a roof without including notice in the contract that the contractor is prohibited from engaging in certain acts, including offering a rebate or other thing of value in exchange for making an insurance claim for damage to the property owner's roof.[97] If the contractor fails to include the notice in the contract, the

[91] OFR, Agency Analysis of 2024 House Bill 515, p. 4 (Jan. 4, 2024).
[92] *See* s. 655.059(1)(e), F.S.
[93] OFR, *supra* note 100, p. 4.
[94] Report from David Altmaier, Florida Insurance Commissioner, to Chair Blaise Ingoglia, Commerce Committee, regarding cost drivers affecting Florida's insurance rates, p. 7 (Feb. 24, 2021), https://www.floir.com/siteDocuments/CommerceCommitteeDataRequest.pdf (last visited February 7, 2024).
[95] *Id.* A "free" roof replacement may be achieved by giving a residential property owner whose policy provides for replacement cost coverage for a roof a gift card or something else valued at the amount of the deductible under the policy so that the entire cost of a new roof is paid by the insurer and the individual soliciting the residential property owner.
[96] *See* ch. 2021-77, Laws of Fla.
[97] S. 489.147(2), F.S.

property owner may void the contract within 10 days of its execution.[98] However, current law does not provide any requirements regarding cancellation of a contract executed during a declared state of emergency.

Effect of the Bill

The bill requires that a contractor that enters into a contract to replace or repair the roof of a residential property during a declared state of emergency by the Governor[99] must include specific language in the contract that allows the residential property owner to cancel the contract by the earlier of:

- Ten days following the contract execution; or
- The official start date that the work on the roof will commence.

If the contract does not contain an official start date, it may be canceled within ten days following execution.

The bill requires that the residential property owner send notice of cancellation of such contract to the address specified in the contract by certified mail, return receipt requested, or another form of mailing that provides proof of mailing.

Depository Institutions

Background

In 2023, the Legislature enacted the Florida Commercial Financing Disclosure Law.[100] This law requires certain disclosures by commercial financing transaction[101] providers. However, it exempted certain state and federally chartered depository institutions from its application.[102] However, a depository institution operating in Florida, but under the authority of a state charter issued by another state was not included in this exemption, nor were industrial loan companies and savings and loan associations operating in this state under a license, e.g., charter, issued under the law of Florida, the federal government, or another state. Accordingly, while such institutions are analogous to the exempted depository institutions, they are not exempted and must comply with the disclosure requirements.

Effect of the Bill

The bill makes additional depository institutions exempt from the Florida Commercial Financing Disclosure Law. It exempts depository institutions operating in Florida, but under the authority of a state charter issued by another state and industrial loan companies and savings and loan associations operating in this state under a license, e.g., charter, issued by Florida, the federal government, or another state.

[98] S. 489.147(2)(b) and (5), F.S.
[99] The State Emergency Management Act empowers the Governor to declare a state of emergency and provides specified powers the Governor may exercise during a declared state of emergency. "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. *See* ss. 252.31-252.60, F.S.
[100] Ch. 2023-290, L.O.F. The commercial financing disclosure law is ch. 559, part XIII, F.S.
[101] "Commercial financing transaction" means a commercial loan, an accounts receivable purchase transaction, or a commercial open-end credit plan to the extent the transaction is also a business purpose transaction. As used in this subsection, the term "business purpose transaction" means a transaction the proceeds of which are provided to a business or are intended to be used to carry on a business and not to be used for personal, family, or household purposes. For purposes of determining whether a transaction is a business purpose transaction, the provider may rely on any written statement of intended purpose signed by the business. The statement may be a separate statement or may be contained in an application, agreement, or other document signed by the business or the business owner. S. 559.9611(6), F.S.
[102] "Depository institution" means a Florida state-chartered bank, savings bank, credit union, or trust company, or a federal savings or thrift association, bank, credit union, savings bank, or thrift. S. 559.9611(9), F.S.

Continuing Education Requirements for Certified Public Accountants

Background

Every insurer authorized to do business in Florida must file an annual financial statement with OIR on or before March 1, and quarterly financial statements on March 31, June 30, and September 30.[103] Such statements must conform with the requirements established by the National Association of Insurance Commissioners, which OIR adopts by rule.[104] As part of the annual statement, all authorized insurers must have an annual audit conducted by an independent certified public accountant (CPA) and must file an audited financial report by June 1 each year.[105]

All CPAs licensed in Florida are required to complete 80 hours of continuing education during the two years prior to the conclusion of each license-renewal cycle.[106] However, there are no requirements regarding the completion of any continuing education related to audits of insurance companies.

Effect of the Bill

The bill requires the CPA that prepares the audit an insurer submits to OIR as part of its annual report to have completed at least four hours of insurance-related continuing education during each two-year continuing education cycle.

Public Adjusters

Background

Florida law defines a public adjuster as someone who, for something of value, directly or indirectly, prepares, completes, or files an insurance claim for an insured or third-party claimant, or who, for something of value, acts on behalf of, or aids, an insured or third-party claimant in settling a claim for loss or damage covered by an insurance contract, or who advertises for employment as an adjuster of such claims.[107] In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.[108]

Public adjusters' contracts relating to property and casualty claims must contain the full name, permanent business address, phone number, email address, and license number of the public adjuster; and the full name of the public adjusting firm for whom the public adjuster works.[109] However, such contracts are not required to contain the license number of the public adjusting firm.

Effect of the Bill

The bill requires that public adjusters' contracts relating to property and casualty claims contain the license numbers of the public adjusting firms by which they are employed.

Notice of Change in Policy Terms

Background

An insurer has the authority to modify the terms of a policy upon its renewal. In case of such changes, the insurer must provide the named insured with advance written notice that summarizes the modifications.[110] This notice can be included with the notice of renewal premium or sent separately

[103] S. 624.424(1), F.S.
[104] *Id.* and R. 69O-137, F.A.C.
[105] S. 624.424(8), F.S.
[106] *See* s. 473.312, F.S. CPAs are licensed under ch. 473, F.S., and must renew their licenses every two years.
[107] S. 626.854, F.S. Public adjusters are regulated under ch. 626, part VI, F.S.
[108] *See id.*
[109] S. 626.8796(2), F.S.
[110] S. 627.43141(2), F.S.

within the specified timeframe.[111] Prior to, or concurrently with, providing the insured with the notice, the insurer must furnish a sample copy of the notice to the insured's insurance agent. The notice itself must be titled "Notice of Change in Policy Terms."[112]

For renewal policies incorporating optional coverage leading to a premium increase, the insurer cannot use the Notice of Change in Policy Terms to introduce the optional coverage without the policyholder's approval.[113] The insured's payment of the renewal premium is considered acceptance of the new policy terms.[114] Failure to furnish the required notice means the original policy terms remain in effect until the subsequent renewal with proper notice, or until the effective date of replacement coverage obtained by the named insured, whichever happens first.[115]

Effect of the Bill

The bill requires that the renewal notice sent to the named insured containing changes in policy terms must be presented in bold type face of not less than 14 points. Additionally, the notice may extend beyond a single page if needed.

Short-term Health Insurance (short-term plans)

Background

Short-term plans are a health insurance product purchased only for limited time periods, usually under one year, during periods of transition, such as unemployment.[116] Beginning in 2016, federal rules related to the Patient Protection and Affordable Care Act (PPACA) limited short-term health plans to no more than three months.[117] In 2018, the Trump administration adopted a rule that allows short-term health plans to be issued for a period of up to 12 months.[118] The new rule also allows the plans to be renewed upon expiration, up to a total coverage period of 36 months. Short-term plans are not subject to the following PPACA requirements:

- Coverage of essential health benefits.
- Prohibition on pre-existing conditions.[119]
- Guaranteed issue of coverage.

As with Association Health Plans (AHPs), the authority to regulate short-term plans remains with the state. In response to the 2018 Department of Labor rules on AHPs and short-term health plans, the Legislature passed SB 322 (2019).[120] The law allows employers from disparate trades to participate in a single AHP, if they are located in the state, and allows AHPs to include out-of-state employers who share a trade or purpose, consistent with the revised federal rules.[121] Following the federal rule for short term plans, the law allows them to be issued for up to 12 months, renewable for a total coverage period of 36 months.[122] In practice, this change allows individuals to purchase short-term health insurance during longer periods of transition. Both changes increase the availability of lower-cost alternatives to comprehensive coverage.

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[111] Id.
[112] Id.
[113] S. 627.43141(3), F.S.
[114] S. 627.43141(5), F.S.
[115] S. 627.43141(6), F.S.
[116] *See* s. 627.6426, F.S.; Florida Department of Financial Services, *Short-term Limited Duration Insurance*, https://www.myfloridacfo.com/division/consumers/consumerprotections/stldipolicies (last visited Jan. 15, 2024).
[117] National Association of Insurance Commissioners, *Short-term Limited-duration Health Plans*, https://content.naic.org/cipr-topics/short-term-limited-duration-health-plans#:~:text=Federal%20regulations%20(81%20FR%2075316,replacement%20for%20traditional%20health%20coverage (last visited Feb. 8, 2024).
[118] *Id.*
[119] *Id.*
[120] Ch. 2019-129, Laws of Fla.
[121] *Id.*
[122] *Id.*

All short-term plans must include disclosures to the purchaser explaining that the plan is not required to comply with certain federal requirements and may exclude certain coverage.[123] However, the law does not specify the method by which these disclosures must be provided.

Effect of the Bill

The bill updates the disclosures that must be provided to a purchaser of a short-term plan to include the following additional items:

- The duration of the plan, including any waiting period;
- Any essential health benefits that the plan does not provide;[124]
- The content of coverage;[125] and
- Any exclusions of preexisting conditions.

The bill also requires that purchasers of short-term plans receive the required disclosures in writing or electronically, and sign them.

Loss Assessment Coverage

Background

Loss assessment coverage is insurance coverage for condominium unit owners that provides protection for situations where the owner of a condominium unit, as the owner of shared property, is held financially responsible for:

- Deductibles owed when a claim is made under a condominium association's property insurance policy;
- Damage that occurs to the condominium building or the common areas of a condominium property; or
- Injuries that occur in the common areas of a condominium property.[126]

Florida law requires that property insurance policies held by condominium unit owners include a minimum property loss assessment coverage of $2,000 for all assessments made because of the same direct loss to the condominium property.[127] The law further establishes that the maximum amount of any unit owner's coverage that can be assessed for any loss is an amount equal to the unit owner's loss assessment coverage limit in effect one day before the date of an occurrence that gave rise to the loss.[128] This coverage is applicable to any loss assessment regardless of the date of assessment by a condominium association.[129]

Effect of the Bill

The bill establishes that a claim resulting from a loss assessment is considered to have occurred on the date a notice of loss assessment is sent by a condominium association to a unit owner. Establishing a date of loss for such claims will help insurers determine whether a loss assessment claim has been timely made.

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[123] S. 627.6426(2), F.S.
[124] Essential health benefits can be found in 42 U.S.C. § 18022(b).
[125] The term content of coverage describes the scope of coverage and includes special restrictions on covered benefits. These restrictions may eliminate coverage for: specific medical conditions, body parts, or body systems; certain drugs; or certain cost-sharing options like deductibles or co-pays. The Henry J. Kaiser Family Foundation, *How Accessible is Individual Health Insurance for Consumers in Less-than-perfect Health?*, https://www.kff.org/wp-content/uploads/2013/01/how-accessible-is-individual-health-insurance-for-consumer-in-less-than-perfect-health-report.pdf (last visited Jan. 19, 2024).
[126] The Balance, *Loss Assessment Explained for Condo Insurance*, https://www.thebalance.com/loss-assessment-explained-for-condo-insurance-4060435 (last visited Jan. 13, 2024).
[127] S. 627.714(1), F.S.
[128] S. 627.714(2), F.S.
[129] *Id.*

Fireworks Safety Standards

Background

Florida law establishes the requirements for the outdoor display of fireworks in the state. At present, such display of fireworks is controlled by the 1995 edition of the National Fire Protection Association 1123, Code for Fireworks Displays (Code).[130]

Effect of the Bill

The bill updates the outdoor fireworks safety standards in Florida to the 2018 Code, which is the most current edition of the code.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.134, F.S., relating to information returns relation to payment-card and third-party network transactions.

Section 2. Amends s. 280.051, F.S., relating to grounds for suspension or disqualification of a qualified public depository.

Section 3. Amends s. 280.54, F.S., relating to administrative penalty in lieu of suspension or disqualification.

Section 4. Creates s. 415.10341, F.S., relating to protection of specified adults.

Section 5. Amends s. 489.147, F.S., relating to prohibited property insurance practices.

Section 6. Amends s. 559.9611, F.S., relating to definitions.

Section 7. Amends s. 624.424, F.S., relating to annual statement and other information.

Section 8. Amends s. 626.8796, F.S., relating to public adjuster contracts; disclosure statement; fraud statement.

Section 9. Amends s. 627.43141, F.S., relating to notice of change in policy terms.

Section 10. Amends s. 627.6426, F.S., relating to short-term health insurance.

Section 11. Amends s. 627.70132, F.S., relating to notice of property insurance claims.

Section 12. Creates s. 655.49, F.S., relating to bad faith termination or restriction of account access; investigation by the office.

Section 13. Amends s. 791.012, F.S., relating to minimum fireworks safety standards.

Section 14. Provides an effective date of July 1, 2024.

[130] S. 791.012, F.S. The Code cited in this statute has not been updated since this statute was first enacted in 1996.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative impact on state expenditures if state agencies are required to update systems or hire additional staff to implement the statutory changes made by the bill.

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 specified adults to the extent the bill allows financial institutions to delay a financial transaction if an employee at the institution reasonably suspects financial abuse of a specified adult. Accordingly, it is foreseeable that fewer specified adults will be able to effectuate a financial transaction procured by improper methods.

The bill may also lead to fewer financial institutions suspending, terminating, or taking similar action restricting customers' or members' account access in bad faith, which may have a positive economic impact.

The bill has an indeterminate negative impact on financial institutions to the extent that such institutions decide to delay disbursements as provided by the bill. Further, if the financial institution does decide to delay disbursements, the institution must first comply with the conditions provided by the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to consumer protection; amending s. 212.134, F.S.; defining terms; revising requirements for payment settlement entities, or their electronic payment facilitators or contracted third parties, in submitting information returns to the Department of Revenue; specifying requirements for third party settlement organizations that conduct certain transactions; amending s. 280.051, F.S.; providing additional grounds for qualified public depositories to be suspended and disqualified; amending s. 280.054, F.S.; providing additional acts deemed knowing and willful violations by qualified public depositories which are subject to certain penalties; creating s. 415.10341, F.S.; defining terms; providing legislative findings and intent; authorizing financial institutions, under certain circumstances, to delay a disbursement or transaction from an account of a specified adult; requiring the financial institution to make certain information available upon request by certain entities; specifying that a delay on a disbursement or transaction expires on a certain date; authorizing the financial institution to extend the delay under certain circumstances; authorizing a court of competent jurisdiction to shorten or extend the

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

delay; providing construction; requiring financial institutions to take certain actions before placing a delay on a disbursement or transaction; providing construction; amending s. 489.147, F.S.; authorizing insureds and claimants to cancel contracts to replace or repair a roof without penalty or obligation within a specified timeframe under certain circumstances; requiring contractors to include a notice in the contracts with residential property owners under certain circumstances; proving requirements for notices of contract cancellation; amending s. 559.9611, F.S.; revising the definition of the term "depository institution"; amending s. 624.424, F.S.; providing requirements for certain insurers' accountants; amending s. 626.8796, F.S.; revising the content of certain public adjuster contracts; amending s. 627.43141, F.S.; providing requirements for certain notice of change in insurance renewal policy terms amending s. 627.6426, F.S.; revising the disclosure requirements of contracts for short-term health insurance; amending s. 627.70132, F.S.; providing that claims resulting from certain loss assessments are considered to have occurred on a specified date; An act relating to access to financial institution customer accounts; amending s. 280.051, F.S.;

providing additional grounds for qualified public depositories to be suspended and disqualified; amending s. 280.054, F.S.; providing additional acts deemed knowing and willful violations by qualified public depositories which are subject to certain penalties; creating s. 655.49, F.S.; authorizing the Office of Financial Regulation to receive complaints from a customer or member who reasonably believes that a financial institution has acted in bad faith in terminating, suspending, or taking similar action restricting access to such customer's or member's account; providing a time limit for a customer or member to file a complaint; providing nonapplicability; providing duties of the office upon receipt of a customer's or member's complaint; providing duties of a financial institution upon receipt of notification that a complaint has been filed; providing violations and penalties; requiring the office to provide certain reports and information to specified entities under certain circumstances; providing that the financial institutions' customers and members have a cause of action under certain circumstances; authorizing such customers and members to recover damages, together with costs and attorney fees; providing a time limit for initiating causes of

action; requiring the office to make available information necessary for filing complaints on its website; amending s. 791.012, F.S.; updating the source of the code for outdoor display of fireworks; providing an effective date.

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

Section 1. Section 1. Section 212.134, Florida Statutes, is amended to read:

212.134 Information returns relating to payment-card and third party ~~third-party~~ network transactions.—

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

(a) "Participating payee" has the same meaning as in s. 6050W of the Internal Revenue Code.

(b) "Return" or "information return" means the Form 1099-K required under s. 6050W of the Internal Revenue Code.

(c) "Third party network transaction" has the same meaning as in s. 6050W of the Internal Revenue Code.

(d) "Third party settlement organization" has the same meaning as in s. 6050W of the Internal Revenue Code.

(2) For each year in which a payment settlement entity, an electronic payment facilitator, or other third party contracted with the payment settlement entity to make payments to settle reportable payment transactions on behalf of the payment settlement entity must file a return pursuant to s. 6050W of the

Internal Revenue Code, for participating payees with an address in this state, the entity, the facilitator, or the third party must submit the information in the return to the department by the 30th day after filing the federal return. The format of the information returns required must be either a copy of such information returns or a copy of such information returns related to participating payees with an address in the state. For purposes of this subsection, the term "payment settlement entity" has the same meaning as provided in s. 6050W of the Internal Revenue Code.

(3) ~~(2)~~ All reports of returns submitted to the department under this section must be in an electronic format.

(4) ~~(3)~~ Any payment settlement entity, facilitator, or third party failing to file the information return required, filing an incomplete information return, or not filing an information return within the time prescribed is subject to a penalty of $1,000 for each failure, if the failure is for not more than 30 days, with an additional $1,000 for each month or fraction of a month during which each failure continues. The total amount of penalty imposed on a reporting entity may not exceed $10,000 annually.

(5) ~~(4)~~ The executive director or his or her designee may waive the penalty if he or she determines that the failure to timely file an information return was due to reasonable cause and not due to willful negligence, willful neglect, or fraud.

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(6) All third party settlement organizations that conduct transactions involving a participating payee with an address in this state shall create a mechanism for participating payees to identify whether a participating payee's transaction is for goods and services or is personal. The mechanism must clearly indicate the participating payee's requirement to indicate the appropriate transaction type. The participating payee is responsible for indicating the appropriate transaction type. All third party settlement organizations shall maintain records that clearly identify whether a transaction, as designated by the participating payee, is a transaction for goods and services or is personal. The information in the return submitted to the department under subsection (2) for such entities must be limited to transactions for goods and services.

Section 2. Subsection (16) is added to section 280.051, Florida Statutes, to read:

280.051 Grounds for suspension or disqualification of a qualified public depository.—A qualified public depository may be suspended or disqualified or both if the Chief Financial Officer determines that the qualified public depository has:

(16) Pursuant to a determination notice reported by the Office of Financial Regulation under s. 655.49, acted in bad faith when terminating, suspending, or taking similar action restricting a customer's or member's account, or failed to cooperate in an investigation conducted pursuant to s.

655.49(3), including, without limitation, failing to timely file a termination-of-access report with the office.

Section 3. Paragraph (b) of subsection (1) of section 280.054, Florida Statutes, is amended to read:

280.054 Administrative penalty in lieu of suspension or disqualification.—

(1) If the Chief Financial Officer finds that one or more grounds exist for the suspension or disqualification of a qualified public depository, the Chief Financial Officer may, in lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository.

(b) With respect to any knowing and willful violation of a lawful order or rule, the Chief Financial Officer may impose a penalty upon the qualified public depository in an amount not exceeding $1,000 for each violation. If restitution is due, the qualified public depository shall make restitution upon the order of the Chief Financial Officer and shall pay interest on such amount at the legal rate. Each day a violation continues constitutes a separate violation. Each of the following ~~Failure to timely file the attestation required under s. 280.025~~ is deemed a knowing and willful violation by the qualified public depository:

1. Failure to timely file the attestation required under s. 280.025.

2. Bad faith termination, suspension, or similar action

restricting a customer's or member's account access, as determined by the Office of Financial Regulation pursuant to s. 655.49.

3. Failure to cooperate in an investigation conducted pursuant to s. 655.49(3), including, without limitation, failure to timely file a termination-of-access report with the office.

Section 4. Section 415.10341, Florida Statutes, is created to read:

415.10341 Protection of specified adults.—

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

(a) "Financial exploitation" means the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of a specified adult; or any act or omission by a person, including through the use of a power of attorney, guardianship, or conservatorship of a specified adult, to:

1. Obtain control over the specified adult's money, assets, or property through deception, intimidation, or undue influence to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property; or

2. Divert the specified adult's money, assets, or property to deprive him or her of the ownership, use, benefit, or possession of the money, assets, or property.

(b) "Financial institution" means a state financial institution or a federal financial institution as those terms

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are defined under s. 655.005(1).

(c) "Specified adult" means a natural person 70 years of age or older, or a vulnerable adult as defined in s. 415.102.

(d) "Trusted contact" means a natural person 18 years of age or older whom the account owner has expressly identified and recorded in a financial institution's books and records as the person who may be contacted about the account.

(2) The Legislature finds that many persons in this state, because of age or disability, are at increased risk of financial exploitation and loss of their assets, funds, investments, and investment accounts. The Legislature further finds that specified adults in this state are at a statistically higher risk of being targeted for financial exploitation, regardless of diminished capacity or other disability, because of their accumulation of substantial assets and wealth compared to younger age groups. In enacting this section, the Legislature recognizes the freedom of specified adults to manage their assets, make investment choices, and spend their funds, and intends that such rights may not be infringed absent a reasonable belief of financial exploitation as provided in this section. The Legislature therefore intends to provide for the prevention of financial exploitation of such persons. The Legislature intends to encourage the constructive involvement of financial institutions that take action based upon the reasonable belief that specified adults who have accounts with

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such financial institutions have been or are the subject of financial exploitation. The Legislature intends to balance the rights of specified adults to direct and control their assets, funds, and investments and to exercise their constitutional rights consistent with due process with the need to provide financial institutions the ability to place narrow, time-limited restrictions on these rights in an effort to decrease specified adults' risk of loss due to abuse, neglect, or financial exploitation.

(3) If a financial institution reports suspected financial exploitation of a specified adult pursuant to s. 415.1034, it may delay a disbursement or transaction from an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if all of the following apply:

(a) The financial institution immediately initiates an internal review of the facts and circumstances that caused an employee of the financial institution to report suspected financial exploitation.

(b) Not later than 3 business days after the date on which the delay was first placed, the financial institution:

1. Notifies in writing all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided for the account, with the exception of any party an employee of the financial institution reasonably believes has engaged in, is engaging in, has

attempted to engage in, or will attempt to engage in the suspected financial exploitation of the specified adult. The notice, which may be provided electronically, must provide the reason for the delay.

2. Creates and maintains for at least 5 years after the date of the delayed disbursement or transaction a written or electronic record of the delayed disbursement or transaction that includes, at minimum, the following information:

a. The date on which the delay was first placed.

b. The name and address of the specified adult.

c. The business location of the financial institution.

d. The name and title of the employee who reported suspected financial exploitation of the specified adult pursuant to s. 415.1034.

e. The facts and circumstances that caused the employee to report suspected financial exploitation.

(4) The financial institution must make the information required in subparagraph (3)(b)2. available for review upon request by the department, any law enforcement agency conducting an investigation under s. 415.104, or any state or federal agency with regulatory authority over the financial institution.

(5) A delay on a disbursement or transaction under subsection (3) expires 5 business days after the date on which the delay was first placed. However, the financial institution may extend the delay for up to 7 additional calendar days if the

financial institution's review of the available facts and circumstances continues to support the reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. This subsection does not prevent a financial institution from terminating a delay after communication with the parties authorized to transact business on the account and any trusted contact on the account.

(6) Before placing a delay on a disbursement or transaction pursuant to this section, a financial institution must do all of the following:

(a) Develop training policies or programs reasonably designed to educate employees on issues pertaining to financial exploitation of specified adults.

(b) Conduct training for all employees at least annually and maintain a written record of all trainings conducted.

(c) Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

(7) Absent a reasonable belief of financial exploitation as provided in this section, this section does not otherwise alter a financial institution's obligations to all parties

authorized to transact business on an account and any trusted contact named on such account.

(8) This section does not create new rights for or impose new obligations on a financial institution under other applicable law.

Section 5. Subsection (6) is added to section 489.147, Florida Statutes, to read:

489.147 Prohibited property insurance practices; contract requirements.—

(6)(a) An insured or claimant may cancel a contract to replace or repair a roof without penalty or obligation until 10 days following the execution of the contract or until the official start date, whichever comes first, if the contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor. For the purposes of this subsection, the official start date is the date on which the work on the roof commences.

(b) A contractor executing during a declaration of a state of emergency a contract to replace or repair a roof of a residential property must include in the contract the following language, in bold type of not less than 18 points, immediately before the space reserved for the signature of the residential property owner:

"You, the residential property owner, may cancel this contract

without penalty or obligation until 10 days following the execution of the contract or until the official start date, whichever comes first, because this contract was entered into during a declaration of a state of emergency by the Governor. It is the responsibility of your contractor to include an official start date clause in your contact. This clause must state the official start date and the work that will be commenced on that date. If there is no official start date clause in the contract, the contract may be voided within 10 days following the execution of the contract."

(c) The residential property owner must send the notice of cancellation by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract.

Section 6. Subsection (9) of section 559.9611, Florida Statutes, is amended to read:

559.9611 Definitions.—As used in this part, the term:

(9) "Depository institution" means a bank, credit union, savings bank, savings and loan association, savings or thrift association, trust company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States, this state, or any other state, district, territory, or commonwealth of the United States which is authorized to

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transact business in this state ~~Florida state-chartered bank, savings bank, credit union, or trust company, or a federal savings or thrift association, bank, credit union, savings bank, or thrift~~.

Section 7. Paragraph (d) of subsection (8) of section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(8)

(d) The certified public accountant that prepares the audit must be licensed to practice pursuant to chapter 473 and must have completed at least 4 hours of insurance-related continuing education during each 2-year continuing education cycle. An insurer may not use the same accountant or partner of an accounting firm responsible for preparing the report required by this subsection for more than 5 consecutive years. Following this period, the insurer may not use such accountant or partner for a period of 5 years, but may use another accountant or partner of the same firm. An insurer may request the office to waive this prohibition based upon an unusual hardship to the insurer and a determination that the accountant is exercising independent judgment that is not unduly influenced by the insurer considering such factors as the number of partners, expertise of the partners or the number of insurance clients of the accounting firm; the premium volume of the insurer; and the number of jurisdictions in which the insurer transacts business.

Section 8. Subsection (2) of section 626.8796, Florida Statutes, is amended to read:

626.8796 Public adjuster contracts; disclosure statement; fraud statement.—

(2) A public adjuster contract relating to a property and casualty claim must contain the full name, permanent business address, phone number, e-mail address, and license number of the public adjuster; the full name and license number of the public adjusting firm; and the insured's full name, street address, phone number, and e-mail address, together with a brief description of the loss. The contract must state the percentage of compensation for the public adjuster's services in minimum 18-point bold type before the space reserved in the contract for the signature of the insured; the type of claim, including an emergency claim, nonemergency claim, or supplemental claim; the initials of the named insured on each page that does not contain the insured's signature; the signatures of the public adjuster and all named insureds; and the signature date. If all of the named insureds' signatures are not available, the public adjuster must submit an affidavit signed by the available named insureds attesting that they have authority to enter into the contract and settle all claim issues on behalf of the named insureds. An unaltered copy of the executed contract must be remitted to the insured at the time of execution and to the insurer, or the insurer's representative within 7 days after

execution. A public adjusting firm that adjusts claims primarily for commercial entities with operations in more than one state and that does not directly or indirectly perform adjusting services for insurers or individual homeowners is deemed to comply with the requirements of this subsection if, at the time a proof of loss is submitted, the public adjusting firm remits to the insurer an affidavit signed by the public adjuster or public adjuster apprentice that identifies:

(a) The full name, permanent business address, phone number, e-mail address, and license number of the public adjuster or public adjuster apprentice.

(b) The full name of the public adjusting firm.

(c) The insured's full name, street address, phone number, and e-mail address, together with a brief description of the loss.

(d) An attestation that the compensation for public adjusting services will not exceed the limitations provided by law.

(e) The type of claim, including an emergency claim, nonemergency claim, or supplemental claim.

Section 9. Subsection (2) of section 627.43141, Florida Statutes, is amended to read:

627.43141 Notice of change in policy terms.—

(2) A renewal policy may contain a change in policy terms. If such change occurs, the insurer shall give the named insured

advance written notice summarizing the change, which may be enclosed in ~~along with~~ the written notice of renewal premium required under ss. 627.4133 and 627.728 or sent separately within the timeframe required under the Florida Insurance Code for the provision of a notice of nonrenewal to the named insured for that line of insurance. The insurer must also provide a sample copy of the notice to the named insured's insurance agent before or at the same time that notice is provided to the named insured. Such notice shall be entitled "Notice of Change in Policy Terms~~.~~" and shall be in bold type of not less than 14 points and included as a single page or consecutive pages, as necessary, within the written notice.

Section 10. Section 627.6426, Florida Statutes, is amended to read:

627.6426 Short-term health insurance.—

(1) For purposes of this part, the term "short-term health insurance" means health insurance coverage provided by an issuer with an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration not to exceed 36 months in total.

(2) All contracts for short-term health insurance entered into by an issuer and an individual seeking coverage shall include the following written disclosures signed by the purchaser at the time of purchase ~~disclosure~~:

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(a) The following statement:

"This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Patient Protection and Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage."

(b) The following information:

1. The duration of the contract, including any waiting period.

2. Any essential health benefit under 42 U.S.C. s. 18022(b) that the contract does not provide.

3. The content of coverage.

4. Any exclusion of preexisting conditions.

(3) The disclosures required in subsection (2) must be printed in no less than 12-point type and in a color that is

readable. A copy of the signed disclosures must be maintained by the issuer for a period of 5 years after the date of purchase.

(4) Disclosures provided by electronic means must meet the requirements of subsection (2).

Section 11. Subsection (4) of section 627.70132, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section to read:

627.70132 Notice of property insurance claim.—

(4) A claim resulting from loss assessment as described in s. 627.714 is considered to have occurred on the date of the notice of loss assessment sent by a unit owner's condominium association.

Section 12. Section 655.49, Florida Statutes, is created to read:

655.49 Bad faith termination or restriction of account access; investigations by the office.—

(1) A customer or member of a financial institution who reasonably believes that a financial institution has terminated, suspended, or taken similar action restricting access to the customer's or member's account in bad faith may file, within 30 calendar days after such termination, suspension, or similar action restricting account access, a complaint with the office alleging a violation of this section. Such complaint is barred if not timely filed.

(2) This section does not apply if a financial institution's termination, suspension, or similar action restricting a customer's or member's account access was due to one or more of the following:

(a) The customer or member initiated the change in access;

(b) There is a lack of activity in the account; or

(c) The account is presumed unclaimed property pursuant to chapter 717.

(3) Upon receipt of a customer's or member's complaint under subsection (1):

(a) Within 30 calendar days, the office must notify the financial institution that a complaint has been filed.

(b) Within 30 calendar days after receiving the notice from the office, the financial institution must file with the office a termination-of-access report containing such information as the commission requires by rule.

(c) Within 90 calendar days after receiving the termination-of-access report from the financial institution, the office must investigate the financial institution's action and determine whether the action was taken in bad faith as substantiated by competent and substantial evidence that was known or should have been known to the financial institution at the time of the termination, suspension, or similar action restricting a customer's or member's account access.

(d) Within 30 calendar days after making the determination

required under paragraph (c), the office must report to the Attorney General and the Chief Financial Officer the determination of a bad faith termination, suspension, or similar action restricting a customer's or member's account access. The report to the Attorney General must describe the findings of the investigation, provide a summary of the evidence, and state whether an alleged violation of the financial institutions codes by the financial institution occurred. Upon reporting to the Attorney General pursuant to this paragraph, the office must send a copy of the report to the customer or member by certified mail, return receipt requested.

(4) A financial institution's bad faith termination, suspension, or similar action restricting access to a customer's or member's account, as determined by the office pursuant to subsection (3), or a financial institution's failure to cooperate in an investigation conducted pursuant to subsection (3), including, without limitation, failure to timely file a termination-of-access report with the office, constitutes a violation of the financial institutions codes and subjects the financial institution to the applicable sanctions and penalties provided for in the financial institutions codes.

(5) The office shall provide any report filed pursuant to this section, or any information contained therein, to any federal, state, or local law enforcement or prosecutorial agency, and any federal or state agency responsible for the

regulation or supervision of financial institutions, if the provision of such report is otherwise required by law.

(6) If the office determines under subsection (3) that a financial institution has acted in bad faith, the aggrieved customer or member of the financial institution has a cause of action against the financial institution for damages and may recover damages therefor in any court of competent jurisdiction, together with costs and reasonable attorney fees to be assessed by the court. To recover damages under this subsection, the customer or member must establish that, beyond a reasonable doubt, the financial institution acted in bad faith in terminating, suspending, or taking similar action restricting access to the customer's or member's account. The office's determination that the financial institution has acted in bad faith pursuant to subsection (3) does not, in and of itself, establish beyond a reasonable doubt that the financial institution acted in bad faith in the termination, suspension, or similar action restricting access to the customer's or member's account. A customer's or member's failure to initiate a cause of action under this subsection within 12 months after the office's finding of bad faith pursuant to subsection (3) bars recovery of any filed claims thereafter.

(7) By July 1, 2024, the office shall make available on its website the information necessary for a customer or member of a financial institution to file a complaint with the office

under subsection (1).

Section 13. Section 791.012, Florida Statutes, is amended to read:

791.012 Minimum fireworks safety standards.—The outdoor display of fireworks in this state shall be governed by the National Fire Protection Association (NFPA) 1123, Code for Fireworks Display, 2018 ~~1995~~ Edition~~, approved by the American National Standards Institute~~. Any state, county, or municipal law, rule, or ordinance may provide for more stringent regulations for the outdoor display of fireworks, but in no event may any such law, rule, or ordinance provide for less stringent regulations for the outdoor display of fireworks. The division shall promulgate rules to carry out the provisions of this section. The Code for Fireworks Display shall not govern the display of any fireworks on private, residential property and shall not govern the display of those items included under s. 791.01(4)(b) and (c) and authorized for sale thereunder.

Section 14. This act shall take effect July 1, 2024.

COMMERCE COMMITTEE

PCS For CS/HB 939 by Rep. Griffitts
Consumer Protection

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Griffitts (Line 149): The amendment makes clarifying and technical changes.

Amendment 2 by Rep. Griffitts (Line 249): The amendment:

- Removes the requirement that financial institutions make certain information available for review upon request to law enforcement and regulatory agencies;
- Defines the term “residential property owner” (RPO);
- Modifies what can be considered the official start date for determining whether an RPO can cancel a contract for roof repairs without penalty; and
- Makes clarifying, technical, and conforming changes.

Amendment 3 by Rep. Griffitts (Line 435): The amendment:

- Provides that a notice of claim for loss assessment coverage may not occur later than 3 years after the date of loss and must be provided to the insurer no later than certain dates;
- Retains current law relating to minimum fireworks safety standards; and
- Removes an offensive term from law.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 149-176 and insert:

restricting access to a customer's or member's account, or failed to cooperate in an investigation conducted pursuant to s. 655.49(3), including, without limitation, failing to timely file a termination-of-access report with the office.

Section 3. Paragraph (b) of subsection (1) of section 280.054, Florida Statutes, is amended to read:

280.054 Administrative penalty in lieu of suspension or disqualification.—

(1) If the Chief Financial Officer finds that one or more grounds exist for the suspension or disqualification of a qualified public depository, the Chief Financial Officer may, in

lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository.

(b) With respect to any knowing and willful violation of a lawful order or rule, the Chief Financial Officer may impose a penalty upon the qualified public depository in an amount not exceeding $1,000 for each violation. If restitution is due, the qualified public depository shall make restitution upon the order of the Chief Financial Officer and shall pay interest on such amount at the legal rate. Each day a violation continues constitutes a separate violation. Each of the following ~~Failure to timely file the attestation required under s. 280.025~~ is deemed a knowing and willful violation by the qualified public depository:

1. Failure to timely file the attestation required under s. 280.025.

2. Bad faith termination, suspension, or similar action restricting access to a customer's or member's account, as

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

Remove lines 48-56 and insert:

considered to have occurred on a specified date; creating s. 655.49, F.S.; authorizing the

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Griffitts offered the following:

Amendment (with title amendment)

Remove lines 249-340 and insert:

exception of any party that an employee of the financial institution reasonably believes has engaged in, is engaging in, has attempted to engage in, or will attempt to engage in the suspected financial exploitation of the specified adult. The notice, which may be provided electronically, must provide the reason for the delay.

2. Creates a written or electronic record of the delayed disbursement or transaction which includes, at minimum, the following information:

a. The date on which the delay was first placed.

b. The name and address of the specified adult.

c. The business location of the financial institution.

d. The name and title of the employee who reported suspected financial exploitation of the specified adult pursuant to s. 415.1034.

e. The facts and circumstances that caused the employee to report suspected financial exploitation.

(4) The financial institution must maintain for at least 5 years after the date of a delayed disbursement or transaction a written or electronic record of the information required by s. 415.10341(3)2.

(5) A delay on a disbursement or transaction under subsection (3) expires 5 business days after the date on which the delay was first placed. However, the financial institution may extend the delay for up to 7 additional calendar days if the financial institution's review of the available facts and circumstances continues to support the reasonable belief that financial exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. The length of the delay may be shortened or extended at any time by a court of competent jurisdiction. This subsection does not prevent a financial institution from terminating a delay after communication with the parties authorized to transact business on the account and any trusted contact on the account.

(6) Before placing a delay on a disbursement or transaction pursuant to this section, a financial institution must do all of the following:

(a) Develop training policies or programs reasonably designed to educate employees on issues pertaining to financial exploitation of specified adults.

(b) Conduct training for all employees at least annually and maintain a written record of all trainings conducted.

(c) Develop, maintain, and enforce written procedures regarding the manner in which suspected financial exploitation is reviewed internally, including, if applicable, the manner in which suspected financial exploitation is required to be reported to supervisory personnel.

(7) Absent a reasonable belief of financial exploitation as provided in this section, this section does not otherwise alter a financial institution's obligations to all parties authorized to transact business on an account and any trusted contact named on such account.

(8) This section does not create new rights for or impose new obligations on a financial institution under other applicable law.

Section 5. Paragraph (b) of subsection (1) of section 489.147, Florida Statutes, is redesignated as paragraph (c), a new paragraph (b) is added to that subsection, and subsection (6) is added to that section, to read:

489.147 Prohibited property insurance practices; contract requirements.—

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

(b) "Residential property owner" means the person who holds the legal title to the residential real property that is subject of and directly impacted by the action of a governmental entity. The term does not include a governmental entity.

(6)(a) A residential property owner may cancel a contract to replace or repair a roof without penalty or obligation within 10 days after the execution of the contract or by the official start date, whichever comes first, if the contract was entered into based on events that are subject of a declaration of a state of emergency by the Governor. For the purposes of this subsection, the official start date is the date on which work that includes the installation of materials that will be included in the final work on the roof commences, a final permit has been issued, or a temporary repair to the roof covering or roof has been made in compliance with the Florida Building Code.

(b) A contractor executing a contract during a declaration of a state of emergency to replace or repair a roof of a residential property must include or add as an attachment to the contract the following language, in bold type of not less than 18 points, immediately before the space reserved for the signature of the residential property owner:

"You, the residential property owner, may cancel this contract without penalty or obligation within 10 days after the execution of the contract or by the official start date, whichever comes first, because this contract was entered into during a state of emergency by the Governor. The official start date is the date on which work that includes the installation of materials that will be included in the final work on the roof commences, a final permit has been issued, or a temporary repair to the roof covering or roof system has been made in compliance with the Florida Building Code."

(c) The residential property owner must send the notice of cancellation by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract.

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

Remove lines 19-35 and insert:

specified adult; requiring the financial institution to maintain certain records for a specific time period; specifying that a delay on a disbursement or transaction expires on a certain date; authorizing the financial institution to extend the delay under certain circumstances; authorizing a court of competent

jurisdiction to shorten or extend the delay; providing construction; requiring financial institutions to take certain actions before placing a delay on a disbursement or transaction; providing construction; amending s. 489.147, F.S.; authorizing insureds and claimants to cancel contracts to replace or repair a roof without penalty or obligation within a specified timeframe under certain circumstances; requiring contractors to include a notice in the contracts with residential property owners under certain circumstances; providing requirements for

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 435-576 and insert:

Policy Terms." and must be in bold type of not less than 14 points and must be included as a single page or consecutive pages, as necessary, within the written notice.

Section 10. Section 627.6426, Florida Statutes, is amended to read:

627.6426 Short-term health insurance.—

(1) For purposes of this part, the term "short-term health insurance" means health insurance coverage provided by an issuer with an expiration date specified in the contract that is less than 12 months after the original effective date of the contract

and, taking into account renewals or extensions, has a duration not to exceed 36 months in total.

(2) All contracts for short-term health insurance entered into by an issuer and an individual seeking coverage shall include the following written disclosures signed by the purchaser at the time of purchase ~~disclosure~~:

(a) The following statement:

"This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Patient Protection and Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage."

(b) The following information:

1. The duration of the contract, including any waiting period.

2. Any essential health benefit under 42 U.S.C. s. 18022(b) that the contract does not provide.

3. The content of coverage.

4. Any exclusion of preexisting conditions.

(3) The disclosures required in subsection (2) must be printed in no less than 12-point type and in a color that is readable. A copy of the signed disclosures must be maintained by the issuer for a period of 5 years after the date of purchase.

(4) Disclosures provided by electronic means must meet the requirements of subsection (2).

Section 11. Subsection (4) of section 627.70132, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section to read:

627.70132 Notice of property insurance claim.—

(4)(a) A notice of claim for loss assessment coverage under s. 627.714 may not occur later than 3 years after the date of loss and must be provided to the insurer the later of:

1. Within 1 year after the date of loss; or

2. Within 90 days after the date on which the condominium association or its governing board votes to levy an assessment resulting from a covered loss.

(b) For purposes of this subsection, the date of loss is the date of the covered loss event that created the need for an assessment.

Section 12. Section 655.49, Florida Statutes, is created to read:

655.49 Bad faith termination or restriction of account access; investigations by the office.—

(1) A customer or member of a financial institution who reasonably believes that a financial institution has terminated, suspended, or taken similar action restricting access to the customer's or member's account in bad faith may file, within 30 calendar days after such termination, suspension, or similar action restricting account access, a complaint with the office alleging a violation of this section. Such complaint is barred if not timely filed.

(2) This section does not apply if a financial institution's termination, suspension, or similar action restricting a customer's or member's account access was due to one or more of the following:

(a) The customer or member initiated the change in access;

(b) There is a lack of activity in the account; or

(c) The account is presumed unclaimed property pursuant to chapter 717.

(3) Upon receipt of a customer's or member's complaint under subsection (1):

(a) Within 30 calendar days, the office must notify the financial institution that a complaint has been filed.

(b) Within 30 calendar days after receiving the notice from the office, the financial institution must file with the office a termination-of-access report containing such information as the commission requires by rule.

(c) Within 90 calendar days after receiving the termination-of-access report from the financial institution, the office must investigate the financial institution's action and determine whether the action was taken in bad faith as substantiated by competent and substantial evidence that was known or should have been known to the financial institution at the time of the termination, suspension, or similar action restricting a customer's or member's account access.

(d) Within 30 calendar days after making the determination required under paragraph (c), the office must report to the Attorney General and the Chief Financial Officer the determination of a bad faith termination, suspension, or similar action restricting a customer's or member's account access. The report to the Attorney General must describe the findings of the investigation, provide a summary of the evidence, and state whether an alleged violation of the financial institutions codes by the financial institution occurred. Upon reporting to the Attorney General pursuant to this paragraph, the office must send a copy of the report to the customer or member by certified mail, return receipt requested.

(4) A financial institution's bad faith termination, suspension, or similar action restricting access to a customer's or member's account, as determined by the office pursuant to subsection (3), or a financial institution's failure to cooperate in an investigation conducted pursuant to subsection (3), including, without limitation, failure to timely file a termination-of-access report with the office, constitutes a violation of the financial institutions codes and subjects the financial institution to the applicable sanctions and penalties provided for in the financial institutions codes.

(5) The office shall provide any report filed pursuant to this section, or any information contained therein, to any federal, state, or local law enforcement or prosecutorial agency, and any federal or state agency responsible for the regulation or supervision of financial institutions, if the provision of such report is otherwise required by law.

(6) If the office determines under subsection (3) that a financial institution has acted in bad faith, the aggrieved customer or member of the financial institution has a cause of action against the financial institution for damages and may recover damages therefor in any court of competent jurisdiction, together with costs and reasonable attorney fees to be assessed by the court. To recover damages under this subsection, the customer or member must establish that, beyond a reasonable doubt, the financial institution acted in bad faith in

terminating, suspending, or taking similar action restricting access to the customer's or member's account. The office's determination that the financial institution has acted in bad faith pursuant to subsection (3) does not, in and of itself, establish beyond a reasonable doubt that the financial institution acted in bad faith in the termination, suspension, or similar action restricting access to the customer's or member's account. A customer's or member's failure to initiate a cause of action under this subsection within 12 months after the office's finding of bad faith pursuant to subsection (3) bars recovery of any filed claims thereafter.

(7) By July 1, 2024, the office shall make available on its website the information necessary for a customer or member of a financial institution to file a complaint with the office under subsection (1).

Section 13. Paragraph (a) of subsection (4) of section 791.01, Florida Statutes, is amended to read:

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

(4)(a) "Fireworks" means and includes any combustible or explosive composition or substance or combination of substances or, except as hereinafter provided, any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation. The term includes blank cartridges and toy cannons in which explosives are used, the type of balloons which require fire underneath to propel them,

firecrackers, torpedoes, skyrockets, Roman candles, ~~dago bombs,~~ and any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance.

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

Remove lines 46-78 and insert:

insurance; amending s. 627.70132, F.S.; providing requirements for notices of claims for loss assessment coverage; providing dates of loss; creating s. 655.49, F.S.; authorizing customers and members of financial institutions to file certain complaints with the Office of Financial Regulation; providing nonapplicability; providing duties of the office upon receipt of such complaints; providing reporting requirements; providing violations; requiring the office to provide reports to certain entities; providing causes of action; providing construction; requiring the office to make certain information available on its website; amending s. 791.01, F.S.; revising the definition of the term "fireworks"; amending s. 791.012, F.S.; updating the

PCS for CS/CS/HB 989

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #. PCS for CS/CS/HB 989 Financial Services
SPONSOR(S). Commerce Committee
TIED BILLS. **IDEN./SIM. BILLS.**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Herrera	Hamon

SUMMARY ANALYSIS

The bill makes changes to various laws related to financial services, including the Department of Financial Services (DFS), that include:

- Renaming the Division of Investigative and Forensic Services to the Division of Criminal Investigations.
- Establishing a tax liaison appointed by the Chief Financial Officer to assist Florida's taxpayers with federal tax issues.
- Enabling customers to file complaints with the Office of Financial Regulation for certain account access restrictions, and providing for investigation of financial institutions who have acted in bad faith, including penalties and prosecution.
- Allows suspension or disqualification for Qualified Public Depositories in certain circumstances.
- Providing a Workers' Compensation reimbursement methodology for emergency services and care when a maximum reimbursement allowance is unavailable.
- Mandating DFS approval for contracts exceeding $100,000 by various associations, ensuring competitive procurement.
- Making select changes related to the Board of Funeral, Cemetery, and Consumer Services; granting DFS authority to disclose certain confidential and exempt public record information; enhancing DFS oversight and administrative authority over Board licensees; and establishing disbursement protocols upon fulfillment of preneed contracts.
- Amending service of process related provisions; adjusting certain notice requirements for administrative complaints and citations.
- Requiring timely responses from surplus lines insurers to the Division of Consumer Services.
- Allowing voluntary submission of information allowing two-factor authentication in agent licensing.
- Establishing certain exemptions from the agent licensing examination requirements.
- Allowing disclosure of confidential investigative information in certain circumstances.
- Requiring licensed adjusters to identify themselves in advertisements based on their adjuster appointment type.
- Allowing general lines agents with a surplus lines license to appoint licenses with a single surplus license agent appointment.
- Revising certain State Fire Marshal-related provisions on fireworks usage, the Florida Fire Prevention Code, and safety standards for mobile food dispensing vehicles and energy storage systems.
- Modifying certain financial requirements for warranty associations and motor vehicle service agreement companies.
- Exempting municipal or county government employees from certain licensing and appointment requirements.
- Clarifying that bail bond agents are not exclusively required to be employed with a bail bond agency.
- Substantially revising the Florida Disposition of Unclaimed Property Act.
- Creating reporting requirements for the Florida Birth-Related Neurological Injury Compensation Association (NICA) and modifying the calculation of reserve estimates related to limitations on ongoing enrollment.

See Fiscal Analysis & Economic Impact Statement for fiscal impacts of the bill.

Except as specified in the bill, it is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

ORGANIZATION OF THE DEPARTMENT OF FINANCIAL SERVICES

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the state's chief fiscal officer,[1] and is designated as the State Fire Marshal. The CFO is the head of the Department of Financial Services (DFS). Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal, and the Department of Banking and Finance merged to form DFS. DFS consists of 13 divisions and several specialized offices.[2] DFS is composed of the following divisions and independent offices:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;[3]
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

Division of Investigative and Forensic Services

The Division of Investigative and Forensic Services consolidates all law enforcement and forensic units housed within DFS.[4] Endowed with a comprehensive mandate, the division probes a diverse array of fraudulent and criminal activities, such as investigations into insurance fraud, Workers' Compensation fraud, fire, arson, explosives, theft or misuse of state funds, and the analysis of fire and explosives samples.[5]

Effect of the Bill

The bill:

- Renames the Division of Investigative and Forensic Services to the Division of Criminal Investigations (DCI).
- Designates DCI as a criminal justice agency with the authority to initiate and conduct investigations into matters falling under the jurisdiction of the CFO and Fire Marshal.

Federal Tax Liaison

Florida Department of Revenue

[1] Art. IV, s. 4, Fla. Const.
[2] S. 20.121, F.S.
[3] This division includes the Bureau of Forensic Services; Bureau of Fire, Arson, and Explosives Investigations; Office of Fiscal Integrity; Bureau of Insurance Fraud; and Bureau of Workers' Compensation Fraud.
[4] Department of Financial Services, Investigative and Forensic Services, *About the Division*, https://myfloridacfo.com/Division/DIFS/ (last visited January 22, 2024).
[5] *Id*.

The Florida Department of Revenue (DOR) manages programs such as the Child Support Program, General Tax Administration, and Property Tax Oversight.[6] DOR's primary responsibility lies in administering Florida's state tax law.[7] To encourage tax compliance, DOR offers taxpayer education through online resources and webinars.[8] Furthermore, DOR monitors taxpayer compliance and initiates enforcement actions, including audits and collections, while prioritizing the protection of taxpayer rights.[9]

Taxpayer Rights Advocate

The Taxpayer Rights Advocate (TRA) is a position established by statute, appointed by, and accountable to the DOR Chief Inspector General, with removal from office authorized only by the Chief Inspector General.[10] The TRA's role is to address taxpayer concerns and ensure adherence to taxpayer rights as defined by constitutional and statutory provisions.[11]

Article I, Section 25 of the Florida Constitution provides for the enactment of a Taxpayers' Bill of Rights by the legislature, outlining taxpayers' rights and responsibilities and the government's obligations to treat taxpayers fairly.[12] The 1992 Florida Legislature created the Taxpayer's Bill of Rights, specified in s. 213.015, F.S., which grants taxpayers the right to request assistance from a DOR Taxpayer Rights Advocate.[13]

TRA facilitates the resolution of taxpayer complaints and problems not resolved through regular administrative channels within DOR.[14] This includes issuing stay actions on behalf of taxpayers facing irreparable loss due to DOR actions.[15] Additionally, TRA's are required to safeguard taxpayer rights during tax determination and collection processes.[16]

While the TRA advocates for taxpayer rights, they do not administer DOR's general tax processes.[17] TRA cannot represent taxpayers but works to ensure fair treatment and resolution of taxpayer issues.[18] TRA does not handle inquiries regarding local property tax matters, instead referring them to DOR's Property Tax Oversight Program.[19]

Effect of the Bill

The bill establishes a Federal Tax Liaison position within DFS, tasked with aiding federal taxpayers in this state. The CFO appoints the liaison, who reports directly to the CFO but operates independently of DFS's authority. The liaison's responsibilities include assisting taxpayers with inquiries, directing them to the appropriate Internal Revenue Service (IRS) divisions and offices for issue resolution, making recommendations to the IRS to address taxpayer problems, providing information on IRS policies and procedures for tax law compliance, and requesting IRS records with taxpayer consent to assist inquiries.

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[6] DOR, *Quick Facts about the Florida DOR*, https://floridarevenue.com/opengovt/Pages/quick_facts.aspx (last visited Jan. 25, 2024).
[7] Florida DOR. *Florida's Taxpayers' Rights Advocate Annual Report July 1, 2020-June 30,2021*, p.7 4- TRA Annual Report (FY 20-21).pdf (floridarevenue.com) (last visited Jan. 25, 2024).
[8] *Id*.
[9] *Id*.
[10] *Id*. at 1.
[11] *Id*.
[12] Art. I, s. 25, Fla. Const.
[13] Florida DOR. *Florida's Taxpayers' Rights Advocate Annual Report July 1, 2020-June 30,2021*, p.1 4- TRA Annual Report (FY 20-21).pdf (floridarevenue.com) (last visited Jan. 25, 2024). *See also* S. 20.21(3), F.S.
[14] *Id*.
[15] *Id*.
[16] *Id*.
[17] *Id*. at 2.
[18] *Id*.
[19] *Id*.

Division of Risk Management

The Division of Risk Management strives to support Florida's state agencies and universities by assisting them in managing various risks and ensuring quality coverage for Workers' Compensation, liability, federal civil rights, automobile liability, and property insurance at reasonable rates.[20] This is achieved through self-insurance, the purchase of insurance, and effective claims administration.[21] The Division of Risk Management consists of three bureaus: Risk Financing and Loss Prevention, State Employee Workers' Compensation Claims, and State Liability and Property Claims.[22]

Effect of the Bill

The bill eliminates the requirement for the Division of Risk Management to produce quarterly reports detailing the total salary indemnification benefits paid and reimbursements from each agency to the State Risk Management Trust Fund for initial salary indemnity costs.

Financial Institutions Codes

Florida's Financial Institutions Codes are codified under Title XXXVIII of the Florida Statutes.[23] The Financial Institutions Codes apply to all state-authorized and state-chartered financial institutions and to the enforcement of all laws relating to state-authorized and state-chartered financial institutions.[24] The Financial Institutions Codes define the term "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.[25]

A primary purpose of the Financial Institutions Codes is to provide for and promote the safe and sound conduct of the financial services industry in Florida.[26] The specific chapters under the Financial Institutions Codes are:

- Ch. 655, F.S. – Financial Institutions Generally
- Ch. 657, F.S. – Credit Unions
- Ch. 658, F.S. – Banks and Trust Companies
- Ch. 660, F.S. – Trust Business
- Ch. 662, F.S. – Family Trust Companies
- Ch. 663, F.S. – International Banking
- Ch. 665, F.S. – Associations
- Ch. 667, F.S. – Savings Banks

Office of Financial Regulation

The Office of Financial Regulation (OFR) is the regulatory authority for Florida's financial services industry.[27] OFR reports to the Financial Services Commission (Commission) which is made up of the Governor and the members of the Florida Cabinet: the Chief Financial Officer (CFO), Attorney General (AG), and Agriculture Commissioner.[28] OFR enforces and administers the Financial Institutions Codes;

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[20] DFS, Division of Risk Management, *Fiscal Year 2021 Annual Report,* https://www.myfloridacfo.com/docs-sf/risk-management-libraries/risk-documents/annual-reports/risk-mgmt-annual-report-2021.pdf?sfvrsn=720e7fcb_4 (last visited Jan. 17, 2024).
[21] *Id*.
[22] *Id*.
[23] S. 655.005(1)(k), F.S.
[24] S. 655.001(1), F.S.
[25] S. 655.005(i), F.S.
[26] S. 655.001(2), F.S.
[27] Florida Office of Financial Regulation, *About Our Agency*, https://flofr.gov/sitePages/AboutOFR.htm (last visited Dec. 4, 2023).
[28] *Id.*

is responsible for supervising banks, credit unions, savings associations, and international bank agencies; and licenses and regulates non-depository finance companies and the securities industry.[29]

Bank Secrecy Act

The federal Bank Secrecy Act (BSA)[30] establishes reporting, recordkeeping, and related requirements for federal and state-chartered[31] financial institutions to help detect and prevent money laundering.[32] Specifically, the BSA and other anti-money laundering regulations (BSA/AML) require financial institutions to, among other things, keep records of cash purchases of negotiable instruments and file reports of cash transactions exceeding $10,000 (daily aggregate amount).[33]

Under the BSA/AML laws, financial institutions must also:

- establish effective BSA compliance programs;
- establish effective customer due diligence systems and monitoring programs;
- screen against Office of Foreign Assets Control lists and other government lists;
- establish an effective suspicious activity monitoring and reporting process; and
- develop risk-based anti-money laundering programs.[34]

The U.S. Office of the Comptroller of Currency regularly conducts examinations of national banks, federal branches, federal savings associations, and agencies of foreign banks in the U.S. to determine compliance with BSA/AML laws.[35]

Suspicious Activity Reports

In addition to the other requirements under the BSA/AML laws, financial institutions are also required to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.[36] These types of reports are known as "suspicious activity reports" (SAR) and are filed with the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury, using FinCEN's BSA E-filing system.[37]

Under this requirement, a financial institution is required to file an SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing an SAR.[38] For instances where no suspect was identified on the date of the incident requiring the filing, a financial institution may delay filing an SAR for an additional 30 calendar days to identify a suspect.[39] However, in no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.[40]

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[29] Florida Department of Financial Services, *Financial Services Commission*, https://www.myfloridacfo.com/about/about-dfs/commission (last visited Dec. 4, 2023). *See also*, s. 655.012, F.S.
[30] 31 U.S.C. § 5311 et seq.
[31] *See*, 12 C.F.R. § 326.8 (sets forth requirements for state-chartered banks to establish and maintain procedures to ensure and monitor their compliance with the BSA). *See also*, 12 C.F.R. § 353 (establishes requirements for state-chartered banks to file a suspicious activity report under certain circumstances).
[32] U.S. Treasury Financial Crimes Enforcement Network, *FinCEN's Legal Authorities*, https://www.fincen.gov/resources/fincens-legal-authorities (last visited Dec. 6, 2023).
[33] *Id.*
[34] U.S. Office of the Comptroller of the Currency, *Bank Secrecy Act*, https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html (last visited Dec. 5, 2023).
[35] *Id.*
[36] U.S. Treasury Financial Crimes Enforcement Network, *supra* note 10.
[37] U.S. Office of the Comptroller of the Currency, *Suspicious Activity Report Program*, https://www.occ.treas.gov/publications-and-resources/forms/sar-program/index-sar-program.html (last visited Dec. 5, 2023).
[38] *Id.*
[39] *Id.*
[40] *Id.*

Federal Trade Commission Act

Section 5 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 45, prohibits "unfair or deceptive acts or practices in or affecting commerce."[41] The prohibition applies to all persons engaged in commerce, including state-chartered banks.[42] The Board of Governors of the Federal Reserve System have authority under federal law[43] to take appropriate action when unfair or deceptive acts or practices are discovered, regardless of state authorities having primary responsibility for enforcing state statutes against unfair or deceptive acts or practices.[44]

Under the FTC Act, an act or practice is considered unfair if it:

- Causes or is likely to cause substantial injury to consumers;
- Cannot be reasonably avoided by consumers; and
- Is not outweighed by countervailing benefits to consumers or to competition.[45]

According to the Board of Governors of the Federal Reserve System, there may be circumstances in which an act or practice violates section 5 of the FTC Act even though the institution is in technical compliance with other applicable laws, such as the BSA/AML laws.[46] Moreover, the policies behind the BSA/AML laws could arguably outweigh a finding that a financial institution committed an unfair act under section 5 of the FTC Act.

Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act

The purpose of the Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act[47] (Act), s. 655.50, F.S., is to require submission to OFR of certain reports and the maintenance of certain records of customers, accounts, and transactions involving currency or monetary instruments or suspicious activities if:[48]

- such reports and records deter using financial institutions to conceal, move, or provide proceeds obtained from or intended for criminal or terrorist activities; or
- such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

The Act requires financial institutions to designate and retain a BSA/AML compliance officer, which is defined as an officer that is responsible for the development and implementation of the financial institution's policies and procedures for complying with the requirements of the Act and BSA/AML laws.[49] Any change in a financial institution's BSA/AML compliance officer must be reported to OFR.[50]

Additionally, the Act requires financial institutions to maintain:[51]

- full and complete records of all financial transactions, including all records required by the BSA/AML laws, for a minimum of 5 years;
- a copy of all reports filed with OFR as required under the Act for a minimum of 5 years after submission of the report; and

[41] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *Federal Trade Commission Act* (last updated Dec. 2016), p. 1, https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf (last visited Feb. 6, 2024).
[42] *Id.*
[43] Section 8 of the Federal Deposit Insurance Act, 12 U.S.C.A. § 1811, et seq.
[44] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *supra* note 19, p. 1.
[45] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *supra* note 19, p. 1.
[46] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *supra* note 19, p. 7.
[47] S. 655.50, F.S.
[48] S. 655.50(2), F.S.
[49] S. 655.50(4), F.S.
[50] *Id.*
[51] S. 655.50(8), F.S.

- a copy of all records of exemption for each qualified business customer[52] for a minimum of 5 calendar years after termination of exempt status of such customer.

The Act also requires financial institutions to keep a record of each financial transaction which involves currency or other monetary instrument that has a value greater than $10,000, involves the proceeds of specified unlawful activity, or is designed to evade the reporting requirements of the Act or other state or federal laws, or which the financial institution reasonably believes is suspicious activity.[53]

A financial institution, or officer, employee, or agent thereof, which files a report in good faith pursuant to the Act is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.[54]

OFR Enforcement

In addition to any other powers conferred by the Financial Institutions Codes, OFR may bring an action in court to enforce or administer the Act, as well as issue and serve upon any person an order of removal if OFR determines such person is violating, has violated, or is about to violate any provisions of the Act or any similar state or federal law.[55]

OFR may also impose and collect an administrative fine against any person found to have violated any provision of the Act or similar state or federal law in an amount up to $10,000 per day for each willful violation or $500 per day for each negligent violation.[56]

Violation of the Act

A person who willfully violates the Act commits a misdemeanor of the first degree,[57] unless the violation involves financial transactions of certain amounts, in which case the criminal penalties vary by first, second, and third-degree felonies depending on the amount and timing of such transactions. [58]
In addition to the criminal penalties, a person who violates the Act may be subject to a fine of up to $250,000 or twice the value of the financial transaction, whichever is greater, and a subsequent violation could result in a fine up to $500,000 or quintuple the value of the financial transaction, whichever is greater.[59]

A person or financial institution who violates the Act may also be liable for a civil penalty of not more than the greater of the value of the financial transaction involved or $25,000.[60]

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[52] *See*, 31 U.S.C. § 5313(e), providing that the U.S. Secretary of Treasury (Secretary) may exempt a depository institution from BSA/AML reporting requirements for transactions between the institution and a "qualified business customer" (QBC) of the institution on the basis of information submitted to the Secretary. QBC is defined as a business that:
- maintains a transaction account at the depository institution;
- frequently engages in transactions with the institution which are subject to BSA/AML reporting requirements; and
- meets criteria which the Secretary determines is sufficient to ensure the purposes of the BSA/AML laws are carried out without requiring a report for such transactions.

[53] S. 655.50(5), F.S.
[54] S. 655.50(5)(c), F.S.
[55] Ss. 655.50(9)(a)-(c), F.S.
[56] S. 655.50(9)(d), F.S.
[57] S. 655.50(10)(a), F.S.
[58] S. 655.50(10)(b), F.S. *See also*, s. 775.082, F.S. A person who willfully violates or knowingly causes another to violate the Act and the violation involves financial transactions of certain amounts:
- financial transactions totaling or exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree;
- financial transactions totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree; or
- financial transactions totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree.

[59] S. 655.50(10)(c), F.S.
[60] Ss. 655.50(10)(d)-(e), F.S.

Effects of Banks' Termination of Account Access

In 2022, banks filed over 1.8 million SARs, which is a 50% increase in two years.[61] Multiple SARs often result in a financial institution terminating, suspending, or otherwise restricting a customer's account access.[62] A New York Times study of over 500 cases of financial institutions "dropping" their customers, including interviews with current and former bank industry staffers, revealed the negative effects of a bank's decision to remove a customer's account access:

> Individuals can't pay their bills on time. Banks often take weeks to send them their balances. While the institutions close their credit cards, their credit scores suffer. Upon cancellation, small businesses often struggle to make payroll – and must explain to vendors and partners that they don't have a bank account for the time being… [And] once customers have moved on, they don't know whether there is a black mark somewhere on their permanent records that will cause a repeat episode at another bank. If the bank has filed an SAR, it isn't legally allowed to tell you, and the federal government prosecutes only a small fraction of the people whom the banks document in their SARs.[63]

As a result, customers do not know why they were ever under suspicion.[64] Interviews with individuals who had lost access to their accounts revealed behaviors that may have caused their banks to "drop" them.[65] Specifically, a few of the interviews revealed the following:[66]

- Unusual Cash Deposits: When a bar owner's weekly cash deposits fell just below the federal currency reporting thresholds, the bank closed the bar's account and the personal checking and credit card accounts of the owner and his spouse.
- A Marijuana Connection: A married couple's accounts at a bank were shut down after the husband started receiving direct deposits from a cannabis company that had recently acquired his employer.
- Criminal History: A man who had served 5 years in prison for stealing a car from a dealership and using a counterfeit bill (among other crimes) had his accounts shut down at three different banks. His personal banker from the third bank hinted it was because of his criminal record.

Qualified Public Depositories

Unless a specific exemption applies, state and local governments must deposit public funds in a bank or savings association that has been designated as a qualified public depository (QPD) under the Florida Security for Public Deposits Act (FSPD).[67]

To be designated as a QPD by the CFO, a bank, savings bank, or savings association must:

- Have a federal or state charter;
- Have authority to accept deposits in Florida;
- Have its principal place of business in Florida, or a branch office in Florida;
- Have deposit insurance pursuant to the Federal Deposit Insurance Act;[68]
- Have procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;

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[61] Ron Lieber and Tara Seigel Bernard, *Why Banks Are Suddenly Closing Down Customer Accounts*, Thomson Reuters (Nov. 5, 2023), https://www.nytimes.com/2023/11/05/business/banks-accounts-close-suddenly.html?unlocked_article_code=1.8Uw.udoQ.0cmUgCSuo6eS&smid=nytcore-android-share (last visited Dec. 5, 2023).
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] S. 280.01, F.S. The Florida Security for Public Deposits Act is codified under ch. 280, F.S.
[68] 12 U.S.C.A. Ch. 16.

- Annually attest to the CFO that the QPD has not engaged in an "unsafe and unsound practice" by denying or cancelling services based on environmental, social, or governance factors, as required by s. 280.025, F.S.; and
- Meet all the requirements of ch. 280, F.S., relating to security for public deposits.[69]

Under the FSPD, a QPD may be suspended or disqualified or both if the CFO determines that the QPD has engaged in certain activities that are listed in s. 280.051, F.S.

Additionally, if the CFO finds that one or more grounds exist for the suspension or disqualification of a QPD, the CFO may, in lieu of suspension or disqualification, impose an administrative penalty upon the QPD.[70] Specifically, with respect to any knowing and willful violation by the QPD of a lawful order or rule, the CFO may impose a penalty not exceeding $1,000 for each violation.[71] Currently, only failure to timely file the attestation required under s. 280.025, F.S., is deemed a knowing and willful violation by a QPD.[72]

Effect of the Bill

Complaints by Customers or Members of a Financial Institution Alleging Bad Faith

The bill amends Florida's Financial Institutions Codes to allow a customer or member of a financial institution who reasonably believes that a financial institution has terminated, suspended, or taken similar action restricting access to the customer's or member's account in bad faith to file, within 30 calendar days of such action, a complaint with OFR alleging a violation of proposed s. 655.49, F.S. Such complaint is barred if not timely filed.

The bill requires OFR, by July 1, 2024, to make available on its website information necessary for a customer or member of a financial institution to file a complaint with OFR pursuant to the bill's provisions.

If a financial institution's termination, suspension, or similar action restricting account access was due to any of the following, the bill's provisions do not apply:
- The customer or member initiated the access change themselves;
- There was a lack of activity in the account; or
- The property is presumed unclaimed pursuant to ch. 717, F.S.[73]

Termination-of-Access Report

Upon OFR's receipt of a complaint filed by a customer or member, within 30 calendar days, OFR must notify the financial institution that a complaint has been filed. Within 30 calendar days of the financial institution receiving notice from OFR, the financial institution must file with OFR a termination-of-access report containing such information as the commission requires by rule.

OFR Investigation and Determination

Within 90 calendar days after receiving the termination-of-access report, OFR must investigate the financial institution's action and determine whether the action was taken in bad faith as substantiated

[69] S. 280.02(26), F.S.
[70] S. 280.054(1), F.S.
[71] S. 280.054(1)(b), F.S.
[72] *Id.*
[73] Ch. 717, F.S. is the Florida Disposition of Unclaimed Property Act (FDUP Act). Unclaimed property is a financial asset that is unknown or lost, or has been left inactive, unclaimed, or abandoned by its owner. Under the FDUP Act, unclaimed property is held by business or government entities (known as "holders") for a set period of time, usually 5 years. If the holder is unable to locate the owner, re-establish contact, and return the asset, it is reported and remitted to the Florida Department of Financial Services' Division of Unclaimed Property. *See*, Florida Department of Financial Services, Division of Unclaimed Property, *About*, https://fltreasurehunt.gov/UP-Web/sitePages/About.jsp (last visited Dec. 5, 2023).

by competent and substantial evidence that was known or should have been known to the financial institution at the time of the termination, suspension, or similar action.

Within 30 calendar days after making a bad faith determination, OFR must report to the AG and the CFO such bad faith termination, suspension, or similar action. The report to the AG must describe the findings of the investigation, provide a summary of the evidence, and state whether the financial institution violated the Financial Institutions Codes. Upon reporting to the AG, OFR must also send a copy of the report to the aggrieved customer or member by certified mail, return receipt requested.

The bill provides that a financial institution's termination, suspension, or similar action restricting a customer's or member's account access in bad faith (as determined by OFR), or a financial institution's failure to cooperate in an investigation conducted pursuant to proposed s. 655.49, F.S. (including, without limitation, failure to timely file a termination-of-access report), constitutes a violation of Florida's Financial Institutions Codes and subjects the financial institution to the applicable sanctions and penalties provided therein.

The bill requires OFR to provide any filed termination-of-access report, and any information contained therein, to any federal, state, or local law enforcement or prosecutorial agency, and any federal or state agency responsible for the regulation or supervision of financial institutions, if the provision of such report is otherwise required by law.

Private Cause of Action

The bill provides a private cause of action to the aggrieved customer or member against the financial institution that, pursuant to a finding by OFR, acted in bad faith in terminating, suspending, or taking similar action restricting account access. The aggrieved customer or member may recover damages in any court of competent jurisdiction, together with costs and reasonable attorney fees to be assessed by the court.

To recover damages, however, the customer or member must establish that, beyond a reasonable doubt, the financial institution acted in bad faith in terminating, suspending, or taking similar action restricting access to the customer's or member's account. The bill provides that OFR's determination that the financial institution has acted in bad faith does not, in and of itself, establish beyond a reasonable doubt that the financial institution acted in bad faith in the termination, suspension, or similar action restricting account access.

The bill provides that a customer's or member's failure to initiate a cause of action within 12 months of OFR making a bad faith determination shall bar recovery of any filed claims thereafter.

Qualified Public Depositories

The bill also amends the list of activities that are grounds for suspension or disqualification or both for a QPD. Specifically, the bill provides that a QPD who is found by OFR to have acted in bad faith when terminating, suspending, or taking similar action restricting a customer's or member's account, or who has failed to cooperate in an investigation conducted pursuant to proposed s. 655.49, F.S. (including, without limitation, failing to timely file a termination-of-access report), is grounds for suspension or disqualification or both.

The bill provides that, with respect to administrative penalties imposed in lieu of suspension or disqualification, a QPD's bad faith termination, suspension, or similar action restricting a customer's or member's account access (as determined by OFR), or a QPD's failure to cooperate in an investigation conducted pursuant to proposed s. 655.49, F.S. (including, without limitation, failure to timely file a termination-of-access report), are each deemed a knowing and willful violation by the QPD.

Division of Workers' Compensation

Florida's Workers' Compensation Law[74] requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require.[75] DFS provides regulatory oversight of Florida's Workers' Compensation system, including the Workers' Compensation health care delivery system. The law specifies certain reimbursement formulas and methodologies to compensate Workers' Compensation health care providers[76] that provide medical services to injured employees. Where a reimbursement amount or methodology is not specifically included in statute, the Three-Member Panel (Panel) is authorized to annually adopt statewide schedules of maximum reimbursement allowances (MRAs) to provide uniform fee schedules for the reimbursement of various medical services.[77] DFS incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals[78] through the rulemaking process provided by the Administrative Procedures Act.[79] In 2023, the Legislature eliminated the authority of the Three-Member Panel to adopt MRA's for individually licensed health care providers, work-hardening programs, pain programs, and durable medical equipment providers.[80] Instead, DFS must annually publish the maximum reimbursement allowance for physician and non-hospital reimbursements on its website by July 1st, effective the following January 1st.[81]

Reimbursement for Healthcare Providers

The Panel, which consists of the CFO or his or her designee and two Governor's appointees, sets the MRAs for hospital reimbursement.[82] Beginning with rates developed in 2024, and implemented with rates effective January 1, 2025, health care providers and non-hospital rates are annually published by DFS, instead of being included in the reimbursement manuals.[83] DFS incorporates the statewide schedules of the MRAs through rulemaking. In establishing the MRA manual, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;[84] the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care; and the financial impact of the MRAs on healthcare providers and facilities.[85] Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.[86]

There are three different reimbursement manuals that determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual, developed by the Division of Workers' Compensation, limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,[87] while reimbursement for surgical procedures is limited to 140 percent of Medicare.[88] The hospital manual, developed by the panel, sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,[89] while other outpatient services are limited to 75 percent of usual and customary charges.[90] Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.[91] The ambulatory surgical centers manual, developed by the panel, limits reimbursement to 60 percent of usual and customary as such

[74] Ch. 440, F.S.
[75] S. 440.13(2)(a), F.S.
[76] The term "health care provider" includes a physician or any recognized practitioner licensed to provide skilled services pursuant to a prescription or under the supervision or direction of a physician. It also includes any hospital licensed under ch. 395 and any health care institution licensed under ch. 400 or ch. 429. S. 440.13(1)(g), F.S.
[77] S. 440.13(12), F.S.
[78] Ss. 440.13(12) and (13), F.S., and r. 69L-7, F.A.C.
[79] Ch. 120, F.S.
[80] Ch. 2023-144, Laws of Fla.
[81] *Id*.
[82] *Id*.
[83] Ch. 2023-144, Laws of Fla.
[84] S. 440.13(12)(i)(1), F.S.
[85] S. 440.13(12)(i)(2), F.S.
[86] S. 440.13(12)(i)(3), F.S.
[87] S. 440.13(12)(f), F.S.
[88] S. 440.13(12)(g), F.S.
[89] S. 440.13(12)(d), F.S.
[90] S. 440.13(12)(a), F.S.
[91] *Id*.

services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a $4.18 dispensing fee.[92] Repackaged or relabeled prescription medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an $8.00 dispensing fee.[93] Fees may not exceed the schedules adopted under Ch. 440, F.S., and department rule.[94]

Effect of the Bill

The bill establishes that reimbursement for emergency services and care, excluding those subject to a maximum reimbursement allowance, must be 250 percent of Medicare rates, unless governed by a contract. Additionally, it requires DFS to collaborate with an actuarial services firm to develop maximum reimbursement allowances for services falling under this provision. This provision will expire on June 30, 2026.

Additionally, the bill gives DFS rulemaking authority.

Florida Self-Insurers Guaranty Association, Inc.

An employer may be eligible to self-insure for their Workers' Compensation coverage.[95] Such an employer must furnish proof to the Florida Self-Insurers Guaranty Association (FSIGA) that the employer has the financial strength necessary to ensure timely payment of all current and future claims.[96] The FSIGA is a nonprofit corporation established pursuant to s. 440.385, F.S., and monitors the financial strength of self-insured entities for DFS and makes recommendations as to the qualifications to self-insure.[97] All self-insurers other than governmental entities and public utilities are required to be members of the FSIGA.[98]

Effect of the Bill

The bill amends regulations concerning the Florida Self-Insurers Guaranty Association. Starting July 1, 2024, all contracts valued at $100,000 or more, entered into by the association, must receive prior approval from DFS. DFS is mandated to approve or deny the contract within ten days; otherwise, it is considered approved. Competitive procurement is required for all such contracts, with awards granted to the most responsible and responsive vendor. Contracts required by law are not subject to the provisions outlined in this bill.

Florida Funeral, Cemetery, and Consumers Services Act

Chapter 497, F.S., known as the Florida Funeral, Cemetery, and Consumer Services Act (Funeral Act), generally regulates funeral and cemetery services.[99] The Funeral Act authorizes the Board of Funeral, Cemetery, and Consumer Services (Board) within DFS to regulate cemeteries, columbaria,[100] cremation services, mausoleums, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.[101]

The Board oversees licensing and rulemaking for the death care industry, including examinations and facility standards.[102] It holds authority over various licensure aspects, such as criteria and practical

[92] S. 440.13(12)(h), F.S.
[93] *Id*.
[94] S. 440.13(12)(f), F.S.
[95] S. 440.38(1)(b), F.S.
[96] *Id.*
[97] *Id.*
[98] S. 440.385(1)(a), F.S.
[99] S. 497.001, F.S.
[100] "Columbarium" means a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains. S. 497.005(18), F.S.
[101] *See* ss. 497.101 and 479.103, F.S.
[102] S. 497.101 and 497.103, F.S.

examinations, including content, grading, and time limits. The Board is comprised of ten members, including the State Health Officer and nine individuals appointed by the Governor.[103] The composition of the Board includes funeral directors, cemetery associates, consumers, and a monument establishment principal. Members serve four-year terms, ensuring diverse representation and preventing conflicts of interest.[104]

Effect of the Bill

The bill introduces changes to the Board of Funeral, Cemetery, and Consumer Services. The changes include:

- The CFO, rather than the Governor, will appoint Board members.
- The funeral director member is no longer conditioned on owning or operating an approved cinerator facility.
- Board members may be reappointed but are limited to serving no more than 8 consecutive years.
- Members are specifically held subject to the code of ethics under part III of ch. 112, F.S.
- Board members cannot vote on measures for their private gain or loss.
- A board member may not knowingly accept gifts or expenditures from entities under consideration for a contract or licensed by DFS.
- Board meetings must comply with open meeting requirements, and all records are open to the public for inspection.
- Notice of Board meetings, except for emergencies, must be published by DFS on the Board's website at least seven days before the meeting. The agenda, arranged by presentation order, must also be published at least seven days in advance, with changes allowed only for good cause after the agenda release.

The bill amends disciplinary procedures and penalties for board members specifying that if certified mail service of an administrative complaint on a licensee cannot be achieved at the last address provided to DFS, service may be carried out by email. The email should be sent with delivery receipt required to the most recent email address provided to DFS by the licensee in accordance with s. 497.146, F.S.

Additionally, the bill modifies procedures for disciplinary citations and minor violations, stipulating that if certified mail service of a citation on a subject cannot be accomplished at the last address provided to DFS, then service may be conducted by email. The email should be sent with delivery receipt required, directed to the most recent email address provided to DFS by the subject in accordance with s. 497.146, F.S.

Disclosure of Confidential and Exempt Information by DFS

The bill specifies circumstances under which confidential and exempt information may be disclosed by the department, including to the probable cause panel of the board for probable cause proceedings, to law enforcement or government agencies for official duties, for matters of immediate public health, safety, or welfare concern, and if the department issues an emergency order.

Regulations on Storage, Preservation, and Transportation of Human Remains

The bill prohibits storing human remains at any establishment or facility not licensed under ch. 497, except for specific designated facilities. Additionally, it sets guidelines for the timeframe and conditions under which human bodies may be held after death, mandates proper transportation measures, and requires the licensing authority to establish minimal standards for handling and storing human remains. Furthermore, it grants the Department authority to intervene and remove human remains in emergency

[103] S. 497.103(1)(a)-(g), F.S.
[104] S. 497.101(3), F.S.

situations, absolving licensees from liability in such cases. Violations of these regulations incur misdemeanor or felony charges, depending on the severity of the offense.

Procedures for Fulfillment of Preneed Contracts

The bill establishes protocols for the fulfillment of preneed contracts, stating that upon delivery of merchandise or services, a preneed licensee can withdraw the deposited amount plus earned income, with adequate documentation. It specifies acceptable evidence of contract fulfillment, including a certified death certificate, invoice reflecting purchaser or beneficiary information, acknowledgment of delivery or services, or relevant governmental documentation. Additionally, it mandates that preneed licensees maintain fulfillment documentation until reviewed by the department.

Service of Process

In general, the law provides for the designation of a public officer, board, agency, or commission as the agent for service of process on a person, firm, or corporation in the state.[105] However, the state CFO is designated as the agent for service of process on insurers and other specific entities or persons licensed by DFS or the Office of Insurance Regulation (OIR). OIR provides oversight for specified insurance products, insurers and other risk bearing entities in Florida.[106] The Financial Services Commission (FSC), composed of the Governor, the Attorney General, the CFO, and the Commissioner of Agriculture, serves as agency head of the Office of Insurance Regulation for purposes of rulemaking. Further, the FSC appoints the commissioner of the Florida Office of Insurance Regulation.[107] Service of process on the CFO is made by mail, personal service, or via DFS's e-portal.[108]

After receiving service of process, the CFO is required to promptly send a copy by registered or certified mail, or by any other verifiable means, to the person designated by an insurer to receive the process.[109] Verifiable means includes making the documents available by electronic transmission from a secure website established by DFS.[110] If DFS makes the documents available electronically, the CFO is required to send a notice of receipt of process to the person designated by the insurer being served to receive legal process.[111]

Service is considered perfected on an insurer when the CFO is served with the process.[112] Although an insurer is not required to respond to a lawsuit except until 20 days after the CFO sends or makes a copy of the process available, the triggering date for other legal deadlines is the date the CFO is served with process.[113] This can create problems for an insurer when a delay occurs between the time the CFO is served and the time the CFO notifies the insurer of the service of process.

Surplus Lines Insurers

Surplus lines insurance is coverage for specific risks that the standard or admitted market is either unable or unwilling to cover.[114] While the admitted market is where most consumers find coverage, the surplus lines market is a supplement for those individuals and businesses that cannot find coverage otherwise.[115] Florida law defines "eligible surplus lines insurer" as an unauthorized insurer which has been made eligible by the OIR to issue insurance coverage under the Surplus Lines Law.[116]

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[105] S. 48.151, F.S.
[106] S. 20.121(3)(a), F.S.
[107] *Id.*
[108] *Id.* DFS, https://myfloridacfo.com/division/generalcounsel/service-of-process (last visited Jan. 23, 2024).
[109] S. 624.423, F.S.
[110] S. 624.307(9), F.S.
[111] *Id.*
[112] S. 624.423(3), F.S.
[113] S. 624.423(2), F.S.
[114] Florida Surplus Lines Service Office, *Surplus Lines Insurance*, https://www.fslso.com/about/surplus-lines-insurance#:~:text=Surplus%20lines%20insurance%20is%20coverage,that%20cannot%20find%20coverage%20otherwise (last visited Jan. 23, 2024).
[115] *Id.*
[116] S. 626.915, F.S.

Effect of the Bill

The bill requires eligible surplus lines insurers to provide a written or electronic response to the Division of Consumer Services within DFS within 14 days of receiving a written request for documents and information related to a consumer complaint.

Additionally, the bill requires that authorized insurers and eligible surplus lines insurers submit email addresses to DFS for directing requests related to consumer complaints. The insurer is required to designate a contact person to DFS for escalated complaint issues, providing the name, email address, and telephone number of the designated contact person.

Division of Insurance Agent and Agency Services

DFS Division of Insurance Agent and Agency Services is responsible for the licensing and regulation of insurance agents, adjusters, insurance agencies, as well as related personnel and business entities.[117]

No person may be, act as, or advertise, or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by DFS and appointed by an appropriate appointing entity or person.[118] There are several types of insurance representatives. These include:

- General lines agents,
- Life insurance agents,
- Health insurance agents,
- Title insurance agents,
- Personal lines agents, and
- Unaffiliated insurance agents.[119]

General Lines Agent

A general lines agent[120] is one who sells the following lines of insurance: property;[121] casualty,[122] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,[123] or a Workers' Compensation self-insurance fund;[124] surety;[125] health;[126] and, marine.[127] The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.[128]

Title Agents and Agencies

Title insurance insures owners of real property (owner's policy) or others having an interest in real property, as well as lenders (mortgagee policies) against loss by encumbrance, defective title, invalidity, or adverse claim to title. It is a policy issued by a title insurer that, after evaluating a search of title, insures against a number of covered risks, including title defects or liens that are not identified as

[117] Ch. 626, parts I-IX, and XIII.
[118] S. 626.112, F.S.
[119] S. 626.015, F.S.
[120] S. 626.015(5), F.S.
[121] S. 624.604, F.S.
[122] S. 624.605, F.S.
[123] As defined in s. 624.462, F.S.
[124] Pursuant to s. 624.4621, F.S.
[125] S. 626.606, F.S.
[126] Ss. 624.603 and 627.6482, F.S.
[127] S. 624.607, F.S.
[128] S. 626.829, F.S.

exceptions. In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[129]

Effect of the Bill

The bill

- Requires DFS to allow applicants to submit cellular telephone numbers as part of the application process on a voluntary basis for purposes of two-factor authentication[130] of login credentials only. A separate bill, HB 991, which is linked to the passage of the bill, proposes to exempt these phone numbers from public records requirements.
- Adds "Registered Claims Adjuster (RCA) from American Insurance College" to the list of individuals exempted from the examination requirement to become an agent or adjuster.
- Allows DFS to disclose confidential investigative information to the subject or the subject's representative in order to review the details of the investigation.
- Adds designation of "Chartered Customer Service Representative (CCSR) from American Insurance College" to the list of criteria to qualify as a customer representative.

Insurance Adjusters

Florida law requires all insurance adjusters to be licensed by DFS and appointed by the appropriate entity or person[131] in order to adjust claims. General requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.[132]

Under s. 626.864, F.S., there are both public adjusters and all-lines adjuster license types, with all-lines appointments further divided into independent adjusters,[133] company employee adjusters,[134] and public adjuster apprentices.[135] The same adjuster may not be concurrently licensed as a public adjuster and an all-lines adjuster.[136] In the case of an all-lines adjuster, the adjuster may be appointed as an independent adjuster, company employee adjuster, or public adjuster apprentice, but not more than one concurrently.[137]

A public adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.[138] Public adjusters operate independently and are not affiliated with any insurer.

An all-lines adjuster is any person who, for compensation, ascertains and determines the amount of any claim, loss, or damage payable under an insurance contract or settles such claim, loss, or damage on behalf of a public adjuster or insurer.[139]

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[129] S. 627.786, F.S.
[130] Two-factor authentication (TFA) is an identity and access management security method that requires two forms of identification to access resources and data. TFA gives businesses the ability to monitor and help safeguard their most vulnerable information and networks. Microsoft, *What is Two-Factor Authentication?,* https://www.microsoft.com/en-us/security/business/security-101/what-is-two-factor-authentication-2fa (last visited Jan. 22, 2024).
[131] *See* s. 626.015(4), F.S., defining "appointment" as the authority given by an insurer or employer to a licensee to adjust claims on behalf of an insurer or employer.
[132] S. 626.171, F.S.
[133] S. 626.855, F.S.
[134] S. 626.856, F.S.
[135] S. 626.8561, F.S.
[136] S. 626.864(2), F.S.
[137] S. 626.864(3), F.S
[138] S. 626.854(1), F.S.
[139] S. 626.8548, F.S.

An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract.[140]

A company employee adjuster is any person employed in-house by an insurer, or a wholly owned subsidiary of the insurer, who ascertains and determines the amount of an insurance claim, loss, or damage, or settles such claim, loss, or damage.[141]

Effect of the Bill

The bill mandates licensed adjusters to clearly identify themselves in all advertisements, solicitations, or written documents, reflecting their specific adjuster appointment type.

Additionally, an adjuster whose license has been revoked or suspended is expressly prohibited from participating in any aspect of an insurance claim or the insurance claim adjusting process.

Unauthorized Insurers and Surplus Lines

A general lines agent, when licensed and appointed as a surplus lines agent, is authorized to initiate and accept surplus lines business from any other originating Florida-licensed general lines agent appointed and licensed for the relevant kinds of insurance, and may receive compensation accordingly.[142] Similarly, a managing general agent, when licensed and appointed as a surplus lines agent, can accept and place surplus lines business originated by a Florida-licensed general lines agent, and may compensate that agent.[143] General lines agents may not knowingly misrepresent any material fact related to such insurance or its eligibility for placement with a surplus lines insurer.[144]

Effect of the Bill

The bill specifies that a general lines agent, while licensed as a surplus lines agent, is authorized to appoint licenses using a single surplus license agent appointment under s. 624.501, F.S. This appointed agent is limited to initiating surplus lines business and receiving surplus lines business exclusively from other Florida-licensed general lines agents who are appointed and licensed for the relevant kinds of insurance. Such agents are not eligible for appointment by or allowed to engage in transacting general lines insurance on behalf of an admitted insurer. Compensation may be provided to such agents.

Florida Medical Malpractice Joint Underwriting Association

The Florida Medical Malpractice Joint Underwriting Association (FMMJUA) is a legislatively established risk apportionment plan designed to ensure the availability of medical liability (malpractice) insurance for various Florida health care providers, including physicians, surgeons, dentists, nurses, physician partnerships or corporations, hospitals, medical facilities, and others.[145] The FMMJUA serves as a provider of liability insurance for medical practitioners who face challenges obtaining coverage from the private market.[146]

Administered by its Board of Governors, composed of representatives from key entities such as the Florida Medical Association, Florida Hospital Association, The Florida Bar, Florida Dental Association, and the insurance industry, the FMMJUA operates under the framework of the FMMJUA Plan of

[140] S. 626.855, F.S.
[141] S. 626.856, F.S.
[142] S. 626.929(1), F.S.
[143] S. 626.929(2), F.S.
[144] S. 626.929(3), F.S.
[145] S. 627.351, F.S. *See also* www.fmmjua.com (last visited Jan. 20, 2024).
[146] *Id*.

Operation.[147] The Board, with OIR approval, oversees crucial aspects like insurance rates, rate classifications, policy forms, and overall policy setting.[148]

Effect of the Bill

The bill requires that, starting July 1, 2024, the FMMJUA must obtain prior approval from DFS for all contracts valued at $100,000 or more. DFS is obligated to render a decision on the contract within ten days; failure to do so will result in the contract being deemed approved. Competitive procurement is a requisite for all such contracts, and awards are to be granted to the most responsible and responsive vendor.

Guaranty Associations

A guaranty association is typically a nonprofit corporation established by law to safeguard policyholders against financial losses and delays in claim payment and settlement resulting from the insolvency of an insurance company.

Florida Insurance Guaranty Association

Section 631.55, F.S., establishes the Florida Insurance Guaranty Association, Inc. (FIGA). In the event of insolvency of a property and casualty insurance company, FIGA is mandated to take over the claims and fulfill obligations to the policyholders of the insolvent insurer.[149] Participation in FIGA is a mandatory requirement for all insurers licensed to sell property and casualty insurance in Florida.[150] Operating as a nonprofit corporation, FIGA is governed by a Board of Directors appointed by DFS, with each member serving a four-year term.[151]

Effect of the Bill

The bill requires that, starting July 1, 2024, FIGA must seek prior approval from DFS for all contracts valued at $100,000 or more, with the exception of contracts involving defense counsel and claim administrators. DFS is required to decide on the contract within ten days; failure to do so will result in it being deemed approved. Competitive procurement is a prerequisite for all such contracts, and awards are to be directed to the most responsible and responsive vendor.

Florida Life and Health Insurance Guaranty Association

Section 631.715, F.S., establishes the Florida Life and Health Insurance Guaranty Association (FLHIGA). Every insurer licensed to sell direct life insurance policies, health insurance policies, annuity contracts, and supplemental contracts in the state must participate in FLHIGA as a requirement for conducting business in Florida.[152] FLHIGA functions as a nonprofit corporation, governed by a Board of Directors consisting of nine to eleven members appointed by member insurers.[153]

Effect of the Bill

The bill requires the FLHIGA to obtain approval from DFS for all contracts valued at $100,000 or more, initiated by the association after July 1, 2024. DFS is mandated to make a decision on the contract within ten days; otherwise, it is deemed approved. Competitive procurement is a requirement for all such contracts, with awards directed to the most responsible and responsive vendor.

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[147] *Id*.
[148] *Id*.
[149] S. 631.57, F.S.
[150] S. 631.56(1), F.S.
[151] *Id*.
[152] S. 631.716(1), F.S.
[153] *Id*.

Florida Health Maintenance Organization Consumer Assistance Plan

Section 631.815, F.S., provides for the creation of the Florida Health Maintenance Organization Consumer Assistance Plan (FHMOCAP). All health maintenance organizations possessing a valid certificate of authority in the state are required to participate in the FHMOCAP as a condition of transacting business in Florida. The FHMOCAP operates under a board of directors as a nonprofit corporation. The Board consists of five to nine members appointed by DFS to serve four-year terms.[154]

Effect of the Bill

The bill requires the FHMOCAP to obtain approval from DFS for all contracts valued at $100,000 or more, initiated by the association after July 1, 2024. DFS is mandated to make a decision on the contract within ten days; otherwise, it is deemed approved. Competitive procurement is a requirement for all such contracts, with awards directed to the most responsible and responsive vendor.

Florida Workers' Compensation Insurance Guaranty Association

Section 631.911, F.S., provides the creation of the Florida Workers' Compensation Insurance Guaranty Association, Incorporated (FWCIGA). All insurers authorized to provide workers' compensation insurance in the state are required to participate in the FWCIGA as a condition of transacting business in Florida. The FWCIGA operates under a board of directors as a nonprofit corporation. The Board consists of eleven members appointed to serve four-year terms.[155]

Effect of the Bill

The bill requires the FWCIGA to obtain approval from DFS for all contracts valued at $100,000 or more, initiated by the association after July 1, 2024. DFS is mandated to make a decision on the contract within ten days; otherwise, it is deemed approved. Competitive procurement is a requirement for all such contracts, with awards directed to the most responsible and responsive vendor.

State Fire Marshal

The CFO serves as the State Fire Marshal, operating through the Division of the State Fire Marshal within DFS.[156] Under this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel; investigates the causes of fires; enforces arson laws; oversees the installation of fire equipment; conducts fire safety inspections of state property; develops fire safety standards; provides facilities for the analysis of fire debris; and manages the Florida State Fire College.[157]

Uniform Fire Safety Standards

DFS is mandated to establish uniform fire safety standards applicable to various entities, including state-owned and state-leased buildings, hospitals, nursing homes, assisted living facilities, adult family-care homes, correctional facilities, public schools, transient public lodging establishments, public food service establishments, elevators, migrant labor camps, mobile home parks, lodging parks, recreational vehicle parks, recreational camps, residential and nonresidential child care facilities, facilities for the developmentally disabled, motion picture and television special effects productions, tunnels, and self-service gasoline stations.[158]

These standards must be reasonably prudent in safeguarding life, safety, and property, considering the characteristics of individuals using these buildings and structures and other associated hazards across

[154] S. 631.816(1), F.S.
[155] S. 631.912(1), F.S.
[156] S. 633.104, F.S.
[157] S. 633.128(h), F.S.
[158] S. 633.206(1), F.S.

the state.[159] Local authorities are generally restricted from imposing more stringent uniform fire safety standards, except in limited circumstances.[160]

Effect of the Bill

The bill adopts the National Fire Protection Association, Inc., Standard 1126, 2021 Edition, Standard for the Use of Pyrotechnics before a Proximate Audience. This replaces the 2001 Edition and is the most current edition.

The bill requires that the State Fire Marshal cannot adopt an accessibility code, as accessibility is already addressed within the Florida Building Code's Americans with Disabilities Act accessibility provisions.

Additionally, the bill mandates DFS to establish consistent fire safety standards for both mobile food dispensing vehicles and energy storage systems.

Motor Vehicle Service Agreement Companies

To engage in service agreement[161] business activities in Florida, a person must hold a license and adhere to various requirements under applicable laws, including the Florida Insurance Code.[162] These requirements include maintaining solvency, demonstrating competent and trustworthy management, making specified deposits, maintaining reserves, and ensuring a minimum net asset requirement of $500,000.[163] Additionally, a service agreement company may establish an unearned premium reserve or secure contractual liability insurance meeting certain criteria.[164] If using contractual liability insurance, the policy must cover 100 percent of claim exposure, ensure refund obligations, provide 90 days' notice for cancellation, and furnish claims statistics to the OIR.[165] Such policies can pay claims as incurred or in the event of the company's failure to meet payment obligations.[166]

Effect of the Bill

The bill permits motor vehicle service agreement companies to employ multiple contractual liability insurance policies to support their financial obligations.

Home Warranty Associations

A home warranty is a contract or agreement between the homeowner and the issuing company, safeguarding the homeowner from expenses related to the repair or replacement of structural components or appliances in the home.[167] This protection extends to issues caused by normal wear and tear or defects in these components or appliances.[168]

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[159] S. 633.206(2)(a), F.S.
[160] S. 633. 206(2)(b), F.S.
[161] S. 634.011(8), F.S., defines "motor vehicle service agreement" or "service agreement" as a contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended. However, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles. Transactions exempt under s. 624.125, F.S., are expressly excluded from this definition and are exempt from the provisions of this part.
[162] S. 634.031(1), F.S.
[163] S. 634.041, F.S.
[164] *Id*.
[165] S. 634.041(8)(b)6., F.S.
[166] *Id*.
[167] S. 634.301(2), F.S.
[168] *Id*.

Home warranty contracts or agreements can be drafted by a Home Warranty Association licensed under s. 634.303, F.S., or by an authorized insurance company permitted to offer coverage in this category.[169]

The elective market in Florida allows a builder, seller, buyer, or owner of a home to choose whether they would like to purchase a home warranty to cover against the cost of repair or replacement, or furnishes repair or replacement, of any structural component or appliance of a home, caused by wear and tear or a defect of a structural component or appliance.[170]

Warranty associations and companies in Florida, including those associations selling home and service warranties, and those companies selling motor vehicle service agreements, are regulated by the OIR.[171]

While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.[172] Home and service warranty associations must be licensed by OIR[173] and must maintain certain minimum financial standards in order to do warranty business in Florida.[174]

Effect of the Bill

The bill specifies that home warranty associations are not obligated to establish an unearned premium[175] reserve or maintain contractual liability insurance. The association may allow premiums to exceed the ratio to net assets limitation under the following conditions:

- The association or its parent corporation, if applicable, must maintain a minimum net worth of at least $100 million and provide the OIR with:
  - Annual audited financial statements or audited consolidated financial statements demonstrating the required net worth.
  - A quarterly written certification of the continuing net worth maintenance.
- Submission of required documents, including Form 10-K, Form 10-Q, or Form 20-F, to the OIR on a quarterly and annual basis.

Failure to timely file the necessary documents may result in the association facing suspension or revocation of its license.

If the net worth of a parent corporation is used to satisfy the net worth provisions:

- The parent corporation must guarantee all service warranty obligations, subject to OIR approval.
- Cancellation, termination, or modification of the guarantee requires a 90-day notice to the OIR.
- The association must demonstrate compliance with all provisions before the effective date of any changes to the guarantee.
- If compliance is not demonstrated, the association must cease writing new and renewal business.

[169] S. 634.303, F.S.
[170] S. 634.301(2), F.S.
[171] *See* ch. 634, F.S.
[172] *See* ch. 634, F.S.
[173] Ss. 634.303 and 634.403, F.S. Neither the Florida Insurance Code (FIC) nor this section grants permission for any home warranty association to conduct insurance business beyond what is specifically defined as home warranty or to participate in any other form of insurance. Sale of alternative insurance types requires explicit authorization through a certificate of authority issued by the office under the provisions of the FIC. S. 634.325, F.S.
[174] Ss. 634.3077 and 634.406, F.S.
[175] Unearned premiums are parts of the insurance premiums that are collected in advance by the insurers. The insurer is subject to refund the unearned premium if the insured decides to terminate the policy before the policy period ends. Clear Tax, *What is Unearned Premium?,* https://cleartax.in/glossary/unearned-premium/ (last visited Jan 23, 2024).

The bill also provides an exemption for employees and agents of municipal or county governments from the licensing and appointment requirements specified in s. 634.317, F.S.

Bail Bonds

A bail bond is a guarantee by a third-party that a defendant in a criminal case will appear in court at all scheduled proceedings. A bail bond agent posts a surety bond to secure the defendant's release from custody; the defendant provides money or other collateral to secure the bail bond and forfeits the premium (10 percent of the amount of bail set by the court) if he or she fails to appear in court or comply with other conditions of the bond. Bail bond agents must be licensed by DFS and appointed by insurance carriers to execute bail bonds. If a defendant fails to appear in court, the bail bond agent may apprehend and detain the defendant until the defendant is surrendered to the authorities.[176]

Bail bond agents may execute or sign bonds, handle collateral receipts, deliver bonds to appropriate authorities, or operate an agency or branch agency at a separate location from the supervising bail bond agent, managing general agent, or insurer that employs the bail bond agent.[177]

Licensure as a Bail Bond Agent

All applicants for bail bond licenses must submit fingerprints for a national criminal background check and pay an application fee.[178] Bail bond agents may not have been convicted of a felony, must be age 18 or older, and must be eligible to work in the United States.[179] A bail bond agent must be appointed by a licensed insurer and the insurer must report the appointment to DFS.[180] A bail bond agent may not charge a premium other than the rate that has been approved by OIR, and must retain records related to any bail bonds the agent has executed or countersigned for at least three years after the liability of the surety has been terminated.[181] Additionally, bail bond agents must register with the sheriff and the clerk of the circuit court in the county where the bail bond agent resides.[182] Bail bond agents may not solicit clients at a jail, prison, or courthouse, and may not pay fees for referrals from any person working in the law enforcement community.[183]

Ownership of a Bail Bond Agency

The owner of a bail bond agency must hold a valid license and appointment as a bail bond agent.[184] Additionally, the owner or operator of the agency is required to appoint a primary bail bond agent, responsible for the overall operation and management of a specific agency location.[185] The name and license number of the primary bail bond agent, along with the agency's address, must be filed with DFS.[186] A primary bail bond agent can supervise only one location, has the authority to hire employees, and is prohibited from employing or contracting with individuals who have been convicted of a felony.[187]

Continuing Education

Bail bond agents are required to complete a minimum of 14 hours of continuing education every two years.[188] Approved schools providing continuing education must be certified by DFS, offering a

[176] Ss. 648.24 and 624.26, F.S. *Also see* DFS, Division of Consumer Services, *Bail Bonds Overview*, https://www.myfloridacfo.com/bail-bonds-overview (last visited Jan. 20, 2024).
[177] S. 648.355, F.S.
[178] *Id*.
[179] S. 648.34, F.S.
[180] S. 648.30, F.S.
[181] Ss. 648.295 and S. 648.36, F.S.,
[182] S. 648.42, F.S.
[183] S. 648.44, F.S.
[184] S. 648.285, F.S.
[185] *Id*.
[186] *Id*.
[187] S. 648.25(6) and 648.387, F.S.
[188] S. 648.385, F.S.

minimum of three classroom-instruction classes per calendar year.[189] Each continuing education class should include at least two hours of approved coursework and be taught by a DFS-approved supervising instructor.[190]

Effect of the Bill

The bill provides the following definitions:

- "Referring bail bond agent" is the limited surety agent who is appointed with the surety company issuing the transfer bond that is to be posted in a county where the referring limited surety agent is not registered. The referring bail bond agent is the appointed agent held liable for the transfer bond, along with the issuing surety company.
- "Transfer bond" means the appearance bond and power of attorney form posted by a limited surety agent who is registered in the county where the defendant is being held in custody, and who is appointed to represent the same surety company issuing the appearance bond as the referring bail bond agent.

The bill requires that the papers, documents, reports, or any other records related to the regulation of bail bonds, which are made confidential and exempt from public records law during an active investigation by DFS, cease to be confidential once DFS or the OIR files a formal administrative complaint, emergency order, or consent order against the individual or entity.

Additionally, the bill allows for the disclosure of confidential investigative records to the subject or their representative for a detailed review.

Furthermore:

- The bill eliminates the requirement for bail bond agents to be employed with a bail bond agency.
- The bill removes the mandate for the submission of a full-face photograph with a limited surety's or bail bond agent's license application.
- The bill mandates the inclusion of the license number, along with the name and address, of the referring bail bond agent on a transfer bond.

Florida Disposition of Unclaimed Property Act

As part of its statutory duties, DFS is mandated to collect and return unclaimed property to Florida residents under ch. 717, F.S., known as the Florida Disposition of Unclaimed Property Act. Unclaimed property refers to funds or other tangible and intangible assets that have remained unclaimed by the owner for a specific period, encompassing various forms such as savings and checking accounts, money orders, stocks, and more.[191]

Chapter 717, F.S., provides a framework for the rightful owners to obtain unclaimed property that is held by DFS. Businesses, acting as holders of unclaimed property, are obligated to make reasonable efforts to locate the owner.[192] If these attempts prove unsuccessful, the businesses then report the property, along with the owner's name, last known address, and other relevant details, to DFS. While DFS serves as the custodian for the State of Florida, it does not assume legal ownership of the property.[193]

To notify owners of their unclaimed property, DFS employs various methods, including database searches.[194] Citizens have the right to claim their property at any time, irrespective of the amount, without incurring any costs.[195] Unclaimed funds are deposited into the State School Fund to support

[189] S. 648.386, F.S.
[190] *Id*.
[191] Ss. 717.104-717.116, F.S.
[192] *Id*.
[193] *Id*.
[194] Florida Department of Financial Services, Agency Analysis of House Bill 425, p. 1 (Feb. 9, 2021).
[195] *Id*.

public schools.[196] Importantly, the original amount reported as unclaimed can always be claimed by the owner or their heirs at no cost.[197]

More than 326 licensed[198] claimant's representatives are registered with DFS to gain access to the unclaimed property database and to seek authorizations from potential claimants of unclaimed property held by DFS to file claims on behalf of those claimants.[199] A claimant representative, who must be a Florida-licensed attorney, a licensed Florida-certified public accountant (CPA), or a private investigator licensed under Chapter 493, F.S., is required to register with DFS.[200] A claimant representative must register with DFS on a form designated by DFS and provide certain documentation (including tax identification number, identification, electronic funds transfer information, business address, and employees and agents) and credentials as to their status as an attorney, CPA, or private investigator.[201] In order to move forward in obtaining unclaimed property on a potential client's behalf, the representative must first obtain that client's authorization.

Effect of the Bill

Revised and New Definitions

The bill includes substantial changes to the law regarding unclaimed property. It significantly revises some definitions and creates others so that the statutory definitions related to the unclaimed property process will better apply to modern business and consumer practices.[202] The updated definitions will also account for new property types, technology advancements, electronic communications, and consumer's changing preferences regarding financial accounts.[203]

The revisions to, and creation of, definitions in the bill include the following:

- An unclaimed property related audit is defined as an action or proceeding to assist in curbing the intentional delay of DFS audits of unclaimed property.
- Audit agent is defined to differentiate between DFS's employee auditors and auditors that DFS contracts with for audit services to establish that the contracted auditors have authority delegated by DFS.
- A definition of claimant representative is created because of confusion regarding the role of such people in the unclaimed property process.

Clarifications on Dormancy Period and Owner's Expression of Interest

The bill clarifies the dormancy period before property is presumed unclaimed and reported to DFS.[204] It also designates what constitutes an owner's expression of interest.

Virtual Currency and Reporting Requirements

The bill adds a definition of virtual currency to unclaimed property law and provides requirements on how this type of property is to be reported and remitted to DFS when it is unclaimed. Virtual currency must be reported to DFS on the annual report filed property holders file with DFS. Property holders must liquidate virtual currency within 30 days before the filing of the report and remit the proceeds to DFS.

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[196] *Id*.
[197] *Id*.
[198] Email from Chase Mitchell, Director of Legislative Affairs and Policy, DFS, Inquiry Regarding Licensed Claimant's Representatives Registration, (Jan. 22, 2024).
[199] DFS, Agency Analysis of House Bill 425, p. 1 (Feb. 9, 2021).
[200] S. 717.124, F.S.
[201] S. 717.1400, F.S.
[202] Department of Financial Services (DFS), Agency Analysis of 2024 House Bill 989, p.5 (Dec. 28, 2023). Many of these definitions have not been updated since 1987.
[203] *Id.*
[204] *Id.* at p. 9.

Property Holder Obligations

The bill provides that a property holder may not assign or otherwise transfer its obligation to report, pay, or deliver property or to comply with unclaimed property law. Furthermore, an entity that acquires all or substantially all of a property holder's capital stock or assets is responsible for the reporting to DFS unless otherwise agreed to by the parties.

Changes to Dormancy Period for Stock or Equity Interest

The bill also updates the time frames for determining whether stock or equity interest in a business association is presumed to be unclaimed. Such stock or equity is presumed to be unclaimed after the earliest of the following:

- three years after any owner-generated activity;
- three years after the death of the owner; or
- one year after notice of the owner's death is received by the holder.

Presumption of Unclaimed Property in Trusts

The bill establishes that all intangible property and associated income held in a fiduciary capacity under a trust instrument are considered unclaimed unless certain actions are taken by the owner within two years. These actions include increasing or decreasing the principal, accepting payment, communicating regarding the property, or expressing interest through documented means. Additionally, the bill specifies that these provisions do not exempt fiduciaries from their obligations under the Florida Trust Code.

Lower Reporting Threshold and Notice to Owners

The bill aims to increase the number of searchable and claimable unclaimed property accounts. Instead of the current reporting threshold of $50, the bill requires that property holders report to DFS the owner and account information for unclaimed property valued at $10 or more.

The bill also makes changes to provide adequate notice to owners that their property has become unclaimed and may be transferred to the custody of the state. It allows notice to be given by mail or email. Such notice must contain a heading that informs the recipient that his or her property may be transferred to DFS if they do not contact the property holder within 30 days after the date of the notice.

The bill establishes that a property holder's substantial compliance with the reporting requirements for unclaimed property and good faith payment of delivery of the property to DFS:

- terminates any legal relationship between the holder and the owner with respect to the property; and
- releases and discharges the holder from liability to the owner or his heirs and representatives.

A payment or delivery of property has been made in good faith if:

- It was made in conjunction with an accurate and acceptable report.
- It was made in a reasonable attempt to comply with ch. 717, F.S.
- The holder had a reasonable basis for believing the property was unclaimed and subject to ch. 717, F.S.
- There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

Records Retention Period Extension

The bill increases the period of time for which property holders must retain records regarding reportable property from five years to ten years. This aligns the records retention requirement with the number of years within which DFS can bring an action to enforce unclaimed property law.

DFS Authority

The bill provides DFS with the authority to refund or return the money or property to a person within five years if it was remitted in error as long as the money or property has not been paid or delivered to a claimant or otherwise disposed of according to unclaimed property law.

DFS Role in Probate Proceedings

The bill clarifies DFS's authority when determining entitlement to unclaimed property that is part of probate proceedings. DFS will be considered a party and provided with notice of proceedings as provided for in the Florida Probate Code and Probate Rules. By becoming a party to the probate proceedings, DFS should no longer have to disburse unclaimed property based upon court orders that were issued based upon false information.

Threshold Increase for Small Estate Accounts

The bill increases the threshold for small estate accounts accompanied with a signed affidavit from $10,000, to $20,000.

Tolling of 10-Year Enforcement Period

The bill clarifies that the 10-year period within which DFS may commence and action or proceeding to enforce unclaimed property law is tolled by the earlier of:

- DFS's or its audit agent's delivery of a notice that a holder is subject to an audit or examination; or
- the holder's written election to enter into an unclaimed property voluntary disclosure agreement.

Auditors' Fees, Investigations, and Examinations

Pursuant to the bill, auditors are allowed to deduct their fees from the property recovered or collected under a contract for the location or collection of unclaimed property. In addition to audits, significant changes and clarifications of DFS's authority to conduct investigations and examinations are made in the bill. Confidential information, including a property holder's financial or proprietary information, may not be disclosed until after an investigation or audit is completed, unless a court requires the disclosure during a judicial proceeding.

Unclaimed Property Purchase, Electronic Signatures, and Exemption for Sale in Bankruptcy

The bill allows anyone to purchase unclaimed property as long as they comply with the other legal requirements regarding recovery and purchase agreements.[205] It also eliminates the prohibition on electronically signing a recovery agreement for claims above $2,000. The bill further provides that the law regarding recovery and purchase agreements does not apply to the sale and purchase of Florida-held unclaimed property accounts through a bankruptcy trustee appointed to represent a debtor's estate in a bankruptcy proceeding.

Florida Birth-Related Neurological Injury Compensation Association

Medical Malpractice Crisis

[205] These requirements are found in s. 717.135, F.S.

During the 1970s and 1980s, medical liability insurance in Florida had become so expensive that, although technically available, it was functionally unavailable.[206] The Florida Legislature determined that obstetrician-gynecologists (ob-gyns) disproportionately accounted for medical liability claims, both in number of claims and amount of payout.[207] Therefore, in 1986, the Legislature created a special task force to study the Florida medical malpractice crisis and address the ob-gyn impact on that crisis.[208] The task force evaluated the rising insurance costs and reported that litigation costs and attorney's fees had increased between 1975 and 1986, but there was no particular change in substantive law to account for the change.[209] Moreover, some physicians became reluctant to treat high-risk patients and practice certain high-risk specialties altogether.[210] In 1985, ob-gyns in Florida paid an average medical malpractice liability premium of $185,460, compared to a national average for ob-gyns of $23,300.[211]

Florida Birth-Related Neurological Injury Compensation Plan

The Florida Birth-Related Neurological Injury Compensation Plan (Plan) was part of the Legislature's efforts to manage both rising medical malpractice costs and diminishing availability of liability insurance by creating a hybrid no-fault and tort medical liability system.[212] The Plan was created to pay for the care of infants born with certain neurological injuries and is available to eligible families without the need for litigation. By eliminating costly legal proceedings, the Plan aims to ensure that birth-injured infants receive the care they need while reducing the financial burden on both medical providers and families.

Florida Birth-Related Neurological Injury Compensation Association

In February 1988, the Legislature created the Florida Birth-Related Neurological Injury Compensation Association (NICA) to manage the Plan.[213] NICA is an independent association. Although it is not a state agency, NICA is subject to regulation and oversight by the Office of Insurance Regulation (OIR) and the Joint Legislative Auditing Committee. Directors on NICA's board are appointed by the Chief Financial Officer (CFO) for staggered terms of three years or until their successors are appointed, but they may not serve more than six consecutive years on the board.[214] The board of directors is composed of:

- One citizen representative.
- One representative of participating physicians.
- One representative of hospitals.
- One representative of casualty insurers.
- One representative of physicians other than participating physicians.
- One parent or guardian representative of an injured infant under the plan.
- One representative of an advocacy organization for children with disabilities.[215]

The board of directors may:

- Administer the Plan.
- Administer the funds collected on behalf of the Plan.
- Administer the payment of claims on behalf of the Plan.
- Direct the investment and reinvestment of any surplus funds over losses and expenses, provided that any investment income generated thereby remains credited to the Plan.
- Reinsure the risks of the Plan in whole or in part.

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[206] Sandy Martin, *NICA - Florida Birth-Related Neurological Injury Compensation Act*, 26 Nova L. R. 609 (2002), https://core.ac.uk/download/pdf/51081713.pdf (last visited Feb. 20, 2024).
[207] *Id*.
[208] *Id*.
[209] *Id*.
[210] *Id*.
[211] *Id*.
[212] *Id.*
[213] S. 766.315, F.S. and ch. 88-1, s. 74, Laws of Fla.
[214] *Id.*
[215] *Id*.

- Sue, be sued, appear, and defend in all actions relating to the Plan.
- Exercise all powers necessary to effect any of the purposes for which the Plan is created.
- Enter into such contracts as are necessary or proper to administer the Plan.
- Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the Plan.
- Take such legal action as may be necessary to avoid payment of improper claims.
- Indemnify any person acting on behalf of the Plan in an official capacity, provided that such person acted in good faith.[216]

Annually, NICA must furnish audited financial reports to:
- Any Plan participant upon request;
- The OIR; and
- The Joint Legislative Auditing Committee.[217]

The reports must be prepared in accordance with accepted accounting procedures. The OIR or the Joint Legislative Auditing Committee may conduct an audit of the Plan at any time.[218]

Eligibility

An administrative law judge (ALJ) within the Florida Division of Administrative Hearings[219] hears all claims under the Plan and determines whether a claim is compensable.[220] To qualify, there must have been a birth injury to the brain or spinal cord of a live infant in which:
- The birth occurred in a hospital;
- The infant weighed 2500g at birth for single gestation or 2000g for multiple gestation at birth;
- There was oxygen deprivation or mechanical injury;
- The injury occurring during labor, delivery or resuscitation efforts in the immediate post delivery period;
- The infant experienced permanent and substantial mental and physical impairment;
- The injury was not caused by genetic or congenital abnormality; and
- The physician is participating in the Plan.[221]

A participating physician under the Plan is a licensed Florida physician who either practices obstetrics or performs obstetrical services on a full or part-time basis and pays a yearly NICA assessment.[222] If the physician did not pay his or her assessment for the year in which the injury occurred, there is no NICA coverage. Hospitals that allow doctors who do not participate in NICA to deliver babies are subject to multi-million dollar catastrophic injury lawsuits despite having paid into the NICA fund.[223]

Benefits

Once an ALJ determines a child is eligible under the Plan, the child is covered for life, and no other compensation from a medical malpractice lawsuit or settlement is available.[224] Instead, there are lifetime benefits and care available through the Plan, which include actual expenses for:
- Medical and hospital services;
- Rehabilitation, therapy, and training;
- Family residential or custodial care;
- Professional residential and custodial care;

[216] *Id*.
[217] *Id*.
[218] *Id*.
[219] S. 766.302, F.S. The Division of Administrative Hearings is housed within the Florida Department of Management Services.
[220] S. 766.304, F.S.
[221] S. 766.302(2), F.S.
[222] S. 766.314, F.S.
[223] S. 766.302(7), F.S.
[224] *Id*.

- Medications;
- Special equipment and facilities; and
- Related travel expenses.[225]

The Plan may also provide:

- A one-time cash award, not to exceed $250,000, to the infant's parents or guardians.
- A $50,000 death benefit for the infant.[226]
- Compensation for reasonable expenses incurred for filing the claim, including attorney's fees.
- An annual benefit up to $10,000 for psychotherapeutic services for immediate family members residing with the birth-injured child;
- A reliable method of transportation to Plan beneficiaries;
- Replacement of any vans purchased by the Plan every 7 years or 150,000 miles, whichever comes first; and
- Housing assistance of up to $100,000 for the lifetime of the child, including home construction and modification costs.[227]

Exclusions

The Plan does not reimburse or pay expenses that might otherwise be covered by insurance or any private or governmental programs, unless such exclusion is prohibited by federal law.[228] Many children with birth-related injuries are either covered by programs such as Children's Medical Services or Medicaid. Under current state and federal law, Medicaid is the payor of last resort for medically necessary goods and services furnished to Medicaid recipients; therefore, current law appears to prohibit NICA from shifting covered costs onto Medicaid.[229]

Effect of the Bill

The bill requires that by September 1, 2025, NICA submit a report to several governmental bodies, including the Governor, the CFO, the President of the Senate, and the Speaker of the House of Representatives. This report must include:

- Recommendations for defining actuarial soundness for the association, including potential options for phasing it in if deemed appropriate.
- Recommendations for the timing of reporting actuarial soundness and specifying to whom the soundness should be reported.
- Recommendations for ensuring a revenue level that will maintain actuarial soundness, also providing potential options for phasing it in if deemed appropriate.

The bill clarifies "family residential or custodial care" as care provided by family members beyond typical duties, without compensation for tasks deemed part of normal family responsibilities. However, the bill removes the provision stating that the award for family residential or custodial care should not be included in current estimates for the purposes of another section.

The bill requires that if the total estimates exceed 100 percent of available funds within 12 months, NICA can't accept new claims without legislative approval, except for claims from injuries occurring 18 months prior. Additionally, the bill mandates that NICA must notify the Governor, the CFO, the President of the Senate, the Speaker of the House of Representatives, OIR, and AHCA within 30 days after the effective date of this suspension.

B. SECTION DIRECTORY:

[225] S. 766.31, F.S.
[226] S. 766.31(1)(b)2., F.S. In 2003, the $10,000 death benefit for an infant replaced the requirements to pay funeral expenses up to $1,500. (Ch. 2003-416, s. 78, Laws of Fla.)
[227] S. 766.31(1)(c), F.S.
[228] S. 766.31(1)(a), F.S.
[229] S. 409.910, F.S.; 42 C.F.R. s. 433.136; 42 U.S.C. s. 1396a.

Section 1. Creates s. 17.69, F.S., relating to Federal Tax Liaison.
Section 2. Amends s. 20.121, F.S. relating to Department of Financial Services.
Section 3. Amends s. 121.0515, F.S., relating to Special Risk Class.
Section 4. Amends s. 280. 051, F.S., relating to suspension or disqualification of a qualified public depository.
Section 5. Amends s. 280.054, F.S., relating to Administrative penalty in lieu of suspension or disqualification.
Section 6. Amends s. 284.44, F.S., relating to salary indemnification costs of state agencies.
Section 7. Amends s 440.13, F.S., relating to medical services and supplies; penalty for violations; limitations.
Section 8. Amends s. 440.385, F.S., relating to Florida Self-Insurers Guaranty Association Incorporated.
Section 9. Amends s. 497.101, F.S., relating to Board of Funeral, Cemetery, And Consumer Services; Membership; appointment; terms.
Section 10. Amends s. 497.153, F.S., relating to disciplinary procedures and penalties.
Section 11. Amends s. 497.155, F.S., relating to disciplinary citations and minor violations.
Section 12. Amends s. 497.172, F.S., relating to public record exemptions; public meetings exemptions.
Section 13. Amends s. 497.386, F.S., relating to storage, preservation, and transportation of human remains.
Section 14. Creates s. 497.469, F.S., relating to fulfillment of preneed contracts.
Section 15. Amends s. 624.307, F.S., relating to general powers; duties.
Section 16. Amends s. 626.171, F.S., relating to Application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.
Section 17. Amends s. 626.221, F.S., relating to examination requirement; exemptions.
Section 18. Amends s. 626.601, F.S., relating to improper conduct; fingerprinting.
Section 19. Amends s. 626.7351, F.S., relating to Qualifications for customer representative's license.
Section 20. Amends s. 626.878, F.S., relating to rules; code of ethics.
Section 21. Amends s. 626.929, F.S., relating to origination, acceptance, placement, of surplus lines business.
Section 22. Amends s. 627.351, F.S., relating to insurance risk appointment plans.
Section 23. Amends s. 631.59, F.S., relating to duties and powers of department and office; association contracts and purchases.
Section 24. Amends s. 631.722, F.S., relating to powers and duties of department and office; contracts and purchases.
Section 25. Amends s. 631.821, F.S., relating to powers and duties of department; board contracts and purchases.
Section 26. Amends s. 631.921, F.S., relating to department powers; board contracts and purchases.
Section 27. Amends s. 633.124, F.S., relating to penalty for violation of law, rule, or order to cease and desist or for failure to comply with corrective order.
Section 28. Amends s. 633.202, F.S., relating to Florida Fire Prevention Code.
Section 29. Amends s. 633.206, F.S., relating to uniform firesafety standards.
Section 30. Amends s. 634.041, F.S., relating to qualifications for license.
Section 31. Amends s. 634.081, F.S., relating to suspension or revocation of license; grounds.
Section 32. Amends s. 634.3077, F.S., relating to financial requirements.
Section 33. Amends s. 634.317, F.S., relating to license and appointment required.
Section 34. Amends s. 648.25, F.S., relating to definitions.
Section 35. Amends s. 648.26, F.S., relating to Department of Financial Services; administration.
Section 36. Amends s. 648.30, F.S., relating to licensure and appointment required; prohibited acts; penalties.
Section 37. Amends s. 648.355, F.S., relating to limited surety agents and professional bail bond agents; qualifications.
Section 38. Creates s. 655.49, F.S., bad faith termination or restriction of account access; investigations by the office.
Section 39. Amends s. 717.101, F.S., relating to definitions.
Section 40. Amends s. 717.102, F.S., relating to property presumed unclaimed; general rule.

Section 41. Amends s. 717.106, F.S., relating to bank deposits and funds in financial organizations.
Section 42. Creates s. 717.1065, F.S., relating to virtual currency.
Section 43. Amends s. 717.1101, F.S., relating to unclaimed equity and debt of business associations.
Section 44. Amends s. 717.112, F.S., relating to property held by agents and fiduciaries.
Section 45. Amends s. 717. 1125, F.S., property held by fiduciaries under trust instruments
Section 46. Amends s. 717.117, F.S., relating to report of unclaimed property.
Section 47. Amends s. 717.119, F.S., relating to payment or delivery of unclaimed property.
Section 48. Amends s. 717.1201, F.S., relating to custody by state; holder relieved from liability; reimbursement of holder paying claim; reclaiming for owner; defense of holder; payment of safe-deposit box or repository charges.
Section 49. Amends s. 717.1242, F.S., relating to restatement of jurisdiction of the circuit court sitting in probate and the department.
Section 50. Amends s. 717.1243, F.S., relating to small estate accounts.
Section 51. Amends s. 717.129, F.S., relating to periods of limitations.
Section 52. Amends s. 717.1301, F.S., relating to investigations; examinations; subpoenas.
Section 53. Amends s. 717.1311, F.S., relating to retention of records.
Section 54. Amends s. 717.1322, F.S., relating to administrative and civil enforcement.
Section 55. Amends s. 717.133, F.S., relating to evidence; estimations; audit reports, examiners worksheets, investigative reports, other related documents.
Section 56. Amends s. 717.134, F.S., relating to penalties and interest.
Section 57. Amends s. 717.135, F.S., relating to recovery agreements and purchase agreements for claims filed by a claimant's representative; fees and costs, or total net gain.
Section 58. Amends s. 717.1400, F.S., relating to registration.
Section 59. Amends s. 766.302, F.S., relating to definitions; ss. 766.301-766.316.
Section 60. Amends s. 766.314, F.S., assessments; plans of operation.
Section 61. Amends s. 197. 582, F.S., disbursement of proceeds of sale.
Section 62. Amends s. 717.1382, F.S., relating to United States savings bond; unclaimed property; escheatment; procedure.
Section 63. Directs the Division of Law Revision to replace “Division of Investigative and Forensic Services” with “Division of Criminal Investigations” within Florida Statutes.
Section 64. Creates an undefined section of law providing reporting requirements for the Florida Birth-Related Neurological Injury Compensation Association.
Section 65. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DFS may face a minimal fiscal impact due to the change in lowering the required aggregate reporting threshold from $50 to $10 for Unclaimed Property. While this adjustment could lead to more people claiming "less than $50" accounts, the overall impact on expenditures is expected to be small. Additionally, DFS anticipates saving money on the cost of serving administrative complaints and citations upon funeral licensees.

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, particularly reporting entities, is expected to be positive. The changes in the bill involve deviations to the ways apparent owners of unclaimed equity and debt property indicate that they have not lost track of their property.

These updates are designed to enhance the process for determining when equity and debt property is considered unclaimed. Reporting entities are already accustomed to providing owner information to other states with similar regulations, and the impact on holders is anticipated to be minimal. While there may be an initial minor IT cost for formatting changes, the overall fiscal impact on the private sector is expected to be positive, fostering increased awareness and opportunities for citizens to recover unclaimed funds.

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 provides rulemaking authority to the Division of Consumer Services to clarify the process for an insurance company, agency, or agent to submit and update their designated contact for receiving and responding to consumer complaints.

C. DRAFTING ISSUES OR OTHER COMMENTS**:**

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the financial services; creating s. 17.69, F.S.; creating the Federal Tax Liaison position within the Department of Financial Services; providing the duties and authority of the liaison; amending s. 20.121, F.S.; renaming a division in the department; removing provisions relating to duties of such division and to bureaus and offices in such division; removing a division; amending s. 121.0515, F.S.; revising requirements for the Special Risk Class membership; amending s. 280.051, F.S.; providing additional grounds for qualified public depositories to be suspended and disqualified; amending s. 280.054, F.S.; providing additional acts deemed knowing and willful violations by qualified public depositories which are subject to certain penalties; amending s. 284.44, F.S.; removing provisions relating to certain quarterly reports prepared by the Division of Risk Management; amending s. 440.13, F.S.; providing the reimbursement schedule requirements for emergency services and care under workers' compensation under certain circumstances; providing rulemaking authority; amending s. 440.385, F.S.; providing requirements for certain contracts entered into and purchases made by the Florida Self-Insurers Guaranty Association, Incorporated; providing duties of the department and the association relating to such contracts and purchases; providing exemptions; amending s. 497.101, F.S.; revising the requirements for appointing and nominating members

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of the Board of Funeral, Cemetery, and Consumer Services; revising the members' terms; revising the authority to remove board members; providing for vacancy appointments; providing that board members are subject to the code of ethics; providing requirements for board members' conduct; prohibiting certain acts by the board; providing penalties; providing requirements for board meetings, books, and records; requiring notices of board meetings; providing requirements for such notices; amending s. 497.153, F.S.; authorizing services by electronic mail of administrative complaints against certain licensees under certain circumstances; amending s. 497.155, F.S.; authorizing services of citations by electronic mail under certain circumstances; amending s. 497.172, F.S.; revising circumstances under which the department may disclose certain information that is confidential and exempt from public records requirements; amending s. 497.386, F.S.; authorizing the department to enter and secure certain establishments, facilities, and morgues and remove certain remains under specified circumstances; requiring the department to make certain determinations; prohibiting certain licensees and facilities from being held liable under certain circumstances; providing penalties; amending s. 497.469, F.S.; authorizing preneed licensees to withdraw certain amounts of money under certain circumstances; providing documents that show that a preneed contract has been fulfilled; providing recordkeeping

requirements; amending s. 624.307, F.S.; requiring eligible surplus lines insurers to respond to the department or the Office of Insurance Regulation after receipt of requests for documents and information concerning consumer complaints; providing penalties for failure to comply; requiring authorized insurers and eligible surplus lines insurers to file e-mail addresses with the department and to designate contact persons for specified purposes; authorizing changes of designated contact information; amending s. 626.171, F.S.; requiring the department to make provisions for certain insurance license applicants to submit cellular telephone numbers for a specified purpose; amending s. 626.221, F.S.; providing a qualification for all-lines adjuster licenses; amending s. 626.601, F.S.; revising construction; amending s. 626.7351, F.S.; providing a qualification for customer representative's licenses; amending s. 626.878, F.S.; providing duties and prohibited acts for adjusters; amending s. 626.929, F.S.; specifying that licensed and appointed general lines agents, rather than general lines agents, may engage in certain activities while also licensed and appointed as surplus lines agents; authorizing general lines agents that are also licensed as surplus lines agents to make certain appointments; authorizing such agents to originate specified businesses and accept specified businesses; prohibiting such agents from being appointed by or transacting certain insurance on behalf of specified insurers; amending s.

627.351, F.S.; providing requirements for certain contracts entered into and purchases made by the Florida Joint Underwriting Association; providing duties of the department and the association associated with such contracts and purchases; amending s. 631.59, F.S.; providing requirements for certain contracts entered into and purchases made by the Florida Insurance Guaranty Association, Incorporated; providing duties of the department and the association associated with such contracts and purchases; providing nonapplicability; amending ss. 631.722, 631.821, and 631.921, F.S.; providing requirements for certain contracts entered into and purchases made by the Florida Life and Health Insurance Guaranty Association, the board of directors of the Florida Health Maintenance Organization Consumer Assistance Plan, and the board of directors of the Florida Workers' Compensation Insurance Guaranty Association, respectively; providing duties of the department and of the association and boards associated with such contracts and purchases; amending s. 633.124, F.S.; updating the edition of a manual for the use of pyrotechnics; amending s. 633.202, F.S.; revising the duties of the State Fire Marshal; amending s. 633.206, F.S.; revising the requirements for uniform firesafety standards established by the department; amending s. 634.041, F.S.; specifying the conditions under which service agreement companies do not have to establish and maintain unearned premium reserves; amending s. 634.081, F.S.;

specifying the conditions under which service agreement companies' licenses are not suspended or revoked under certain circumstances; amending s. 634.3077, F.S.; specifying requirements for certain contractual liability insurance obtained by home warranty associations; providing that such associations are not required to establish unearned premium reserves or maintain contractual liability insurance; authorizing such associations to allow their premiums to exceed certain limitations under certain circumstances; amending s. 634.317, F.S.; providing that certain entities, employees, and agents are exempt from sales representative licenses and appointments under certain circumstances; amending s. 648.25, F.S.; providing definitions; amending s. 648.26, F.S.; revising the types of investigatory records of the department which are confidential and exempt from public records requirements; revising the circumstances under which investigatory records are confidential and exempt from public records requirements; revising construction; amending s. 648.30, F.S.; revising circumstances under which a person or entity may act in the capacity of a bail bond agent or bail bond agency and perform certain functions, duties, and powers; amending s. 648.355, F.S.; revising the requirements for limited surety agents and professional bail bond agent license applications; creating s. 655.49, F.S.; authorizing the Office of Financial Regulation to receive complaints from a customer or member who reasonably

believes that a financial institution has acted in bad faith in terminating, suspending, or taking similar action restricting access to such customer's or member's account; providing a time limit for a customer or member to file a complaint; providing nonapplicability; providing duties of the office upon receipt of a customer's or member's complaint; providing duties of a financial institution upon receipt of notification that a complaint has been filed; providing violations and penalties; requiring the office to provide certain reports and information to specified entities under certain circumstances; providing that the financial institutions' customers and members have a cause of action under certain circumstances; authorizing such customers and members to recover damages, together with costs and attorney fees; providing a time limit for initiating causes of action; requiring the office to make available information necessary for filing complaints on its website; amending s. 717.101, F.S.; providing and revising definitions; amending s. 717.102, F.S.; providing a rebuttal to a presumption of unclaimed property; providing requirements for such rebuttal; providing circumstances under which a property is presumed unclaimed; providing construction; amending s. 717.106, F.S.; conforming a cross-reference; creating s. 717.1065, F.S.; providing circumstances under which virtual currency held or owing by banking organizations are not presumed unclaimed; prohibiting virtual currency holders from deducting certain

charges from amounts of specified virtual currency under certain circumstances; providing an exception; amending s. 717.1101, F.S.; revising the date on which stocks and other equity interests in business associations are presumed unclaimed; amending s. 717.112, F.S.; providing that certain intangible property held by attorneys in fact and by agents in a fiduciary capacity are presumed unclaimed under certain circumstances; revising the requirements for claiming such property; providing construction; amending s. 717.1125, F.S.; providing construction; amending s. 717.117, F.S.; removing the paper option for reports by holders of unclaimed funds and property; revising the requirements for reporting the owners of unclaimed property and funds; authorizing the department to extend reporting dates under certain circumstances; revising the circumstances under which the department may impose and collect penalties; requiring holders of inactive accounts to notify apparent owners; revising the manner of sending such notices; providing requirements for such notices; amending s. 717.119, F.S.; requiring certain virtual currency to be remitted to the department; providing requirements for the liquidation of such virtual currency; providing that holders of such virtual currency are relieved of all liability upon delivery of the virtual currency to the department; prohibiting holders from assigning or transferring certain obligations or from complying with certain provisions; providing that certain entities are

responsible for meeting holders' obligations and complying with certain provisions under certain circumstances; providing construction; amending s. 717.1201, F.S.; providing that the state assumes custody and responsibility for the safekeeping of unclaimed property upon good faith payments or deliveries of property to the department; providing that the department relieves holders of certain liability under specified circumstances; providing construction; requiring the department to defend holders against certain claims and indemnify holders against certain liability under specified circumstances; revising circumstances under which payments or deliveries of unclaimed property are considered to be made in good faith; authorizing the department to refund and redeliver certain money and property under certain circumstances; amending s. 727.1242, F.S.; revising legislative intent; amending s. 717.1243, F.S.; revising applicability of certain provisions relating to unclaimed small estate accounts; amending s. 717.129, F.S.; revising the prohibition of department enforcement relating to duties of holders of unclaimed funds and property; revising the tolling for the periods of limitation relating to duties of holders of unclaimed funds and property; amending s. 717.1301, F.S.; revising the department's authorities on the disposition of unclaimed funds and property for specified purposes; prohibiting certain materials from being disclosed or made public under certain circumstances; revising the basis for the

department's cost assessment against holders of unclaimed funds and property; amending s. 717.1311, F.S.; revising the recordkeeping requirements for funds and property holders; amending s. 717.1322, F.S.; revising acts that are violations of specified provisions and constitute grounds for administrative enforcement actions and civil enforcement by the department; providing that claimants' representatives, rather than registrants, are subject to civil enforcement and disciplinary actions for certain violations; amending s. 717.1333, F.S.; conforming provisions to changes made by the act; amending s. 717.134, F.S.; conforming a provision to changes made by the act; amending s. 717.135, F.S.; revising the information that certain agreements relating to unclaimed property must disclose; removing a requirement for Unclaimed Property Purchase Agreement; providing nonapplicability; amending s. 717.1400, F.S.; removing a circumstance under which certain persons must register with the department; amending s. 766.302, F.S.; revising a definition; amending s. 766.314, F.S.; revising circumstances under which the Florida Birth-Related Neurological Injury Compensation Plan may not accept new claims; amending ss. 197.582 and 717.1382, F.S.; conforming a cross-reference; providing a directive to the Division of Law Revision; providing reporting requirements for the Florida Birth-Related Neurological Injury Compensation Association; providing effective dates.

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

Section 1. Section 17.69, Florida Statutes, is created to read:

17.69 Federal Tax Liaison.—

(1) The Federal Tax Liaison position is created within the department. The purpose of the position is to assist the taxpayers of the state.

(2) The Chief Financial Officer shall appoint a Federal Tax Liaison. The Federal Tax Liaison reports directly to the Chief Financial Officer but is not otherwise under the authority of the department or of any employee of the department.

(3) The Federal Tax Liaison may:

(a) Assist taxpayers by answering taxpayer questions.

(b) Direct taxpayers to the proper division or office within the Internal Revenue Service in order to facilitate timely resolution to taxpayer issues.

(c) Prepare recommendations for the Internal Revenue Service of any actions that will help resolve problems encountered by taxpayers.

(d) Provide information about the policies, practices, and procedures that the Internal Revenue Service uses to ensure compliance with the tax laws.

(e) With the consent of the taxpayer, request records from the Internal Revenue Service to assist the liaison in responding to taxpayer inquiries.

Section 2. Paragraphs (g) through (n) of subsection (2) of section 20.121, Florida Statutes, are redesignated as paragraphs (f) through (m), respectively, and paragraph (e) and present paragraph (f) of subsection (2) of that section are amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions and office:

(e) The Division of Criminal Investigations ~~Investigative and Forensic Services~~, which shall function as a criminal justice agency for purposes of ss. 943.045-943.08. The division may initiate and conduct investigations into any matter under the jurisdiction of the Chief Financial Officer and Fire Marshal within or outside of this state as it deems necessary. ~~If, during an investigation, the division has reason to believe that any criminal law of this state or the United States has or may have been violated, it shall refer any records tending to show such violation to state law enforcement and, if applicable, federal prosecutorial agencies and shall provide investigative assistance to those agencies as appropriate. The division shall include the following bureaus and office:~~

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~~1. The Bureau of Forensic Services;~~

~~2. The Bureau of Fire, Arson, and Explosives Investigations;~~

~~3. The Office of Fiscal Integrity, which shall have a separate budget;~~

~~4. The Bureau of Insurance Fraud; and~~

~~5. The Bureau of Workers' Compensation Fraud.~~

~~(f) The Division of Public Assistance Fraud, which shall function as a criminal justice agency for purposes of ss. 943.045-943.08. The division shall conduct investigations pursuant to s. 414.411 within or outside of the state as it deems necessary. If, during an investigation, the division has reason to believe that any criminal law of the state has or may have been violated, it shall refer any records supporting such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.~~

Section 3. Paragraph (f) of subsection (2) and paragraph (h) of subsection (3) of section 121.0515, Florida Statutes, are amended to read:

121.0515 Special Risk Class.—

(2) MEMBERSHIP.—

(f) Effective July 1, 2008, the member must be employed by the Department of Law Enforcement in the crime laboratory or by the Department of Financial Services ~~Division of State Fire~~

~~Marshal~~ in the forensic laboratory and meet the special criteria set forth in paragraph (3)(h).

(3) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

(h) Effective July 1, 2008, the member must be employed by the Department of Law Enforcement in the crime laboratory or by the Department of Financial Services ~~Division of State Fire Marshal~~ in the forensic laboratory in one of the following classes:

1. Forensic technologist (class code 8459);

2. Crime laboratory technician (class code 8461);

3. Crime laboratory analyst (class code 8463);

4. Senior crime laboratory analyst (class code 8464);

5. Crime laboratory analyst supervisor (class code 8466);

6. Forensic chief (class code 9602); or

7. Forensic services quality manager (class code 9603);

Section 4. Effective July 1, 2024, subsection (16) is added to section 280.051, Florida Statutes, to read:

280.051 Grounds for suspension or disqualification of a qualified public depository.—A qualified public depository may be suspended or disqualified or both if the Chief Financial Officer determines that the qualified public depository has:

(16) Pursuant to a determination notice reported by the Office of Financial Regulation under s. 655.49, acted in bad faith when terminating, suspending, or taking similar action

restricting a customer's or member's account, or failed to cooperate in an investigation conducted pursuant to s. 655.49(3), including, without limitation, failing to timely file a termination-of-access report with the office.

Section 5. Effective July 1, 2024, paragraph (b) of subsection (1) of section 280.054, Florida Statutes, is amended to read:

280.054 Administrative penalty in lieu of suspension or disqualification.—

(1) If the Chief Financial Officer finds that one or more grounds exist for the suspension or disqualification of a qualified public depository, the Chief Financial Officer may, in lieu of suspension or disqualification, impose an administrative penalty upon the qualified public depository.

(b) With respect to any knowing and willful violation of a lawful order or rule, the Chief Financial Officer may impose a penalty upon the qualified public depository in an amount not exceeding $1,000 for each violation. If restitution is due, the qualified public depository shall make restitution upon the order of the Chief Financial Officer and shall pay interest on such amount at the legal rate. Each day a violation continues constitutes a separate violation. Each of the following ~~Failure to timely file the attestation required under s. 280.025~~ is deemed a knowing and willful violation by the qualified public depository:

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1. Failure to timely file the attestation required under s. 280.025.

2. Bad faith termination, suspension, or similar action restricting a customer's or member's account access, as determined by the Office of Financial Regulation pursuant to s. 655.49.

3. Failure to cooperate in an investigation conducted pursuant to s. 655.49(3), including, without limitation, failure to timely file a termination-of-access report with the office.

Section 6. Subsection (6) of section 284.44, Florida Statutes, is amended to read:

284.44 Salary indemnification costs of state agencies.—

~~(6) The Division of Risk Management shall prepare quarterly reports to the Executive Office of the Governor and the chairs of the legislative appropriations committees indicating for each state agency the total amount of salary indemnification benefits paid to claimants and the total amount of reimbursements from state agencies to the State Risk Management Trust Fund for initial costs for the previous quarter. These reports shall also include information for each state agency indicating the number of cases and amounts of initial salary indemnification costs for which reimbursement requirements were waived by the Executive Office of the Governor pursuant to this section.~~

Section 7. Subsection (12) of section 440.13, Florida

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Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(a) A three-member panel is created, consisting of the Chief Financial Officer, or the Chief Financial Officer's designee, and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers, the other member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel shall determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by hospitals and ambulatory surgical centers. The maximum reimbursement allowances for inpatient hospital care shall be based on a schedule of per diem rates, to be approved by the three-member panel no later than March 1, 1994, to be used in conjunction with a precertification manual as determined by the department, including maximum hours in which an outpatient may remain in observation status, which shall not exceed 23 hours. All compensable charges for hospital outpatient care shall be reimbursed at 75 percent of usual and customary charges, except

as otherwise provided by this subsection. Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for hospital inpatient care, hospital outpatient care, and ambulatory surgical centers. A hospital or an ambulatory surgical center shall be reimbursed either the agreed-upon contract price or the maximum reimbursement allowance in the appropriate schedule.

(b) Payments for outpatient physical, occupational, and speech therapy provided by hospitals shall be the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

(c) Payments for scheduled outpatient nonemergency radiological and clinical laboratory services that are not provided in conjunction with a surgical procedure shall be the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

(d)1. Outpatient reimbursement for scheduled surgeries shall be 60 percent of charges.

2. Reimbursement for emergency services and care as defined in s. 395.002 which does not include a maximum reimbursement allowance must be 250 percent of Medicare, unless there is a contract, in which case the contract governs reimbursement. Upon this subparagraph taking effect, the department shall engage with an actuarial services firm to begin development of maximum reimbursement allowances for services

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subject to the reimbursement provisions of this subparagraph. This subparagraph expires June 30, 2026.

(e)1. By July 1 of each year, the department shall notify carriers and self-insurers of the physician and nonhospital services schedule of maximum reimbursement allowances. The notice must include publication of this schedule of maximum reimbursement allowances on the division's website. This schedule is not subject to approval by the three-member panel and does not include reimbursement for prescription medication.

2. Subparagraph 1. shall take effect January 1, following the July 1, 2024, notice of the physician and nonhospital services schedule of maximum reimbursement allowances that the department provides to carriers and self-insurers.

(f) Maximum reimbursement for a physician licensed under chapter 458 or chapter 459 shall be 110 percent of the reimbursement allowed by Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

(g) Maximum reimbursement for surgical procedures shall be 140 percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

(h) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price plus $4.18 for the dispensing fee. For

repackaged or relabeled prescription medications dispensed by a dispensing practitioner as provided in s. 465.0276, the fee schedule for reimbursement shall be 112.5 percent of the average wholesale price, plus $8.00 for the dispensing fee. For purposes of this subsection, the average wholesale price shall be calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug dispensed by the practitioner, based upon the published manufacturer's average wholesale price published in the Medi-Span Master Drug Database as of the date of dispensing. All pharmaceutical claims submitted for repackaged or relabeled prescription medications must include the National Drug Code of the original manufacturer. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount except where the employer or carrier, or a service company, third party administrator, or any entity acting on behalf of the employer or carrier directly contracts with the provider seeking reimbursement for a lower amount.

(i) Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the uniform schedule of maximum reimbursement allowances as

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determined by the panel or as otherwise provided in this section. This subsection also applies to independent medical examinations performed by health care providers under this chapter. In determining the uniform schedule, the panel shall first approve the data which it finds representative of prevailing charges in the state for similar treatment, care, and attendance of injured persons. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving workers' compensation payments shall maintain records verifying their usual charges. In establishing the uniform schedule of maximum reimbursement allowances, the panel must consider:

1. The levels of reimbursement for similar treatment, care, and attendance made by other health care programs or third-party providers;

2. The impact upon cost to employers for providing a level of reimbursement for treatment, care, and attendance which will ensure the availability of treatment, care, and attendance required by injured workers; and

3. The financial impact of the reimbursement allowances upon health care providers and health care facilities, including trauma centers as defined in s. 395.4001, and its effect upon their ability to make available to injured workers such medically necessary remedial treatment, care, and attendance. The uniform schedule of maximum reimbursement allowances must be

reasonable, must promote health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and must be sufficient to ensure availability of such medically necessary remedial treatment, care, and attendance to injured workers.

(j) In addition to establishing the uniform schedule of maximum reimbursement allowances, the panel shall:

1. Take testimony, receive records, and collect data to evaluate the adequacy of the workers' compensation fee schedule, nationally recognized fee schedules and alternative methods of reimbursement to health care providers and health care facilities for inpatient and outpatient treatment and care.

2. Survey health care providers and health care facilities to determine the availability and accessibility of workers' compensation health care delivery systems for injured workers.

3. Survey carriers to determine the estimated impact on carrier costs and workers' compensation premium rates by implementing changes to the carrier reimbursement schedule or implementing alternative reimbursement methods.

4. Submit recommendations on or before January 15, 2017, and biennially thereafter, to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

The department, as requested, shall provide data to the panel,

including, but not limited to, utilization trends in the workers' compensation health care delivery system. The department shall provide the panel with an annual report regarding the resolution of medical reimbursement disputes and any actions pursuant to subsection (8). The department shall provide administrative support and service to the panel to the extent requested by the panel. The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection. For prescription medication purchased under the requirements of this subsection, a dispensing practitioner shall not possess such medication unless payment has been made by the practitioner, the practitioner's professional practice, or the practitioner's practice management company or employer to the supplying manufacturer, wholesaler, distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of that medication.

Section 8. Subsections (9) through (13) of section 440.385, Florida Statutes, are renumbered as subsections (10) through (14), respectively, and a new subsection (9) is added to that section to read:

440.385 Florida Self-Insurers Guaranty Association, Incorporated.—

(9) CONTRACTS AND PURCHASES.—

(a) After July 1, 2024, all contracts entered into, and all purchases made by, the association pursuant to this section

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which are valued at or more than $100,000 must first be approved by the department. The department has 10 days to approve or deny the contract or purchase upon electronic receipt of the approval request. The contract or purchase is automatically approved if the department is nonresponsive.

(b) All contracts and purchases valued at or more than $100,000 require competition through a formal bid solicitation conducted by the association. The association must undergo a formal bid solicitation process. The formal bid solicitation process must include all of the following:

1. The time and date for the receipt of bids, the proposals, and whether the association contemplates renewal of the contract, including the price for each year for which the contract may be renewed.

2. All the contractual terms and conditions applicable to the procurement.

(c) Evaluation of bids by the association must include consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor. The association must award the contract to the most responsible and responsive vendor. Any formal bid solicitation conducted by the association must be made available, upon request, to the department via electronic delivery.

(d) Contracts that are required by law are exempt from this section.

Section 9. Subsection (7) of section 497.101, Florida Statutes, is renumbered as subsection (11), subsections (1) through (4) are amended, and new subsections (7) through (10) are added to that section, to read:

497.101 Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.—

(1) The Board of Funeral, Cemetery, and Consumer Services is created within the Department of Financial Services and shall consist of 10 members, 9 of whom shall be appointed by ~~the Governor from nominations made by~~ the Chief Financial Officer and confirmed by the Senate. ~~The Chief Financial Officer shall nominate one to three persons for each of the nine vacancies on the board, and the Governor shall fill each vacancy on the board by appointing one of the persons nominated by the Chief Financial Officer to fill that vacancy. If the Governor objects to each of the nominations for a vacancy, she or he shall inform the Chief Financial Officer in writing. Upon notification of an objection by the Governor, the Chief Financial Officer shall submit one to three additional nominations for that vacancy until the vacancy is filled.~~ One member must be the State Health Officer or her or his designee.

(2) Two members of the board must be funeral directors licensed under part III of this chapter who are associated with a funeral establishment. One member of the board must be a funeral director licensed under part III of this chapter who is

associated with a funeral establishment licensed under part III of this chapter which has a valid preneed license issued pursuant to this chapter ~~and who owns or operates a cinerator facility approved under chapter 403 and licensed under part VI of this chapter~~. Two members of the board must be persons whose primary occupation is associated with a cemetery company licensed pursuant to this chapter. Two members of the board must be consumers who are residents of this state, have never been licensed as funeral directors or embalmers, are not connected with a cemetery or cemetery company licensed pursuant to this chapter, and are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition. One of the two consumer members must be at least 60 years of age. One member of the board must be a consumer who is a resident of this state; is licensed as a certified public accountant under chapter 473; has never been licensed as a funeral director or an embalmer; is not a principal or an employee of any licensee licensed under this chapter; and does not otherwise have control, as defined in s. 497.005, over any licensee licensed under this chapter. One member of the board must be a principal of a monument establishment licensed under this chapter as a monument builder. One member must be the State Health Officer or her or his designee. There may not be two or more board members who are principals or employees of the same company or partnership or group of companies or partnerships

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under common control.

(3) Board members shall be appointed for terms of 4 years and may be reappointed; however, a member may not serve for more than 8 consecutive years.~~, and~~ The State Health Officer shall serve as long as that person holds that office. The designee of the State Health Officer shall serve at the pleasure of the Chief Financial Officer ~~Governor~~.

(4) The Chief Financial Officer ~~Governor may suspend and the Senate~~ may remove any board member for malfeasance or misfeasance, neglect of duty, incompetence, substantial inability to perform official duties, commission of a crime, or other substantial cause as determined by the Chief Financial Officer ~~Governor or Senate, as applicable,~~ to evidence a lack of fitness to sit on the board. A board member shall be deemed to have resigned her or his board membership, and that position shall be deemed vacant, upon the failure of the member to attend three consecutive meetings of the board or at least half of the meetings of the board during any 12-month period, unless the Chief Financial Officer determines that there was good and adequate justification for the absences and that such absences are not likely to continue. Any vacancy so created shall be filled as provided in subsection (1).

(7) Members of the board are subject to the code of ethics under part III of chapter 112. For purposes of applying part III of chapter 112 to activities of the members of the board, those

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persons are considered public officers, and the department is considered their agency. A board member may not vote on any measure that would inure to his or her special private gain or loss and, in accordance with s. 112.3143(2), may not vote on any measure that he or she knows would inure to the special private gain or loss of any principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of his or her relative or business associate. Before the vote is taken, such member shall publicly state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(8) In accordance with ss. 112.3148 and 112.3149, a board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the department or the board, which is under consideration for a contract, or which is licensed by the department.

(9) A board member who fails to comply with subsection (7) or subsection (8) is subject to the penalties provided under ss.

112.317 and 112.3173.

(10)(a) All meetings of the board are subject to the requirements of s. 286.011, and all books and records of the board are open to the public for reasonable inspection except as otherwise provided by s. 497.172 or other applicable law.

(b) Except for emergency meetings, the department shall give notice of any board meeting by publication on the department's website at least 7 days before the meeting. The department shall publish a meeting agenda on its website at least 7 days before the meeting. The agenda must contain the items to be considered in order of presentation. After the agenda has been made available, a change may be made only for good cause, as determined by the person designated to preside, and must be stated in the record. Notification of such change must be at the earliest practicable time.

Section 10. Paragraph (a) of subsection (4) of section 497.153, Florida Statutes, is amended to read:

497.153 Disciplinary procedures and penalties.—

(4) ACTION AFTER PROBABLE CAUSE FOUND.—

(a) Service of an administrative complaint may be in person by department staff or any person authorized to make service of process under the Florida Rules of Civil Procedure. Service upon a licensee may in the alternative be made by certified mail, return receipt requested, to the last known address of record provided by the licensee to the department. If

service by certified mail cannot be made at the last address provided by the licensee to the department, service may be made by e-mail, delivery receipt required, sent to the most recent e-mail address provided by the licensee to the department in accordance with s. 497.146.

Section 11. Paragraph (e) of subsection (1) of section 497.155, Florida Statutes, is amended to read:

497.155 Disciplinary citations and minor violations.—

(1) CITATIONS.—

(e) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address in accordance with s. 497.146. If service by certified mail cannot be made at the last address provided by the subject to the department, service may be made by e-mail, delivery receipt required, sent to the most recent e-mail address provided by the subject to the department in accordance with s. 497.146.

Section 12. Paragraph (d) of subsection (3) of section 497.172, Florida Statutes, is amended to read:

497.172 Public records exemptions; public meetings exemptions.—

(3) EXAMINATIONS, INSPECTIONS, AND INVESTIGATIONS.—

(d) Information made confidential and exempt pursuant to this subsection may be disclosed by the department as follows:

1. To the probable cause panel of the board, for the

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purpose of probable cause proceedings pursuant to s. 497.153.

2. To any law enforcement agency or other government agency in the performance of its official duties and responsibilities.

3. If the department uncovers information of immediate and serious concern to the public health, safety, or welfare, it may disseminate such information as it deems necessary for the public health, safety, or welfare.

4. If the department issues an emergency order pursuant to s. 497.156.

Section 13. Section 497.386, Florida Statutes, is amended to read:

497.386 Storage, preservation, and transportation of human remains.—

(1) A person may not store or maintain human remains at any establishment or facility except an establishment or facility licensed under this chapter or a health care facility, medical examiner's facility, morgue, or cemetery holding facility.

(2) A dead human body may not be held in any place or in transit over 24 hours after death or pending final disposition unless the body is maintained under refrigeration at a temperature of 40 degrees Fahrenheit or below or is embalmed or otherwise preserved in a manner approved by the licensing authority in accordance with the provisions of this chapter.

(3) A dead human body transported by common carrier or any agency or individual authorized to carry dead human bodies must be placed in a carrying container adequate to prevent the seepage of fluids and escape of offensive odors. A dead human body may be transported only when accompanied by a properly completed burial-transit permit issued in accordance with the provisions of chapter 382.

(4) The licensing authority shall establish by rule the minimal standards of acceptable and prevailing practices for the handling and storing of dead human bodies, provided that all human remains transported or stored must be completely covered and at all times treated with dignity and respect.

(5) In the event of an emergency situation, including the abandonment of any establishments or facilities licensed under this chapter or any medical examiner's facility, morgue, or cemetery holding facility, the department may enter and secure such establishment, facility, or morgue during or outside of normal business hours and remove human remains and cremated remains from the establishment, facility, or morgue. For purposes of this subsection, the department shall determine if a facility is abandoned and if there is an emergency situation. A licensee or licensed facility that accepts transfer of human remains and cremated remains from the department pursuant to this subsection may not be held liable for the condition of any human remains or cremated remains at the time of transfer.

(6)~~(5)~~ A person who violates subsection (1) or subsection (3) ~~any provision of this section~~ commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) A person who violates subsection (2) or subsection (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 14. Section 497.469, Florida Statutes, is created to read:

497.469 Fulfillment of preneed contracts.—

(1) Upon delivery of merchandise or performance of services in fulfillment of a preneed contract, either in part or in whole, a preneed licensee may withdraw the amount deposited in trust plus income earned on such amount for the merchandise delivered or services performed, when adequate documentation is submitted to the trustee.

(2) The following documentation is satisfactory evidence that a preneed contract has been fulfilled:

(a) A certified copy of death certificate;

(b) An invoice for merchandise which reflects the name of the purchaser or beneficiary and the contract number;

(c) An acknowledgment signed by the purchaser or legally authorized person, acknowledging that merchandise was delivered or services performed; or

(d) A burial permit or other documentation provided to

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another governmental agency.

(3) The preneed licensee shall maintain documentation that supports fulfillment of a particular contract until such records are examined by the department.

Section 15. Paragraphs (c) and (d) subsection (10) of section 624.307, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, paragraph (b) is amended, and a new paragraph (c) is added to subsection (10) of that section, to read:

624.307 General powers; duties.—

(10)

(b) Any person licensed or issued a certificate of authority or made an eligible surplus lines insurer by the department or the office shall respond, in writing or electronically, to the division within 14 days after receipt of a written request for documents and information from the division concerning a consumer complaint. The response must address the issues and allegations raised in the complaint and include any requested documents concerning the consumer complaint not subject to attorney-client or work-product privilege. The division may impose an administrative penalty for failure to comply with this paragraph of up to $5,000 per violation upon any entity licensed by the department or the office and up to $1,000 per violation by any individual licensed by the department or the office.

(c) Each insurer issued a certificate of authority or made an eligible surplus lines insurer shall file with the department an e-mail address to which requests for response to consumer complaints shall be directed pursuant to paragraph (b). Such insurer shall also designate a contact person for escalated complaint issues and shall provide the name, e-mail address, and telephone number of such person. A licensee of the department, including an agency or a firm, may elect to designated an e-mail address to which requests for response to consumer complaints shall be directed pursuant to paragraph (b). If a licensee, including an agency or a firm, elects not to designate an e-mail address, the department shall direct requests for response to consumer complaints to the e-mail address of record for the licensee in the department's licensing system. An insurer or a licensee, including an agency or a firm, may change a designated contact information at any time by submitting the new information to the department using the method designated by rule by the department.

Section 16. Subsection (2) of section 626.171, Florida Statutes, is amended to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.—

(2) In the application, the applicant shall set forth:

(a) His or her full name, age, social security number,

residence address, business address, mailing address, contact telephone numbers, including a business telephone number, and e-mail address.

(b) A statement indicating the method the applicant used or is using to meet any required prelicensing education, knowledge, experience, or instructional requirements for the type of license applied for.

(c) Whether he or she has been refused or has voluntarily surrendered or has had suspended or revoked a license to solicit insurance by the department or by the supervising officials of any state.

(d) Whether any insurer or any managing general agent claims the applicant is indebted under any agency contract or otherwise and, if so, the name of the claimant, the nature of the claim, and the applicant's defense thereto, if any.

(e) Proof that the applicant meets the requirements for the type of license for which he or she is applying.

(f) The applicant's gender (male or female).

(g) The applicant's native language.

(h) The highest level of education achieved by the applicant.

(i) The applicant's race or ethnicity (African American, white, American Indian, Asian, Hispanic, or other).

(j) Such other or additional information as the department may deem proper to enable it to determine the character,

experience, ability, and other qualifications of the applicant to hold himself or herself out to the public as an insurance representative.

However, the application must contain a statement that an applicant is not required to disclose his or her race or ethnicity, gender, or native language, that he or she will not be penalized for not doing so, and that the department will use this information exclusively for research and statistical purposes and to improve the quality and fairness of the examinations. The department shall make provisions for applicants to submit cellular telephone numbers as part of the application process on a voluntary basis only for the purpose of two-factor authentication of secure login credentials only.

Section 17. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

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

(j) An applicant for license as an all-lines adjuster who has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state; Certified All Lines Adjuster (CALA) from Kaplan Financial Education; Associate in Claims (AIC) from the Insurance Institute of America; Professional Claims Adjuster (PCA) from

the Professional Career Institute; Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy; Certified Adjuster (CA) from ALL LINES Training; Certified Claims Adjuster (CCA) from AE21 Incorporated; Claims Adjuster Certified Professional (CACP) from WebCE, Inc.; Accredited Insurance Claims Specialist (AICS) from Encore Claim Services; Professional in Claims (PIC) from 2021 Training, LLC; Registered Claims Adjuster (RCA) from American Insurance College; or Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM) whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 18. Subsection (6) of section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

(6) The complaint and any information obtained pursuant to the investigation by the department or office are confidential and are exempt from s. 119.07 unless the department or office files a formal administrative complaint, emergency order, or consent order against the individual or entity. This subsection does not prevent the department or office from disclosing the complaint or such information as it deems necessary to conduct

the investigation, to update the complainant as to the status and outcome of the complaint, to review the details of the investigation with the individual or entity being investigated or their representative, or to share such information with any law enforcement agency or other regulatory body.

Section 19. Subsection (3) of section 626.7351, Florida Statutes, is amended to read:

626.7351 Qualifications for customer representative's license.—The department shall not grant or issue a license as customer representative to any individual found by it to be untrustworthy or incompetent, or who does not meet each of the following qualifications:

(3) Within 4 years preceding the date that the application for license was filed with the department, the applicant has earned the designation of Accredited Advisor in Insurance (AAI), Associate in General Insurance (AINS), or Accredited Customer Service Representative (ACSR) from the Insurance Institute of America; the designation of Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors; the designation of Certified Professional Service Representative (CPSR) from the National Foundation for CPSR; the designation of Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives; the designation of Certified Insurance Representative (CIR) from All-Lines Training; the designation of Chartered Customer

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Service Representative (CCSR) from American Insurance College; the designation of Professional Customer Service Representative (PCSR) from the Professional Career Institute; the designation of Insurance Customer Service Representative (ICSR) from Statewide Insurance Associates LLC; the designation of Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in the state whose curriculum is approved by the department and includes comprehensive analysis of basic property and casualty lines of insurance and testing which demonstrates mastery of the subject; or a degree from an accredited institution of higher learning approved by the department when the degree includes a minimum of 9 credit hours of insurance instruction, including specific instruction in the areas of property, casualty, and inland marine insurance. The department shall adopt rules establishing standards for the approval of curriculum.

Section 20. Section 626.878, Florida Statutes, is amended to read:

626.878 Rules; code of ethics.—

(1) An adjuster shall subscribe to the code of ethics specified in the rules of the department. The rules shall implement the provisions of this part and specify the terms and conditions of contracts, including a right to cancel, and require practices necessary to ensure fair dealing, prohibit conflicts of interest, and ensure preservation of the rights of

the claimant to participate in the adjustment of claims.

(2) A person licensed as an adjuster must identify himself or herself in any advertisement, solicitation, or written document based on the adjuster appointment type held.

(3) An adjuster who has had his or her licensed revoked or suspended may not participate in any part of an insurance claim or in the insurance claims adjusting process, including estimating, completing, filing, negotiating, appraising, mediating, umpiring, or effecting settlement of a claim for loss or damage covered under an insurance contract. A person who provides these services while the person's license is revoked or suspended acts as an unlicensed adjuster.

Section 21. Subsection (1) of section 626.929, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

626.929 Origination, acceptance, placement of surplus lines business.—

(1) A licensed and appointed general lines agent while also licensed and appointed as a surplus lines agent under this part may originate surplus lines business and may accept surplus lines business from any other originating Florida-licensed general lines agent appointed and licensed as to the kinds of insurance involved and may compensate such agent therefor.

(4) A general lines agent while licensed as a surplus lines agent under this part may appoint these licenses with a

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single surplus license agent appointment pursuant to s. 624.501. Such agent may only originate surplus lines business and accept surplus lines business from other originating Florida-licensed general lines agents appointed and licensed as to the kinds of insurance involved and may compensate such agent therefor. Such agent may not be appointed by or transact general lines insurance on behalf of an admitted insurer.

Section 22. Paragraph (j) is added to subsection (4) of section 627.351, Florida Statutes, to read:

627.351 Insurance risk apportionment plans.—

(4) MEDICAL MALPRACTICE RISK APPORTIONMENT; ASSOCIATION CONTRACTS AND PURCHASES.—

(j)1. After July 1, 2024, all contracts entered into, and all purchases made by, the association pursuant to this subsection which are valued at or more than $100,000 must first be approved by the department. The department has 10 days to approve or deny a contract or purchase upon electronic receipt of the approval request. The contract or purchase is automatically approved if the department is nonresponsive.

2. All contracts and purchases valued at or more than $100,000 require competition through a formal bid solicitation conducted by the association. The association must undergo a formal bid solicitation process by a minimum of three vendors. The formal bid solicitation process must include all of the following:

a. The time and date for the receipt of bids, the proposals, and whether the association contemplates renewal of the contract, including the price for each year for which the contract may be renewed.

b. All the contractual terms and conditions applicable to the procurement.

3. Evaluation of bids by the association must include consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor. The association must award the contract to the most responsible and responsive vendor. Any formal bid solicitation conducted by the association must be made available, upon request, to the department by electronic delivery.

Section 23. Subsection (5) is added to section 631.59, Florida Statutes, to read:

631.59 Duties and powers of department and office; association contracts and purchases.—

(5)(a) After July 1, 2024, all contracts entered into, and all purchases made by, the association pursuant to this section which are valued at or more than $100,000 must first be approved by the department. The department has 10 days to approve or deny the contract or purchase upon electronic receipt of the approval request. The contract or purchase is automatically approved if the department is nonresponsive.

(b) All contracts and purchases valued at or more than

$100,000 require competition through a formal bid solicitation conducted by the association. The association must undergo a formal bid solicitation process. The formal bid solicitation process must include all of the following:

1. The time and date for the receipt of bids, the proposals, and whether the association contemplates renewal of the contract, including the price for each year for which the contract may be renewed.

2. All the contractual terms and conditions applicable to the procurement.

(c) Evaluation of bids by the association must include consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor. The association must award the contract to the most responsible and responsive vendor. Any formal bid solicitation conducted by the association must be made available, upon request, to the department via electronic delivery.

(d) Paragraphs (b) and (c) do not apply to claims defense counsel or claims vendors if contracts with all vendors which may exceed $100,000 are provided to the department for prior approval in accordance with paragraph (a).

Section 24. Subsection (6) is added to section 631.722, Florida Statutes, to read:

631.722 Powers and duties of department and office; association contracts and purchases.—

(6)(a) After July 1, 2024, all contracts entered into, and all purchases made by, the association pursuant to this section which are valued at or more than $100,000 must first be approved by the department. The department has 10 days to approve or deny the contract or purchase upon electronic receipt of the approval request. The contract or purchase is automatically approved if the department is nonresponsive.

(b) All contracts and purchases valued at or more than $100,000 require competition through a formal bid solicitation conducted by the association. The association must undergo a formal bid solicitation process. The formal bid solicitation process must include all of the following:

1. The time and date for the receipt of bids, the proposals, and whether the association contemplates renewal of the contract, including the price for each year for which the contract may be renewed.

2. All the contractual terms and conditions applicable to the procurement.

(c) Evaluation of bids by the association must include consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor. The association must award the contract to the most responsible and responsive vendor. Any formal bid solicitation conducted by the association must be made available, upon request, to the department via electronic delivery.

Section 25. Subsection (5) is added to section 631.821, Florida Statutes, to read:

631.821 Powers and duties of the department; board contracts and purchases.—

(5)(a) After July 1, 2024, all contracts entered into, and all purchases made by, the board pursuant to this section which are valued at or more than $100,000 must first be approved by the department. The department has 10 days to approve or deny the contract or purchase upon electronic receipt of the approval request. The contract or purchase is automatically approved if the department is nonresponsive.

(b) All contracts and purchases valued at or more than $100,000 require competition through a formal bid solicitation conducted by the board. The board must undergo a formal bid solicitation process. The formal bid solicitation process must include all of the following:

1. The time and date for the receipt of bids, the proposals, and whether the board contemplates renewal of the contract, including the price for each year for which the contract may be renewed.

2. All the contractual terms and conditions applicable to the procurement.

(c) Evaluation of bids by the board must include consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor. The plan

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must award the contract to the most responsible and responsive vendor. Any formal bid solicitation conducted by the board must be made available, upon request, to the department via electronic delivery.

Section 26. Section 631.921, Florida Statutes, is amended to read:

631.921 Department powers; board contracts and purchases.—

(1) The corporation shall be subject to examination by the department. By March 1 of each year, the board of directors shall cause a financial report to be filed with the department for the immediately preceding calendar year in a form approved by the department.

(2)(a) After July 1, 2024, all contracts entered into, and all purchases made by, the board pursuant to this section which are valued at or more than $100,000 must first be approved by the department. The department has 10 days to approve or deny the contract or purchase upon electronic receipt of the approval request. The contract or purchase is automatically approved if the department is nonresponsive.

(b) All contracts and purchases valued at or more than $100,000 require competition through a formal bid solicitation conducted by the board. The board must undergo a formal bid solicitation process. The formal bid solicitation process must include all of the following:

1. The time and date for the receipt of bids, the

proposals, and whether the board contemplates renewal of the contract, including the price for each year for which the contract may be renewed.

2. All the contractual terms and conditions applicable to the procurement.

(c) Evaluation of bids by the board must include consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor. The association must award the contract to the most responsible and responsive vendor. Any formal bid solicitation conducted by the association must be made available, upon request, to the department via electronic delivery.

Section 27. Paragraph (b) of subsection (3) of section 633.124, Florida Statutes, is amended to read:

633.124 Penalty for violation of law, rule, or order to cease and desist or for failure to comply with corrective order.—

(3)

(b) A person who initiates a pyrotechnic display within any structure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, unless:

1. The structure has a fire protection system installed in compliance with s. 633.334.

2. The owner of the structure has authorized in writing the pyrotechnic display.

3. If the local jurisdiction requires a permit for the use of a pyrotechnic display in an occupied structure, such permit has been obtained and all conditions of the permit complied with or, if the local jurisdiction does not require a permit for the use of a pyrotechnic display in an occupied structure, the person initiating the display has complied with National Fire Protection Association, Inc., Standard 1126, 2021 ~~2001~~ Edition, Standard for the Use of Pyrotechnics before a Proximate Audience.

Section 28. Subsection (2) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(2) The State Fire Marshal shall adopt the current edition of the National Fire Protection Association's Standard 1, Fire Prevention Code but may not adopt a building, mechanical, accessibility, or plumbing code. The State Fire Marshal shall adopt the current edition of the Life Safety Code, NFPA 101, current editions, by reference. The State Fire Marshal may modify the selected codes and standards as needed to accommodate the specific needs of the state. Standards or criteria in the selected codes shall be similarly incorporated by reference. The State Fire Marshal shall incorporate within sections of the Florida Fire Prevention Code provisions that address uniform firesafety standards as established in s. 633.206. The State Fire Marshal shall incorporate within sections of the Florida

Fire Prevention Code provisions addressing regional and local concerns and variations.

Section 29. Paragraph (b) of subsection (1) of section 633.206, Florida Statutes, is amended to read:

633.206 Uniform firesafety standards.—The Legislature hereby determines that to protect the public health, safety, and welfare it is necessary to provide for firesafety standards governing the construction and utilization of certain buildings and structures. The Legislature further determines that certain buildings or structures, due to their specialized use or to the special characteristics of the person utilizing or occupying these buildings or structures, should be subject to firesafety standards reflecting these special needs as may be appropriate.

(1) The department shall establish uniform firesafety standards that apply to:

(b) All new, existing, and proposed hospitals, nursing homes, assisted living facilities, adult family-care homes, correctional facilities, public schools, transient public lodging establishments, public food service establishments, mobile food dispensing vehicles, elevators, migrant labor camps, mobile home parks, lodging parks, recreational vehicle parks, recreational camps, residential and nonresidential child care facilities, facilities for the developmentally disabled, motion picture and television special effects productions, tunnels, energy storage systems, and self-service gasoline stations, of

which standards the State Fire Marshal is the final administrative interpreting authority.

In the event there is a dispute between the owners of the buildings specified in paragraph (b) and a local authority requiring a more stringent uniform firesafety standard for sprinkler systems, the State Fire Marshal shall be the final administrative interpreting authority and the State Fire Marshal's interpretation regarding the uniform firesafety standards shall be considered final agency action.

Section 30. Paragraph (b) of subsection (8) of section 634.041, Florida Statutes, is amended to read:

634.041 Qualifications for license.—To qualify for and hold a license to issue service agreements in this state, a service agreement company must be in compliance with this part, with applicable rules of the commission, with related sections of the Florida Insurance Code, and with its charter powers and must comply with the following:

(8)

(b) A service agreement company does not have to establish and maintain an unearned premium reserve if it secures and maintains contractual liability insurance in accordance with the following:

1. Coverage of 100 percent of the claim exposure is obtained from an insurer <u>or insurers</u> approved by the office,

which hold ~~holds~~ a certificate of authority under s. 624.401 to do business within this state, or secured through ~~a~~ risk retention groups ~~group~~, which are ~~is~~ authorized to do business within this state under s. 627.943 or s. 627.944. Such insurers ~~insurer~~ or risk retention groups ~~group~~ must maintain a surplus as regards policyholders of at least $15 million.

2. If the service agreement company does not meet its contractual obligations, the contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds for all service agreements issued by the service agreement company while the policy was in effect. This requirement also applies to those service agreements for which no premium has been remitted to the insurer.

3. If the issuer of the contractual liability policy is fulfilling the service agreements covered by the contractual liability policy and the service agreement holder cancels the service agreement, the issuer must make a full refund of unearned premium to the consumer, subject to the cancellation fee provisions of s. 634.121(3). The sales representative and agent must refund to the contractual liability policy issuer their unearned pro rata commission.

4. The policy may not be canceled, terminated, or nonrenewed by the insurer or the service agreement company unless a 90-day written notice thereof has been given to the

office by the insurer before the date of the cancellation, termination, or nonrenewal.

5. The service agreement company must provide the office with the claims statistics.

6. A policy issued in compliance with this paragraph may either pay 100 percent of claims as they are incurred, or pay 100 percent of claims due in the event of the failure of the service agreement company to pay such claims when due.

All funds or premiums remitted to an insurer by a motor vehicle service agreement company under this part shall remain in the care, custody, and control of the insurer and shall be counted as an asset of the insurer; provided, however, this requirement does not apply when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If the motor vehicle service agreement company chooses to comply with this paragraph but also maintains a reserve to pay claims, such reserve shall only be considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.

Section 31. Subsection (5) of section 634.081, Florida Statutes, is amended to read:

634.081 Suspension or revocation of license; grounds.—

(5) The office shall suspend or revoke the license of a

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company if it finds that the ratio of gross written premiums written to net assets exceeds 10 to 1 unless the company has in excess of $750,000 in net assets and is utilizing contractual liability insurance which cedes 100 percent of the service agreement company's claims liabilities to the contractual liability insurers ~~insurer~~ or is utilizing contractual liability insurance which reimburses the service agreement company for 100 percent of its paid claims. However, if a service agreement company has been licensed by the office in excess of 10 years, is in compliance with all applicable provisions of this part, and has net assets at all times in excess of $3 million that comply with the provisions of part II of chapter 625, such company may not exceed a ratio of gross written premiums written to net assets of 15 to 1.

Section 32. Subsection (5) of section 634.3077, Florida Statutes, is renumbered as subsection (6), subsection (3) is amended, and a new subsection (5) is added to that section, to read:

634.3077 Financial requirements.—

(3) An association may ~~shall~~ not be required to set up an unearned premium reserve if it has purchased contractual liability insurance which demonstrates to the satisfaction of the office that 100 percent of its claim exposure is covered by such insurance. Such contractual liability insurance shall be obtained from an insurer or insurers that hold ~~holds~~ a

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certificate of authority to do business within the state or from an insurer or insurers approved by the office as financially capable of meeting the obligations incurred pursuant to the policy. For purposes of this subsection, the contractual liability policy shall contain the following provisions:

(a) In the event that the home warranty association is unable to fulfill its obligation under its contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the contractual liability insurer will pay losses and unearned premiums under such plans directly to persons making claims under such contracts.

(b) The insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.

(c) The policy may not be canceled or not renewed by ~~either~~ the insurer or the association unless 60 days' written notice thereof has been given to the office by the insurer before the date of such cancellation or nonrenewal.

(d) The contractual liability insurance policy shall insure all home warranty contracts that were issued while the policy was in effect whether or not the premium has been remitted to the insurer.

(5) An association licensed under this part is not required to establish an unearned premium reserve or maintain contractual liability insurance and may allow its premiums to

exceed the ratio to net assets limitation of this section if the association complies with the following:

(a) The association or, if the association is a direct or indirect wholly owned subsidiary of a parent corporation, its parent corporation has, and maintains at all times, a minimum net worth of at least $100 million and provides the office with the following:

1. A copy of the association's annual audited financial statements or the audited consolidated financial statements of the association's parent corporation, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, which clearly demonstrate the net worth of the association or its parent corporation to be $100 million, and a quarterly written certification to the office that the association or its parent corporation continues to maintain the net worth required under this paragraph.

2. The association's or its parent corporation's Form 10-K, Form 10-Q, or Form 20-F as filed with the United States Securities and Exchange Commission or such other documents required to be filed with a recognized stock exchange, which shall be provided on a quarterly and annual basis within 10 days after the last date each such report must be filed with the Securities and Exchange Commission, the National Association of Securities Dealers Automated Quotation system, or other recognized stock exchange.

Failure to timely file the documents required under this paragraph may, at the discretion of the office, subject the association to suspension or revocation of its license under this part.

(b) If the net worth of a parent corporation is used to satisfy the net worth provisions of paragraph (a), the following provisions must be met:

1. The parent corporation must guarantee all service warranty obligations of the association, wherever written, on a form approved in advance by the office. A cancellation, termination, or modification of the guarantee does not become effective unless the parent corporation provides the office written notice at least 90 days before the effective date of the cancellation, termination, or modification and the office approves the request in writing. Before the effective date of the cancellation, termination, or modification of the guarantee, the association must demonstrate to the satisfaction of the office compliance with all applicable provisions of this part, including whether the association will meet the requirements of this section by the purchase of contractual liability insurance, establishing required reserves, or other method allowed under this section. If the association or parent corporation does not demonstrate to the satisfaction of the office compliance with all applicable provisions of this part, the association or

parent association shall immediately cease writing new and renewal business upon the effective date of the cancellation, termination, or modification.

2. The association must maintain at all times net assets of at least $750,000.

Section 33. Section 634.317, Florida Statutes, is amended to read:

634.317 License and appointment required.—No person may solicit, negotiate, or effectuate home warranty contracts for remuneration in this state unless such person is licensed and appointed as a sales representative. A licensed and appointed sales representative shall be directly responsible and accountable for all acts of the licensee's employees. A municipality, a county government, a special district, an entity operated by a municipality or county government, or an employee or agent of a municipality, county government, special district, or entity operated by a municipality or county government is exempt from the licensing and appointing requirements under this section.

Section 34. Subsection (9) of section 648.25, Florida Statutes, is renumbered as subsection (10), and new subsection (9) and subsection (11) are added to that section to read:

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

(9) "Referring bail bond agent" is the limited surety agent who is requesting the transfer bond. The referring bail

bond agent is the agent held liable for the transfer bond, along with the issuing surety company.

(11) "Transfer bond" means the appearance bond and power of attorney form posted by a limited surety agent who is registered in the county where the defendant is being held in custody.

Section 35. Subsection (3) of section 648.26, Florida Statutes, is amended to read:

648.26 Department of Financial Services; administration.—

(3) The papers, documents, reports, or any other investigatory records of the department are confidential and exempt from s. 119.07(1) until such investigation is completed or ceases to be active, unless the department or office files a formal administrative complaint, emergency order, or consent order against the individual or entity. For the purpose of this section, an investigation is considered active while the investigation is being conducted by the department with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department is proceeding with reasonable dispatch and there is good faith belief that action may be initiated by the department or other administrative or law enforcement agency. This subsection does not prevent the department or office from disclosing the content of a complaint or such information as it deems necessary to conduct the

investigation, to update the complainant as to the status and outcome of the complaint, to review the details of the investigation with the subject or the subject's representative, or to share such information with any law enforcement agency or other regulatory body.

Section 36. Paragraph (a) of subsection (1) of section 648.30, Florida Statutes, is amended to read:

648.30 Licensure and appointment required; prohibited acts; penalties.—

(1)(a) A person or entity may not act in the capacity of a bail bond agent or bail bond agency or perform any of the functions, duties, or powers prescribed for bail bond agents or bail bond agencies under this chapter unless that person or entity is qualified, licensed, and appointed as provided in this chapter ~~and employed by a bail bond agency~~.

Section 37. Subsection (1) of section 648.355, Florida Statutes, is amended to read:

648.355 Limited surety agents and professional bail bond agents; qualifications.—

(1) The applicant shall furnish, with the application for license, a complete set of the applicant's fingerprints in accordance with s. 626.171(4) ~~and a recent credential-sized, fullface photograph of the applicant~~. The department may not issue a license under this section until the department has received a report from the Department of Law Enforcement and the

Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints.

Section 38. Effective July 1, 2024, Section 655.49, Florida Statutes, is created to read:

655.49 Bad faith termination or restriction of account access; investigations by the office.—

(1) A customer or member of a financial institution who reasonably believes that a financial institution has terminated, suspended, or taken similar action restricting access to the customer's or member's account in bad faith may file, within 30 calendar days after such termination, suspension, or similar action restricting account access, a complaint with the office alleging a violation of this section. Such complaint is barred if not timely filed.

(2) This section does not apply if a financial institution's termination, suspension, or similar action restricting a customer's or member's account access was due to one or more of the following:

(a) The customer or member initiated the change in access;

(b) There is a lack of activity in the account; or

(c) The account is presumed unclaimed property pursuant to chapter 717.

(3) Upon receipt of a customer's or member's complaint under subsection (1):

(a) Within 30 calendar days, the office must notify the financial institution that a complaint has been filed.

(b) Within 30 calendar days after receiving the notice from the office, the financial institution must file with the office a termination-of-access report containing such information as the commission requires by rule.

(c) Within 90 calendar days after receiving the termination-of-access report from the financial institution, the office must investigate the financial institution's action and determine whether the action was taken in bad faith as substantiated by competent and substantial evidence that was known or should have been known to the financial institution at the time of the termination, suspension, or similar action restricting a customer's or member's account access.

(d) Within 30 calendar days after making the determination required under paragraph (c), the office must report to the Attorney General and the Chief Financial Officer the determination of a bad faith termination, suspension, or similar action restricting a customer's or member's account access. The report to the Attorney General must describe the findings of the investigation, provide a summary of the evidence, and state whether an alleged violation of the financial institutions codes by the financial institution occurred. Upon reporting to the Attorney General pursuant to this paragraph, the office must send a copy of the report to the customer or member by certified

mail, return receipt requested.

(4) A financial institution's bad faith termination, suspension, or similar action restricting access to a customer's or member's account, as determined by the office pursuant to subsection (3), or a financial institution's failure to cooperate in an investigation conducted pursuant to subsection (3), including, without limitation, failure to timely file a termination-of-access report with the office, constitutes a violation of the financial institutions codes and subjects the financial institution to the applicable sanctions and penalties provided for in the financial institutions codes.

(5) The office shall provide any report filed pursuant to this section, or any information contained therein, to any federal, state, or local law enforcement or prosecutorial agency, and any federal or state agency responsible for the regulation or supervision of financial institutions, if the provision of such report is otherwise required by law.

(6) If the office determines under subsection (3) that a financial institution has acted in bad faith, the aggrieved customer or member of the financial institution has a cause of action against the financial institution for damages and may recover damages therefor in any court of competent jurisdiction, together with costs and reasonable attorney fees to be assessed by the court. To recover damages under this subsection, the customer or member must establish that, beyond a reasonable

doubt, the financial institution acted in bad faith in terminating, suspending, or taking similar action restricting access to the customer's or member's account. The office's determination that the financial institution has acted in bad faith pursuant to subsection (3) does not, in and of itself, establish beyond a reasonable doubt that the financial institution acted in bad faith in the termination, suspension, or similar action restricting access to the customer's or member's account. A customer's or member's failure to initiate a cause of action under this subsection within 12 months after the office's finding of bad faith pursuant to subsection (3) bars recovery of any filed claims thereafter.

(7) By July 1, 2024, the office shall make available on its website the information necessary for a customer or member of a financial institution to file a complaint with the office under subsection (1).

Section 39. Section 717.101, Florida Statutes, is amended to read:

717.101 Definitions.—As used in this chapter, unless the context otherwise requires:

(1) "Aggregate" means the amounts reported for owners of unclaimed property of less than $10 ~~$50~~ or where there is no name for the individual or entity listed on the holder's records, regardless of the amount to be reported.

(2) "Apparent owner" means the person whose name appears

on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Audit" means an action or proceeding to examine and verify a person's records, books, accounts, and other documents to ascertain and determine compliance with this chapter.

(4) "Audit agent" means a person with whom the department enters into a contract with to conduct an audit or examination. The term includes an independent contractor of the person and each individual participating in the audit on behalf of the person or contractor.

(5)~~(3)~~ "Banking organization" means any and all banks, trust companies, private bankers, savings banks, industrial banks, safe-deposit companies, savings and loan associations, credit unions, and investment companies in this state, organized under or subject to the laws of this state or of the United States, including entities organized under 12 U.S.C. s. 611, but does not include federal reserve banks. The term also includes any corporation, business association, or other organization that:

(a) Is a wholly or partially owned subsidiary of any banking, banking corporation, or bank holding company that performs any or all of the functions of a banking organization; or

(b) Performs functions pursuant to the terms of a contract with any banking organization ~~state or national bank,~~

~~international banking entity or similar entity, trust company, savings bank, industrial savings bank, land bank, safe-deposit company, private bank, or any organization otherwise defined by law as a bank or banking organization~~.

(6)~~(4)~~ "Business association" means any for-profit or nonprofit corporation other than a public corporation; joint stock company; investment company; unincorporated association or association of two or more individuals for business purposes, whether or not for profit; partnership; joint venture; limited liability company; sole proprietorship; business trust; trust company; land bank; safe-deposit company; safekeeping depository; financial organization; insurance company; federally chartered entity; utility company; or other business entity, whether or not for profit ~~corporation (other than a public corporation), joint stock company, investment company, business trust, partnership, limited liability company, or association of two or more individuals for business purposes, whether for profit or not for profit~~.

(7)~~(5)~~ "Claimant" means the person on whose behalf a claim is filed.

(8) "Claimant's representative" means an attorney who is a member in good standing of The Florida Bar, a certified public accountant licensed in this state, or private investigator who is duly licensed to do business in the state, registered with the department, and authorized by the claimant to claim

unclaimed property on the claimant's behalf. The term does not include a person acting in a representative capacity, such as a personal representative, guardian, trustee, or attorney, whose representation is not contingent upon the discovery or location of unclaimed property; provided, however, that any agreement entered into for the purpose of evading s. 717.135 is invalid and unenforceable.

(9) ~~(6)~~ "Credit balance" means an account balance in the customer's favor.

(10) ~~(7)~~ "Department" means the Department of Financial Services.

(11) ~~(8)~~ "Domicile" means the state of incorporation for a corporation; the state of filing for a business association, other than a corporation, whose formation or organization requires a filing with a state; the state of organization for a business association, other than a corporation, whose formation or organization does not require a filing with a state; the state of home office for a federally charted entity ~~incorporated under the laws of a state, or, for an unincorporated business association, the state where the business association is organized~~.

(12) ~~(9)~~ "Due diligence" means the use of reasonable and prudent methods under particular circumstances to locate apparent owners of inactive accounts using the taxpayer identification number or social security number, if known, which

may include, but are not limited to, using a nationwide database, cross-indexing with other records of the holder, mailing to the last known address unless the last known address is known to be inaccurate, providing written notice as described in this chapter by electronic mail if an apparent owner has elected such delivery, or engaging a licensed agency or company capable of conducting such search and providing updated addresses.

(13) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(14)~~(10)~~ "Financial organization" means a ~~state or federal~~ savings association, savings and loan association, savings bank, industrial bank, bank, banking organization, trust company, international bank agency, cooperative bank, building and loan association, or credit union.

(15)~~(11)~~ "Health care provider" means any state-licensed entity that provides and receives payment for health care services. These entities include, but are not limited to, hospitals, outpatient centers, physician practices, and skilled nursing facilities.

(16)~~(12)~~ "Holder" means:

(a) A person~~, wherever organized or domiciled,~~ who is in possession or control or has custody of property or the rights to property belonging to another; is indebted to another on an

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obligation; or is obligated to hold for the account of, or to deliver or pay to, the owner, property subject to this chapter; or~~:~~

~~(a) In possession of property belonging to another;~~

(b) A trustee in case of a trust~~; or~~

~~(c) Indebted to another on an obligation~~.

(17)~~(13)~~ "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether for profit or not for profit, which is engaged in providing insurance coverage.

(18)~~(14)~~ "Intangible property" includes, by way of illustration and not limitation:

(a) Moneys, checks, virtual currency, drafts, deposits, interest, dividends, and income.

(b) Credit balances, customer overpayments, security deposits and other instruments as defined by chapter 679, refunds, unpaid wages, unused airline tickets, and unidentified remittances.

(c) Stocks, and other intangible ownership interests in business associations.

(d) Moneys deposited to redeem stocks, bonds, bearer bonds, original issue discount bonds, coupons, and other securities, or to make distributions.

(e) Amounts due and payable under the terms of insurance policies.

(f) Amounts distributable from a trust or custodial fund established under a plan to provide any health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefit.

(19) ~~(15)~~ "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail. For the purposes of identifying, reporting, and remitting property to the department which is presumed to be unclaimed, "last known address" includes any partial description of the location of the apparent owner sufficient to establish the apparent owner was a resident of this state at the time of last contact with the apparent owner or at the time the property became due and payable.

(20) ~~(16)~~ "Lawful charges" means charges against dormant accounts that are authorized by statute for the purpose of offsetting the costs of maintaining the dormant account.

(21) ~~(17)~~ "Managed care payor" means a health care plan that has a defined system of selecting and limiting health care providers as evidenced by a managed care contract with the health care providers. These plans include, but are not limited to, managed care health insurance companies and health maintenance organizations.

(22) ~~(18)~~ "Owner" means a person, or the person's legal representative, entitled to receive or having a legal or

equitable interest in or claim against property subject to this chapter; a depositor in the case of a deposit; a beneficiary in the case of a trust or a deposit in trust; or a payee in the case of a negotiable instrument or other intangible property ~~a depositor in the case of a deposit, a beneficiary in the case of a trust or a deposit in trust, or a payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his or her legal representative~~.

(23) "Person" means an individual; estate; business association; corporation; firm; association; joint adventure; partnership; government or governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

(24) ~~(19)~~ "Public corporation" means a corporation created by the state, founded and owned in the public interest, supported by public funds, and governed by those deriving their power from the state.

(25) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) ~~(20)~~ "Reportable period" means the calendar year ending December 31 of each year.

(27) ~~(21)~~ "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession, and any other area subject to the

legislative authority of the United States.

(28) ~~(22)~~ "Trust instrument" means a trust instrument as defined in s. 736.0103.

~~(23) "Ultimate equitable owner" means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether such natural person owns or controls such ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof.~~

(29) "Unclaimed Property Purchase Agreement" means the form adopted by the department pursuant to s. 717.135 which must be used, without modification or amendment, by a claimant's representative to purchase unclaimed property from an owner.

(30) "Unclaimed Property Recovery Agreement" means the form adopted by the department pursuant to s. 717.135 which must be used, without modification or amendment, by a claimant's representative to obtain an owner's consent and authority to recover unclaimed property on the owner's behalf.

(31) ~~(24)~~ "United States" means any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of

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America.

(32) ~~(25)~~ "Utility" means a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

(33)(a) "Virtual currency" means digital units of exchange that:

1. Have a centralized repository or administrator;

2. Are decentralized and have no centralized repository or administrator; or

3. May be created or obtained by computing or manufacturing effort.

(b) The term does not include any of the following:

1. Digital units that:

a. Are used solely within online gaming platforms;

b. Have no market or application outside of the online gaming platforms in sub-subparagraph a.;

c. Cannot be converted into, or redeemed for, fiat currency or virtual currency; and

d. Can or cannot be redeemed for real-world goods, services, discounts, or purchases.

2. Digital units that can be redeemed for:

a. Real-world goods, services, discounts, or purchases as part of a customer affinity or rewards program with the issuer

or other designated merchants; or

b. Digital units in another customer affinity or rewards program, but cannot be converted into, or redeemed for, fiat currency or virtual currency.

3. Digital units used as part of prepaid cards.

Section 40. Subsections (3) and (4) are added to section 717.102, Florida Statutes, to read:

717.102 Property presumed unclaimed; general rule.—

(3) A presumption that property is unclaimed is rebutted by an apparent owner's expression of interest in the property. An owner's expression of interest in property includes:

(a) A record communicated by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held;

(b) An oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or its agent contemporaneously makes and preserves a record of the fact of the apparent owner's communication;

(c) Presentment of a check or other instrument of payment of a dividend, interest payment, or other distribution, with respect to an account, underlying security, or interest in a business association;

(d) Activity directed by an apparent owner in the account in which the property is held, including accessing the account

or information concerning the account, or a direction by the apparent owner to increase, decrease, or otherwise change the amount or type of property held in the account;

(e) A deposit into or withdrawal from an account at a financial organization, excluding an automatic deposit or withdrawal previously authorized by the apparent owner or an automatic reinvestment of dividends or interest, which does not constitute an expression of interest; or

(f) Any other action by the apparent owner which reasonably demonstrates to the holder that the apparent owner knows that the property exists.

(4) If a holder learns or receives confirmation of an apparent owner's death, the property shall be presumed unclaimed 2 years after the date of death, unless a fiduciary appointed to represent the estate of the apparent owner has made an expression of interest in the property before the expiration of the 2-year period. This subsection may not be construed to extend the otherwise applicable dormancy period prescribed by this chapter.

Section 41. Subsection (5) of section 717.106, Florida Statutes, is amended to read:

717.106 Bank deposits and funds in financial organizations.—

(5) If the documents establishing a deposit described in subsection (1) state the address of a beneficiary of the

deposit, and the account has a value of at least $50, notice shall be given to the beneficiary as provided for notice to the apparent owner under s. 717.117(6) ~~s. 717.117(4)~~. This subsection shall apply to accounts opened on or after October 1, 1990.

Section 42. Section 717.1065, Florida Statutes, is created to read:

717.1065 Virtual currency.—

(1) Any virtual currency held or owing by a banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity is presumed unclaimed unless the owner, within 5 years, has communicated in writing with the banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity concerning the virtual currency or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity.

(2) A holder may not deduct from the amount of any virtual currency subject to this section any charges imposed by reason of the virtual currency unless there is a valid and enforceable written contract between the holder and the owner of the virtual currency pursuant to which the holder may impose those charges and the holder does not regularly reverse or otherwise cancel those charges with respect to the virtual currency.

Section 43. Paragraph (a) of subsection (1) of section 717.1101, Florida Statutes, is amended to read:

717.1101 Unclaimed equity and debt of business associations.—

(1)(a) Stock or other equity interest in a business association is presumed unclaimed on the date of ~~3 years after~~ the earliest of the following:

1. Three years after ~~The date of~~ the most recent of any owner-generated activity or communication related to the account, as recorded and maintained in the holder's database and records systems sufficient enough to demonstrate the owners continued awareness or interest in the property ~~dividend, stock split, or other distribution unclaimed by the apparent owner~~;

2. Three years after the date of the death of the owner, as evidenced by: ~~The date of a statement of account or other notification or communication that was returned as undeliverable; or~~

a. Notice to the holder of the owner's death by an administrator, beneficiary, relative, or trustee, or by a personal representative or other legal representative of the owner's estate;

b. Receipt by the holder of a copy of the death certificate of the owner;

c. Confirmation by the holder of the owner's death though other means; or

d. Other evidence from which the holder may reasonably conclude that the owner is deceased; or

3. One year after the date on which the holder receives notice under subparagraph 2. if the notice is received 2 years or less after the owner's death and the holder lacked knowledge of the owner's death during that period of 2 years or less ~~The date the holder discontinued mailings, notifications, or communications to the apparent owner~~.

Section 44. Subsection (1) of section 717.112, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

717.112 Property held by agents and fiduciaries.—

(1) ~~Except as provided in ss. 717.1125 and 733.816,~~ All intangible property and any income or increment thereon held in a fiduciary capacity for the benefit of another person, including property held by an attorney in fact or an agent, except as provided in ss. 717.1125 and 733.816, is presumed unclaimed unless the owner has within 5 years after it has become payable or distributable increased or decreased the principal, accepted payment of principal or income, communicated in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

(6) This section does not relieve a fiduciary of his or her duties under applicable general law.

Section 45. Section 717.1125, Florida Statutes, is amended to read:

717.1125 Property held by fiduciaries under trust instruments.—All intangible property and any income or increment thereon held in a fiduciary capacity for the benefit of another person under a trust instrument is presumed unclaimed unless the owner has, within 2 years after it has become payable or distributable, increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary. This section does not relieve a fiduciary of his or her duties under the Florida Trust Code.

Section 46. Effective January 1, 2025, section 717.117, Florida Statutes, is amended to read:

717.117 Report of unclaimed property.—

(1) Every person holding funds or other property, tangible or intangible, presumed unclaimed and subject to custody as unclaimed property under this chapter shall report to the department ~~on such forms as the department may prescribe by rule. In lieu of forms, a report identifying 25 or more different apparent owners must be submitted by the holder~~ via electronic medium as the department may prescribe by rule. The report must include:

(a) Except for traveler's checks and money orders, the

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name, social security number or taxpayer identification number, ~~and~~ date of birth, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property which is presumed unclaimed and which has a value of $10 ~~$50~~ or more.

(b) For unclaimed funds that ~~which~~ have a value of $10 ~~$50~~ or more held or owing under any life or endowment insurance policy or annuity contract, the identifying information provided in paragraph (a) for both ~~full name, taxpayer identification number or social security number, date of birth, if known, and last known address of~~ the insured or annuitant and ~~of~~ the beneficiary according to records of the insurance company holding or owing the funds.

(c) For all tangible property held in a safe-deposit box or other safekeeping repository, a description of the property and the place where the property is held and may be inspected by the department, and any amounts owing to the holder. Contents of a safe-deposit box or other safekeeping repository which consist of documents or writings of a private nature and which have little or no apparent value shall not be presumed unclaimed.

(d) The nature or type of property, any accounting or ~~and~~ identifying number associated with the property, a ~~if any, or~~ description of the property, and the amount appearing from the records to be due. Items of value of less than $10 ~~under $50~~ each may be reported in the aggregate.

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(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property.

(f) Any other information the department may prescribe by rule as necessary for the administration of this chapter.

(2) If the total value of all presumed unclaimed property, whether tangible or intangible, held by a person is less than $10, a zero balance report may be filed for that reporting period.

~~(f) Any person or business association or public corporation holding funds presumed unclaimed and having a total value of $10 or less may file a zero balance report for that reporting period. The balance brought forward to the new reporting period is zero.~~

~~(g) Such other information as the department may prescribe by rule as necessary for the administration of this chapter.~~

(3) ~~(h)~~ Credit balances, customer overpayments, security deposits, and refunds having a value of less than $10 shall not be presumed unclaimed.

(4) ~~(2)~~ If the holder of property presumed unclaimed and subject to custody as unclaimed property is a successor holder or if the holder has changed the holder's name while in possession of the property, the holder shall file with the holder's report all known names and addresses of each prior holder of the property. Compliance with this subsection means

the holder exercises reasonable and prudent efforts to determine the names of all prior holders.

(5)~~(3)~~ The report must be filed before May 1 of each year. The report applies ~~shall apply~~ to the preceding calendar year. Upon written request by any person required to file a report, and upon a showing of good cause, the department may extend the reporting date. The department may impose and collect a penalty of $10 per day up to a maximum of $500 for the failure to timely report, if an extension was not provided or if the holder of the property failed ~~the failure~~ to include in a report information required by this chapter which was in the holder's possession at the time of reporting. The penalty shall be remitted to the department within 30 days after the date of the notification to the holder that the penalty is due and owing. As necessary for proper administration of this chapter, the department may waive any penalty due with appropriate justification. ~~On written request by any person required to file a report and upon a showing of good cause, the department may postpone the reporting date.~~ The department must provide information contained in a report filed with the department to any person requesting a copy of the report or information contained in a report, to the extent the information requested is not confidential, within 45 days after the department determines that the report ~~has been processed and added to the unclaimed property database subsequent to a determination that the report~~ is accurate and

acceptable and that the reported property is the same as the remitted property.

(6) ~~(4)~~ Holders of inactive accounts having a value of $50 or more shall use due diligence to locate and notify apparent owners that the entity is holding unclaimed property available for them to recover. Not more than 120 days and not less than 60 days prior to filing the report required by this section, the holder in possession of property presumed unclaimed and subject to custody as unclaimed property under this chapter shall send written notice by first-class United States mail to the apparent owner at the apparent owner's last known address from the holder's records or from other available sources, or via electronic mail if the apparent owner has elected this method of delivery, informing the apparent owner that the holder is in possession of property subject to this chapter, if the holder has in its records a mailing or electronic ~~an~~ address for the apparent owner which the holder's records do not disclose to be inaccurate. These two means of contact are not mutually exclusive; if the mailing address is determined to be inaccurate, electronic mail may be used if so elected by the apparent owner.

(7) The written notice to the apparent owner required under this section must:

(a) Contain a heading that reads substantially as follows: "Notice. The State of Florida requires us to notify you that

your property may be transferred to the custody of the Florida Department of Financial Services if you do not contact us before (insert date that is at least 30 days after the date of notice)."

(b) Identify the type, nature, and, except for property that does not have a fixed value, value of the property that is the subject of the notice.

(c) State that the property will be turned over to the custody of the department as unclaimed property if no response to this letter is received.

(d) State that any property that is not legal tender of the United States may be sold or liquidated by the department.

(e) State that after the property is turned over to the department, an apparent owner seeking return of the property may file a claim with the department.

(f) State that the property is currently with a holder and provide instructions that the apparent owner must follow to prevent the holder from reporting and paying for the property or from delivering the property to the department.

(8)~~(5)~~ Any holder of intangible property may file with the department a petition for determination that the property is unclaimed requesting the department to accept custody of the property. The petition shall state any special circumstances that exist, contain the information required by subsection (4) ~~(2)~~, and show that a diligent search has been made to locate the

owner. If the department finds that the proof of diligent search is satisfactory, it shall give notice as provided in s. 717.118 and accept custody of the property.

(9) ~~(6)~~ Upon written request by any entity or person required to file a report, stating such entity's or person's justification for such action, the department may place that entity or person in an inactive status as an unclaimed property "holder."

(10) ~~(7)~~ (a) This section does not apply to the unclaimed patronage refunds as provided for by contract or through bylaw provisions of entities organized under chapter 425 or that are exempt from ad valorem taxation pursuant to s. 196.2002.

(b) This section does not apply to intangible property held, issued, or owing by a business association subject to the jurisdiction of the United States Surface Transportation Board or its successor federal agency if the apparent owner of such intangible property is a business association. The holder of such property does not have any obligation to report, to pay, or to deliver such property to the department.

(c) This section does not apply to credit balances, overpayments, refunds, or outstanding checks owed by a health care provider to a managed care payor with whom the health care provider has a managed care contract, provided that the credit balances, overpayments, refunds, or outstanding checks become due and owing pursuant to the managed care contract.

(11) ~~(8)~~ (a) As used in this subsection, the term "property identifier" means the descriptor used by the holder to identify the unclaimed property.

(b) Social security numbers and property identifiers contained in reports required under this section, held by the department, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) This exemption applies to social security numbers and property identifiers held by the department before, on, or after the effective date of this exemption.

Section 47. Subsections (4), (5), and (6) of section 717.119, Florida Statutes, are renumbered as subsections (5), (6), and (7), respectively, and new subsection (4) and subsection (8) are added to that section, to read:

717.119 Payment or delivery of unclaimed property.—

(4) All virtual currency reported under this chapter on the annual report filing required in s. 717.117 shall be remitted to the department with the report. The holder shall liquidate the virtual currency and remit the proceeds to the department. The liquidation must occur within 30 before the filing of the report. Upon delivery of the virtual currency proceeds to the department, the holder is relieved of all liability of every kind in accordance with the provisions of s. 717.1201 to every person for any losses or damages resulting to the person by the delivery to the department of the virtual

currency proceeds.

(8) A holder may not assign or otherwise transfer its obligation to report, pay, or deliver property or to comply with the provisions of this chapter, other than to a parent, subsidiary, or affiliate of the holder.

(a) Unless otherwise agreed to by the parties to a transaction, the holder's successor by merger or consolidation, or any person or entity that acquires all or substantially all of the holder's capital stock or assets, is responsible for fulfilling the holder's obligation to report, pay, or deliver property or to comply with the duties of this chapter regarding the transfer of property owed to the holder's successor and being held for an owner resulting from the merger, consolidation, or acquisition.

(b) This subsection does not prohibit a holder from contracting with a third party for the reporting of unclaimed property, but the holder remains responsible to the department for the complete, accurate, and timely reporting of the property.

Section 48. Section 717.1201, Florida Statutes, is amended to read:

717.1201 Custody by state; holder ~~relieved from~~ liability; reimbursement of holder paying claim; reclaiming for owner; ~~defense of holder;~~ payment of safe-deposit box or repository charges.—

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(1) Upon the good faith payment or delivery of unclaimed property to the department, the state assumes custody and responsibility for the safekeeping of the property. Any person who pays or delivers unclaimed property to the department in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

(a) A holder's substantial compliance with s. 717.117(6) and good faith payment or delivery of unclaimed property to the department releases the holder from liability that may arise from such payment or delivery, and such delivery and payment may be plead as a defense in any suit or action brought by reason of such delivery or payment. This section does not relieve a fiduciary of his or her duties under the Florida Trust Code or Florida Probate Code.

(b) If the holder pays or delivers property to the department in good faith and thereafter any other person claims the property from the holder paying or delivering, or another state claims the money or property under that state's laws relating to escheat or abandoned or unclaimed property, the department, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim, except that a holder may not be indemnified against penalties imposed by another state.

(2) For the purposes of this section, a payment or delivery of unclaimed property is made in good faith if:

(a) The payment or delivery was made in conjunction with an accurate and acceptable report.

(b) The payment or delivery was made in a reasonable attempt to comply with this chapter and other applicable general law.

(c) The holder had a reasonable basis for believing, based on the facts then known, that the property was unclaimed and subject to this chapter.

(d) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(3) ~~(2)~~ Any holder who has paid money to the department pursuant to this chapter may make payment to any person appearing to be entitled to payment and, upon filing proof that the payee is entitled thereto, the department shall forthwith repay the holder without deduction of any fee or other charges. If repayment is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be repaid under this subsection upon filing proof that the instrument was duly presented and that the payee is entitled to payment. The holder shall be repaid for payment made under this subsection even if the payment was made to a person whose claim was barred under s. 717.129(1).

(4) ~~(3)~~ Any holder who has delivered property, including a certificate of any interest in a business association, other than money to the department pursuant to this chapter may reclaim the property if still in the possession of the department, without payment of any fee or other charges, upon filing proof that the owner has claimed the property from the holder.

(5) ~~(4)~~ The department may accept an affidavit of the holder stating the facts that entitle the holder to recover money and property under this section as sufficient proof.

~~(5) If the holder pays or delivers property to the department in good faith and thereafter any other person claims the property from the holder paying or delivering, or another state claims the money or property under that state's laws relating to escheat or abandoned or unclaimed property, the department, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.~~

~~(6) For the purposes of this section, "good faith" means that:~~

~~(a) Payment or delivery was made in a reasonable attempt to comply with this chapter.~~

~~(b) The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to~~

~~that person, that the property was unclaimed for the purposes of this chapter.~~

~~(c) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.~~

(6)~~(7)~~ Property removed from a safe-deposit box or other safekeeping repository is received by the department subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The department shall make the reimbursement to the holder out of the proceeds remaining after the deduction of the department's selling cost.

(7) If it appears to the satisfaction of the department that, because of some mistake of fact, error in calculation, or erroneous interpretation of a statute, a person has paid or delivered to the department pursuant to any provision of this chapter any money or other property not required by this chapter to be so paid or delivered, the department may, within 5 years after such erroneous payment or delivery, refund or redeliver such money or other property to the person, provided that such money or property has not been paid or delivered to a claimant or otherwise disposed of in accordance with this chapter.

Section 49. Subsection (1) of section 717.1242, Florida Statutes, is amended to read:

717.1242 Restatement of jurisdiction of the circuit court sitting in probate and the department.—

(1) It is and has been the intent of the Legislature that, pursuant to s. 26.012(2)(b), circuit courts have jurisdiction of proceedings relating to the settlement of the estates of decedents and other jurisdiction usually pertaining to courts of probate. It is and has been the intent of the Legislature that, pursuant to this chapter ~~s. 717.124~~, the department determines the merits of claims and entitlements to unclaimed ~~for~~ property paid or delivered to the department under this chapter. Consistent with this legislative intent, any ~~estate or~~ beneficiary, devisee, heir, personal representative, or other interested person, as those terms are defined in the Florida Probate Code and the Florida Trust Code ~~s. 731.201~~, of an estate seeking to obtain property paid or delivered to the department under this chapter must file a claim with the department as provided in s. 717.124.

Section 50. Subsection (4) of section 717.1243, Florida Statutes, is amended to read:

717.1243 Small estate accounts.—

(4) This section ~~only~~ applies only if all of the unclaimed property held by the department on behalf of the owner has an aggregate value of $20,000 ~~$10,000~~ or less and no probate proceeding is pending.

Section 51. Subsection (2) of section 717.129, Florida

Statutes, is amended to read:

717.129 Periods of limitation.—

(2) The department may not commence an ~~No~~ action or proceeding to enforce this chapter with respect to the reporting, payment, or delivery of property or any other duty of a holder under this chapter ~~may be commenced by the department with respect to any duty of a holder under this chapter~~ more than 10 years after the duty arose. The period of limitation established under this subsection is tolled by the earlier of the department's or audit agent's delivery of a notice that a holder is subject to an audit or examination under s. 717.1301 or the holder's written election to enter into an unclaimed property voluntary disclosure agreement.

Section 52. Section 717.1301, Florida Statutes, is amended to read:

717.1301 Investigations; examinations; subpoenas.—

(1) To carry out the chapter's purpose of protecting the interest of missing owners through the safeguarding of their property and to administer and enforce this chapter, the department may:

(a) Investigate, examine, inspect, request, or otherwise gather information or evidence on, claim documents from a claimant or a claimant's representative during its review of a claim.

(b) Audit the records of a person or the records in the

possession of an agent, representative, subsidiary, or affiliate of the person subject to this chapter to determine whether the person complied with this chapter. Such records may include information to verify the completeness or accuracy of the records provided, even if such records may not identify property reportable to the department.

(c) Take testimony of a person, including the person's employee, agent, representative, subsidiary, or affiliate, to determine whether the person complied with this chapter.

(d) Issue an administrative subpoena to require that the records specified in paragraph (b) be made available for examination or audit and that the testimony specified in paragraph (c) be provided.

(e) Bring an action in a court of competent jurisdiction seeking enforcement of an administrative subpoena issued under this section, which the court shall consider under procedures that will lead to an expeditious resolution of the action.

(f) Bring an administrative action or an action in a court of competent jurisdiction to enforce this chapter.

(2) If a person is subject to reporting property under this chapter, the department may require the person to file a verified report in a form prescribed by the department. The verified report must:

(a) State whether the person is holding property reportable under this chapter;

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(b) Describe the property not previously reported, the property about which the department has inquired, or the property that is in dispute as to whether it is reportable under this chapter; and

(c) State the amount or value of the property.

(3) The department may authorize a compliance review of a report for a specified reporting year. The review must be limited to the contents of the report filed, as required by s. 717.117 and subsection (2), and all supporting documents related to the reports. If the review results in a finding of a deficiency in unclaimed property due and payable to the department, the department shall notify the holder in writing of the amount of deficiency within 1 year after the authorization of the compliance review. If the holder fails to pay the deficiency within 90 days, the department may seek to enforce the assessment under subsection (1). The department is not required to conduct a review under this section before initiating an audit.

(4) Notwithstanding any other provision of law, in a contract providing for the location or collection of unclaimed property, the department may authorize the contractor to deduct its fees and expenses for services provided under the contract from the unclaimed property that the contractor has recovered or collected under the contract. The department shall annually report to the Chief Financial Officer the total amount collected

or recovered by each contractor during the previous fiscal year and the total fees and expenses deducted by each contractor.

~~(1) The department may make investigations and examinations within or outside this state of claims, reports, and other records as it deems necessary to administer and enforce the provisions of this chapter. In such investigations and examinations the department may administer oaths, examine witnesses, issue subpoenas, and otherwise gather evidence. The department may request any person who has not filed a report under s. 717.117 to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter.~~

~~(2) Subpoenas for witnesses whose evidence is deemed material to any investigation or examination under this section may be issued by the department under seal of the department, or by any court of competent jurisdiction, commanding such witnesses to appear before the department at a time and place named and to bring such books, records, and documents as may be specified or to submit such books, records, and documents to inspection. Such subpoenas may be served by an authorized representative of the department.~~

~~(3) If any person shall refuse to testify, produce books, records, and documents, or otherwise refuse to obey a subpoena issued under this section, the department may present its petition to a court of competent jurisdiction in or for the~~

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~~county in which such person resides or has its principal place of business, whereupon the court shall issue its rule nisi requiring such person to obey forthwith the subpoena issued by the department or show cause for failing to obey said subpoena. Unless said person shows sufficient cause for failing to obey the subpoena, the court shall forthwith direct such person to obey the same subject to such punishment as the court may direct including, but not limited to, the restraint, by injunction or by appointment of a receiver, of any transfer, pledge, assignment, or other disposition of such person's assets or any concealment, alteration, destruction, or other disposition of subpoenaed books, records, or documents as the court deems appropriate, until such person has fully complied with such subpoena and the department has completed its investigation or examination. The department is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar. Costs incurred by the department to obtain an order granting, in whole or in part, its petition shall be taxed against the subpoenaed person, and failure to comply with such order shall be a contempt of court.~~

~~(4) Witnesses shall be entitled to the same fees and mileage as they may be entitled by law for attending as witnesses in the circuit court, except where such examination or investigation is held at the place of business or residence of the witness.~~

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(5) The material compiled by the department in an investigation or examination under this chapter is confidential until the investigation or examination is complete. If any such material contains a holder's financial or proprietary information, it may not be disclosed or made public by the department after the investigation or audit is completed, except as required by a court of competent jurisdiction in the course of a judicial proceeding in which the state is a party, or pursuant to an agreement with another state allowing joint audits. Such material may be considered trade secret and exempt from s. 119.07(1) as provided for in s. 119.0715. The records, data, and information gathered ~~material compiled~~ by the department in an investigation or audit ~~examination~~ under this chapter remain ~~remains~~ confidential ~~after the department's investigation or examination is complete~~ if the department has submitted the material or any part of it to any law enforcement agency or other administrative agency for further investigation or for the filing of a criminal or civil prosecution and such investigation has not been completed or become inactive.

(6) If an investigation or an audit ~~examination~~ of the records of any person results in the disclosure of property reportable and deliverable under this chapter, the department may assess the cost of the investigation or audit ~~the examination~~ against the holder ~~at the rate of $100 per 8-hour day for each investigator or examiner~~. ~~Such fee shall be~~

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~~calculated on an hourly basis and shall be rounded to the nearest hour. The person shall also pay the travel expense and per diem subsistence allowance provided for state employees in s. 112.061. The person shall not be required to pay a per diem fee and expenses of an examination or investigation which shall consume more than 30 worker-days in any one year unless such examination or investigation is due to fraudulent practices of the person, in which case such person shall be required to pay the entire cost regardless of time consumed.~~ The fee for the costs of the investigation or audit shall be remitted to the department within 30 days after the date of the notification that the fee is due and owing. Any person who fails to pay the fee within 30 days after the date of the notification that the fee is due and owing shall pay to the department interest at the rate of 12 percent per annum on such fee from the date of the notification.

Section 53. Subsection (1) of section 717.1311, Florida Statutes, is amended to read:

717.1311 Retention of records.—

(1) Every holder required to file a report under s. 717.117 shall maintain a record of the specific type of property, amount, name, and last known address of the owner for 10 ~~5~~ years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2) or by rule of the department.

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Section 54. Paragraph (j) of subsection (1) and subsection (3) of section 717.1322, Florida Statutes, are amended to read:

717.1322 Administrative and civil enforcement.—

(1) The following acts are violations of this chapter and constitute grounds for an administrative enforcement action by the department in accordance with the requirements of chapter 120 and for civil enforcement by the department in a court of competent jurisdiction:

(j) Requesting or receiving compensation for notifying a person of his or her unclaimed property or assisting another person in filing a claim for unclaimed property, unless the person is an attorney licensed to practice law in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, or entering into, or making a solicitation to enter into, an agreement to file a claim for unclaimed property owned by another, ~~or a contract or agreement to purchase unclaimed property,~~ unless such person is registered with the department under this chapter and an attorney licensed to practice law in this state in the regular practice of her or his profession, a Florida-certified public accountant who is acting within the scope of the practice of public accounting as defined in chapter 473, or a private investigator licensed under chapter 493. This paragraph does not apply to a person who has been granted a durable power of attorney to convey and receive all of the real and personal property of the owner, is the

court-appointed guardian of the owner, has been employed as an attorney or qualified representative to contest the department's denial of a claim, or has been employed as an attorney to probate the estate of the owner or an heir or legatee of the owner.

(3) A claimant's representative ~~registrant~~ is subject to civil enforcement and the disciplinary actions specified in subsection (2) for violations of subsection (1) by an agent or employee of the registrant's employer if the claimant's representative ~~registrant~~ knew or should have known that such agent or employee was violating any provision of this chapter.

Section 55. Subsection (1) of section 717.1333, Florida Statutes, is amended to read:

717.1333 Evidence; estimations; audit reports and worksheets, investigator ~~examiner's worksheets, investigative~~ reports and worksheets, other related documents.—

(1) In any proceeding involving a holder under ss. 120.569 and 120.57 in which an audit agent ~~auditor, examiner,~~ or investigator acting under authority of this chapter is available for cross-examination, any official written report, worksheet, or other related paper, or copy thereof, compiled, prepared, drafted, or otherwise made or received by the audit agent ~~auditor, examiner,~~ or investigator, after being duly authenticated by the audit agent ~~auditor, examiner,~~ or investigator, may be admitted as competent evidence upon the

oath of the audit agent ~~auditor, examiner,~~ or investigator that the report, worksheet, or related paper was prepared or received as a result of an audit, examination, or investigation of the books and records of the person audited, examined, or investigated, or the agent thereof.

Section 56. Subsections (1) and (2) of section 717.134, Florida Statutes, are amended to read:

717.134 Penalties and interest.—

(1) For any person who willfully fails to render any report required under this chapter, the department may impose and collect a penalty of $500 per day up to a maximum of $5,000 and 25 percent of the value of property not reported until an appropriate ~~a~~ report is provided ~~rendered for any person who willfully fails to render any report required under this chapter~~. Upon a holder's showing of good cause, the department may waive said penalty or any portion thereof. If the holder acted in good faith and without negligence, the department shall waive the penalty provided herein.

(2) For any person who willfully refuses to pay or deliver unclaimed property to the department as required under this chapter, the department may impose and collect a penalty of $500 per day up to a maximum of $5,000 and 25 percent of the value of property not paid or delivered until the property is paid or delivered ~~for any person who willfully refuses to pay or deliver abandoned property to the department as required under this~~

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~~chapter~~.

Section 57. Section 717.135, Florida Statutes, is amended to read:

717.135 Recovery agreements and purchase agreements for claims filed by a claimant's representative; fees and costs, or total net gain.—

(1) In order to protect the interests of owners of unclaimed property, the department shall adopt by rule a form entitled "Unclaimed Property Recovery Agreement" and a form entitled "Unclaimed Property Purchase Agreement."

(2) The Unclaimed Property Recovery Agreement and the Unclaimed Property Purchase Agreement must include and disclose all of the following:

(a) The total dollar amount of unclaimed property accounts claimed or sold.

(b) The total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing claimant's representative.

(c) The total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing claimant's representative.

(d) The net dollar amount to be received by the claimant or the seller.

(e) For each account claimed, the unclaimed property account number.

(f) For the Unclaimed Property Purchase Agreement, a statement that the amount of the purchase price will be remitted to the seller by the purchaser within 30 days after the execution of the agreement by the seller.

(g) The name, address, e-mail address, phone number, and license number of the claimant's representative.

(h)1. The manual signature of the claimant or seller and the date signed, affixed on the agreement by the claimant or seller.

2. Notwithstanding any other provision of this chapter to the contrary, the department may allow an apparent owner, who is also the claimant or seller, to sign the agreement electronically ~~for claims of $2,000 or less~~. All electronic signatures on the Unclaimed Property Recovery Agreement and the Unclaimed Property Purchase Agreement must be affixed on the agreement by the claimant or seller using the specific, exclusive eSignature product and protocol authorized by the department.

(i) The social security number or taxpayer identification number of the claimant or seller, if a number has been issued to the claimant or seller.

(j) The total fees and costs, or the total discount in the case of a purchase agreement, which may not exceed 30 percent of

the claimed amount. In the case of a recovery agreement, if the total fees and costs exceed 30 percent, the fees and costs shall be reduced to 30 percent and the net balance shall be remitted directly by the department to the claimant. In the case of a purchase agreement, if the total net gain of the claimant's representative exceeds 30 percent, the claim will be denied.

(3) For an Unclaimed Property Purchase Agreement form, proof that the purchaser has made payment must be filed with the department along with the claim. If proof of payment is not provided, the claim is void.

(4) A claimant's representative must use the Unclaimed Property Recovery Agreement or the Unclaimed Property Purchase Agreement as the exclusive means of entering into an agreement or a contract with a claimant or seller to file a claim with the department.

(5) Fees and costs may be owed or paid to, or received by, a claimant's representative only after a filed claim has been approved and if the claimant's representative used an agreement authorized by this section.

(6) A claimant's representative may not use or distribute any other agreement of any type, conveyed by any method, with respect to the claimant or seller which relates, directly or indirectly, to unclaimed property accounts held by the department or the Chief Financial Officer other than the agreements authorized by this section. Any engagement,

authorization, recovery, or fee agreement that is not authorized by this section is void. A claimant's representative is subject to administrative and civil enforcement under s. 717.1322 if he or she uses an agreement that is not authorized by this section and if the agreement is used to apply, directly or indirectly, to unclaimed property held by this state. This subsection does not prohibit lawful nonagreement, noncontractual, or advertising communications between or among the parties.

(7) The Unclaimed Property Recovery Agreement ~~and the Unclaimed Property Purchase Agreement~~ may not contain language that makes the agreement irrevocable or that creates an assignment of any portion of unclaimed property held by the department.

(8) When a claim is approved, the department may pay any additional account that is owned by the claimant but has not been claimed at the time of approval, provided that a subsequent claim has not been filed or is not pending for the claimant at the time of approval.

(9) This section does not supersede s. 717.1241.

(10) This section does not apply to the sale and purchase of Florida-held unclaimed property accounts through a bankruptcy estate representative or other person or entity authorized pursuant to Title XI of the United States Code or an order of a bankruptcy court to act on behalf or for the benefit of the debtor, its creditors, and its bankruptcy estate.

Section 58. Subsections (1), (2), and (3) of section 717.1400, Florida Statutes, are amended to read:

717.1400 Registration.—

(1) In order to file claims as a claimant's representative, ~~acquire ownership of or entitlement to unclaimed property,~~ receive a distribution of fees and costs from the department, and obtain unclaimed property dollar amounts and numbers of reported shares of stock held by the department, a private investigator holding a Class "C" individual license under chapter 493 must register with the department on such form as the department prescribes by rule and must be verified by the applicant. To register with the department, a private investigator must provide:

(a) A legible copy of the applicant's Class "A" business license under chapter 493 or that of the applicant's firm or employer which holds a Class "A" business license under chapter 493.

(b) A legible copy of the applicant's Class "C" individual license issued under chapter 493.

(c) The business address and telephone number of the applicant's private investigative firm or employer.

(d) The names of agents or employees, if any, who are designated to act on behalf of the private investigator, together with a legible copy of their photo identification issued by an agency of the United States, or a state, or a

political subdivision thereof.

(e) Sufficient information to enable the department to disburse funds by electronic funds transfer.

(f) The tax identification number of the private investigator's firm or employer which holds a Class "A" business license under chapter 493.

(2) In order to file claims as a claimant's representative, ~~acquire ownership of or entitlement to unclaimed property,~~ receive a distribution of fees and costs from the department, and obtain unclaimed property dollar amounts and numbers of reported shares of stock held by the department, a Florida-certified public accountant must register with the department on such form as the department prescribes by rule and must be verified by the applicant. To register with the department, a Florida-certified public accountant must provide:

(a) The applicant's Florida Board of Accountancy number.

(b) A legible copy of the applicant's current driver license showing the full name and current address of such person. If a current driver license is not available, another form of identification showing the full name and current address of such person or persons shall be filed with the department.

(c) The business address and telephone number of the applicant's public accounting firm or employer.

(d) The names of agents or employees, if any, who are designated to act on behalf of the Florida-certified public

accountant, together with a legible copy of their photo identification issued by an agency of the United States, or a state, or a political subdivision thereof.

(e) Sufficient information to enable the department to disburse funds by electronic funds transfer.

(f) The tax identification number of the accountant's public accounting firm employer.

(3) In order to file claims as a claimant's representative, ~~acquire ownership of or entitlement to unclaimed property,~~ receive a distribution of fees and costs from the department, and obtain unclaimed property dollar amounts and numbers of reported shares of stock held by the department, an attorney licensed to practice in this state must register with the department on such form as the department prescribes by rule and must be verified by the applicant. To register with the department, such attorney must provide:

(a) The applicant's Florida Bar number.

(b) A legible copy of the applicant's current driver license showing the full name and current address of such person. If a current driver license is not available, another form of identification showing the full name and current address of such person or persons shall be filed with the department.

(c) The business address and telephone number of the applicant's firm or employer.

(d) The names of agents or employees, if any, who are

designated to act on behalf of the attorney, together with a legible copy of their photo identification issued by an agency of the United States, or a state, or a political subdivision thereof.

(e) Sufficient information to enable the department to disburse funds by electronic funds transfer.

(f) The tax identification number of the attorney's firm or employer.

Section 59. Paragraph (c) of subsection (10) of section 766.302, Florida Statutes, is amended to read:

766.302 Definitions; ss. 766.301-766.316.—As used in ss. 766.301-766.316, the term:

(10) "Family residential or custodial care" means care normally rendered by trained professional attendants which is beyond the scope of child care duties, but which is provided by family members. Family members who provide nonprofessional residential or custodial care may not be compensated under this act for care that falls within the scope of child care duties and other services normally and gratuitously provided by family members. Family residential or custodial care shall be performed only at the direction and control of a physician when such care is medically necessary. Reasonable charges for expenses for family residential or custodial care provided by a family member shall be determined as follows:

~~(c) The award of family residential or custodial care as~~

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

~~defined in this section shall not be included in the current estimates for purposes of s. 766.314(9)(c).~~

Section 60. Paragraph (c) of subsection (9) of section 766.314, Florida Statutes, is amended to read:

766.314 Assessments; plan of operation.—

(9)

(c) If the total of all current estimates equals or exceeds 100 ~~80~~ percent of the funds on hand and the funds that will become available to the association within the next 12 months from all sources described in subsection ~~subsections~~ (4) ~~and (5)~~ and paragraph (5)(a) ~~(7)(a)~~, the association may not accept any new claims without express authority from the Legislature. ~~Nothing in~~ This section does not preclude ~~precludes~~ the association from accepting any claim if the injury occurred 18 months or more before the effective date of this suspension. Within 30 days after the effective date of this suspension, the association shall notify the Governor, the Speaker of the House of Representatives, the President of the Senate, the Office of Insurance Regulation, the Agency for Health Care Administration, and the Department of Health of this suspension.

Section 61. Paragraph (a) of subsection (2) of section 197.582, Florida Statutes, is amended to read:

197.582 Disbursement of proceeds of sale.—

(2)(a) If the property is purchased for an amount in excess of the statutory bid of the certificateholder, the

surplus must be paid over and disbursed by the clerk as set forth in subsections (3), (5), and (6). If the opening bid included the homestead assessment pursuant to s. 197.502(6)(c), that amount must be treated as surplus and distributed in the same manner. The clerk shall distribute the surplus to the governmental units for the payment of any lien of record held by a governmental unit against the property, including any tax certificates not incorporated in the tax deed application and omitted taxes, if any. If there remains a balance of undistributed funds, the balance must be retained by the clerk for the benefit of persons described in s. 197.522(1)(a), except those persons described in s. 197.502(4)(h), as their interests may appear. The clerk shall mail notices to such persons notifying them of the funds held for their benefit at the addresses provided in s. 197.502(4). Such notice constitutes compliance with the requirements of s. 717.117(6) ~~s. 717.117(4)~~. Any service charges and costs of mailing notices shall be paid out of the excess balance held by the clerk. Notice must be provided in substantially the following form:

NOTICE OF SURPLUS FUNDS FROM TAX DEED SALE

CLERK OF COURT

.... COUNTY, FLORIDA

Tax Deed #.....

Certificate #.....

Property Description: .....

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

Pursuant to chapter 197, Florida Statutes, the above property was sold at public sale on ...(date of sale)..., and a surplus of $...(amount)... (subject to change) will be held by this office for 120 days beginning on the date of this notice to benefit the persons having an interest in this property as described in section 197.502(4), Florida Statutes, as their interests may appear (except for those persons described in section 197.502(4)(h), Florida Statutes).

To the extent possible, these funds will be used to satisfy in full each claimant with a senior mortgage or lien in the property before distribution of any funds to any junior mortgage or lien claimant or to the former property owner. To be considered for funds when they are distributed, you must file a notarized statement of claim with this office within 120 days of this notice. If you are a lienholder, your claim must include the particulars of your lien and the amounts currently due. Any lienholder claim that is not filed within the 120-day deadline is barred.

A copy of this notice must be attached to your statement of claim. After the office examines the filed claim statements, it will notify you if you are entitled to any payment.

Dated: .....

Clerk of Court

Section 62. Subsection (1) of section 717.1382, Florida Statutes, is amended to read:

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

717.1382 United States savings bond; unclaimed property; escheatment; procedure.—

(1) Notwithstanding any other provision of law, a United States savings bond in possession of the department or registered to a person with a last known address in the state, including a bond that is lost, stolen, or destroyed, is presumed abandoned and unclaimed 5 years after the bond reaches maturity and no longer earns interest and shall be reported and remitted to the department by the financial institution or other holder in accordance with ss. 717.117(1) and (5) ~~(3)~~ and 717.119, if the department is not in possession of the bond.

Section 63. The Division of Law Revision is directed to prepare a reviser's bill for the 2025 Regular Session of the Legislature to change the term "Division of Investigative and Forensic Services" wherever the term appears in the Florida Statutes to "Division of Criminal Investigations."

Section 64. By September 1, 2025, the Florida Birth-Related Neurological Injury Compensation Association shall submit a report to the Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives which must include, but is not limited to, the following:

(1) Recommendations for defining actuarial soundness for the association, including options for phase-in, if appropriate.

(2) Recommendations for timing of reporting actuarial

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soundness and to whom the soundness should be reported.

(3) Recommendations for ensuring a revenue level to maintain actuarial soundness, including options for phase-in, if appropriate.

Section 65. Except as otherwise provided in this act, this act shall take effect upon becoming a law.

COMMERCE COMMITTEE

PCS for CS/CS/HB 989 by Rep. LaMarca
Financial Services

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. LaMarca (Line 2817): the amendment makes the following changes:

- Refines the categorization of benefits for firefighters undergoing cancer treatment.
- Modifies the date by which NICA must submit a required report and requires NICA to consult with OIR and AHCA before submitting the report.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove lines 2817-2818 and insert:

Section 64. Subsection (2) of section 112.1816, Florida Statutes, is amended to read:

112.1816 Firefighters; cancer diagnosis.—

(2) Upon a diagnosis of cancer, a firefighter is entitled to the following benefits, as an alternative to pursuing workers' compensation benefits under chapter 440, if the firefighter has been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for any cancer:

(a) Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter for any out-of-pocket deductible, copayment, or coinsurance costs incurred due to the treatment of cancer.

(b) A one-time cash payout of $25,000, upon the firefighter's initial diagnosis of cancer.

(c) Leave time and employee retention benefits equivalent to those provided for other injuries or illnesses incurred in the line of duty.

If the firefighter elects to continue coverage in the employer-sponsored health plan or group health insurance trust fund after he or she terminates employment, the benefits specified in paragraphs (a) and (b) must be made available by the former employer of a firefighter for 10 years following the date on which the firefighter terminates employment so long as the firefighter otherwise met the criteria specified in this subsection when he or she terminated employment and was not subsequently employed as a firefighter following that date. ~~For purposes of determining leave time and employee retention policies, the employer must consider a firefighter's cancer diagnosis as an injury or illness incurred in the line of duty.~~

Section 65. By September 1, 2024, the Florida Birth-Related Neurological Injury Compensation Association shall, in

consultation with the Office of Insurance Regulation and the Agency for Health Care Administration,

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

Remove line 222 and insert:
providing a directive to the Division of Law Revision; amending s. 112.1816, F.S.; providing that, upon a diagnosis of cancer, firefighters are entitled to certain benefits under specified circumstances; providing

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1007 Nicotine Products and Dispensing Devices
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under part I of ch. 569, F.S., and nicotine products under part II of ch. 569, F.S.

The bill:

- Provides definitions for “nicotine product manufacturer”, “wholesale nicotine products dealer", and “wholesale nicotine products dealer permit”.
- Requires manufacturers to certify nicotine dispensing devices with the Division and provide evidence that they have sought approval with the Food and Drug Administration (FDA).
- Requires the Division to develop and maintain an online directory that lists:
  - nicotine product manufacturers that sell nicotine dispensing devices in this state; and
  - nicotine dispensing devices certified by those manufacturers with the Division which comply with this requirement.
- Creates a new wholesale nicotine product dealer permit and requires wholesalers who do not have a tobacco permit to register, and only buy products on the directory.
- Authorizes the Division to conduct unannounced inspections of nicotine product manufacturers.
- Provides administrative fines and imposes criminal penalties for violations of certain provisions.
- Mandates retail nicotine product permit holders, other than nicotine manufacturers selling direct to consumers, to purchase only from permitted wholesalers and only purchase registered products.
- Modifies retail nicotine product dealer permit requirements.
- Allows law enforcement to seize and destroy non-registered nicotine products.

The bill may have an indeterminate fiscal impact on state government and the private sector. See the Fiscal Analysis and Economic Impact Statement for details.

Except as otherwise provided, the effective date of the bill is October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Regulation of Tobacco Products

The Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act) gives the U.S. Food and Drug Administration (FDA) authority to regulate the manufacture, distribution, and marketing of tobacco products to protect the public health. The Tobacco Control Act provides advertising and labeling guidelines, provides standards for tobacco products, and requires face-to-face transactions for tobacco sales with certain exceptions.[1]

On August 8, 2016, the FDA extended the definition of "**tobacco product[s]"** regulated under the Act to **include electronic nicotine delivery systems** (ENDS). ENDS include e-cigarettes, e-cigars, e-hookah, vape pens, personal vaporizers and electronic pipes. Additionally, the definition of tobacco products includes components and parts such as e-liquids, tanks, cartridges, pods, wicks, and atomizers. On April 14, 2022, the FDA's authority was further expanded to include tobacco products containing nicotine from any source, including synthetic nicotine.[2]

Federal law preempts states from providing additional or different requirements for tobacco products in regards to "standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products." However, federal law explicitly preserves the right of states, or any political subdivision of a state, to enact laws, rules, regulations or other measures related to prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of tobacco products which are more stringent than federal requirements.[3]

Registration by Manufacturers

Under federal law, manufacturers[4] are required initially, and annually thereafter, to register the name[5], places of business, and all such establishments of that manufacturer in any State with the FDA.[6] These manufacturers are required to register any additional places which they own or operate and start to manufacture, prepare, compound, or process a tobacco product or tobacco products.[7]

FDA Premarket Review Application Process for Tobacco Products[8]

Before a new tobacco product[9] can be distributed into interstate commerce, the manufacturer is required to submit a marketing application to the FDA and receive authorization.[10] These applications

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[1] Federal Food, Drug, and Cosmetic Act, 21 USC § 351 et seq; 15 U.S.C. s. 1333, s. 1335; 21 U.S.C. s. 387g, s. 387f.

[2] "NTN is the term used to describe nicotine that did not come from a tobacco plant. NTN includes 'synthetic' nicotine." U.S. Food and Drug Administration. *Regulation and Enforcement of Non-Tobacco Nicotine (NTN) Products*, U.S. Food and Drug Administration, www.fda.gov/tobacco-products/products-ingredients-components/regulation-and-enforcement-non-tobacco-nicotine-ntn-products (last visited Jan. 19, 2024).

[3] 21 U.S.C. § 387p.

[4] "The term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user." 21 USCA § 387e(a)(1).

[5] "The term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation." 21 USCA § 387e(a)(2).

[6] 21 USCA § 387e(b)(c).

[7] 21 USCA § 387e(d).

[8] *See generally*, 21 U.S.C. § 387j.

[9] "A 'new tobacco product' is defined as any product not commercially marketed in the U.S. as of Feb. 15, 2007, or the modification of a tobacco product where the modified product was commercially marketed in the U.S. after Feb. 15, 2007." 21 U.S.C. § 387j(1).

are reviewed by the FDA to determine whether the product meets the proper requirements to receive marketing authorization. Marketing authorization can be achieved through a Premarket Tobacco Product Application (PMTA), Substantial Equivalence (SE) Report, or Exemption from Substantial Equivalence Request (EX REQ).[11] The FDA may issue a marketing granted order, temporarily suspend a marketing order, withdraw a marketing granted order, or issue a marketing denial order.[12] Preexisting tobacco products were required to submit marketing applications to the FDA and receive authorization by a particular date depending on the kind of tobacco product. A tobacco manufacturer may challenge the FDA's marketing denial.[13] Manufactures must hold onto records that show their tobacco products are legally on the market.

An applicant may submit a PMTA to demonstrate that a new tobacco product meets the requirements to receive a marketing granted order.[14] The PMTA must contain certain information[15] for the FDA to ascertain whether there are any applicable grounds for a marketing denial order. A PMTA must demonstrate the new tobacco product would be appropriate for the protection of the public health and takes into account the increased or decreased likelihood that existing users of tobacco products will stop using such products, as well as the increased or decreased likelihood that those who do not use tobacco products will start using such products.[16]

A SE Report can be submitted by the tobacco manufacturer to seek an FDA substantially equivalent order. The applicant must provide information on the new tobacco product's characteristics and compare its characteristics to another tobacco product.[17] The SE Report must contain certain information to allow the FDA to determine whether the new tobacco product is substantially equivalent to a tobacco product that was commercially marketed in the United States as of February 15, 2007.[18]

On the other hand, FDA may exempt from the requirements relating to the demonstration that a tobacco product is substantially equivalent tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive if certain conditions are met. An EX REQ from the requirement of showing a substantial equivalence may be made only by the manufacturer of a legally marketed tobacco product for a minor modification to that tobacco product.[19]

The FDA receives millions of applications.[20] **"To date, the FDA has authorized marketing of 45 products, including 23 tobacco-flavored e-cigarette products and devices."[21]** However, the FDA tobacco premarket application process has been challenged. In 2022, the Eleventh Circuit Court of Appeals set aside FDA marketing order denials as arbitrary and capricious[22] because FDA failed to

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[10] *Market and Distribute a Tobacco Product*, U.S. Food and Drug Administration, www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product (last visited Jan. 19, 2024).
[11] https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-products-marketing-orders
[12] 21 U.S.C. § 387j.
[13] *See* Melissa Kress, *Bat to Challenge FDA's Marketing Denial Order for Flavored Vuse Products*, Convenience Store News, (Oct. 13, 2023), https://csnews.com/bat-challenge-fdas-marketing-denial-order-flavored-vuse-products (last visited Jan. 20, 2024).
[14] 21 CFR 1114.5.
[15] The PMTA must include information, such as, full reports of investigations of health risks, effect on the population as a whole, product formulation, statement of compliance and certification, and manufacturing. *See* 21 CFR § 1114.7(a).
[16] *Supra* note 9.
[17] *See* 21 CFR 1107.16 and 21 CFR 1107.18.
[18] 21 CFR 1107.18.
[19] 21 CFR 1107.1.
[20] "FDA Makes Determinations on More than 99% of the 26 Million Tobacco." U.S. Food and Drug Administration, www.fda.gov/tobacco-products/ctp-newsroom/fda-makes-determinations-more-99-26-million-tobacco-products-which-applications-were-submitted (last visited Jan. 24, 2024).
[21] "Premarket Tobacco Product Marketing Granted Orders", U.S. Food and Drug Administration, (updated as of Jan. 9, 2024), www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-granted-orders (last visited Jan. 24, 2024).
[22] Arbitrary and capricious means "founded on prejudice or preference rather than on reason or fact. ARBITRARY, Black's Law Dictionary (11th ed. 2019); *see also*, "…[A]n agency action is lawful only if it rests 'on a consideration of the relevant factors. An agency rule would be arbitrary and capricious if the agency ... entirely failed to consider an important aspect of the problem." *Bidi Vapor LLC v. U.S. Food & Drug Admin.*, 47 F.4th 1191, 1202 (11th Cir. 2022).

consider relevant factors in evaluating the applications submitted by the six tobacco companies.[23] In 2024, the Fifth Circuit Court of Appeals stated in reference to the tobacco premarketing application process, that "[o]ver several years, the Food and Drug Administration sent manufacturers of flavored e-cigarette products on a wild goose chase."[24]

Florida Regulation of Tobacco and Nicotine Products

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under part I of ch. 569, F.S., and nicotine products under part II of ch. 569, F.S. Under Florida law, tobacco products and nicotine products have different definitions. This differs from federal law where tobacco products include nicotine products.

Regulation of Tobacco Products

"Tobacco products" include loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.[25]

Section 210.25(11), F.S., relating to the tax on tobacco products other than cigarettes or cigars, defines the term "tobacco products" differently as "loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing."

"Tobacco products" in either definition does not include nicotine products or nicotine dispensing devices.

Under Section 210.01, F.S.:

"Wholesale dealer" means any person located inside or outside this state who sells cigarettes[26] to retail dealers or other persons for purposes of resale only. Such term shall not include any cigarette manufacturer, export warehouse proprietor, or importer with a valid permit [27]if such person sells or distributes cigarettes in this state only to dealers who are agents and who hold valid and current permits under s. 210.15, F.S. or to any cigarette manufacturer, export warehouse proprietor, or importer who holds a valid and current permit under 26 U.S.C. s. 5712.[28]

"Distributing agent" means every person, firm or corporation in this state who acts as an agent for any person, firm or corporation outside or inside the state by receiving cigarettes in interstate or intrastate commerce and storing such cigarettes subject to distribution or delivery upon order from said principal to wholesale dealers and other distributing agents inside or outside this state.[29]

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[23] *See, Bidi Vapor LLC v. U.S. Food & Drug Admin*., 47 F.4th 1191, 1205 (11th Cir. 2022) (where 6 tobacco companies included their proposed marketing and sales-access restrictions in their application, and the FDA marketing denial orders specifically stated that it did not consider the marketing or sales-access-restriction plans in the companies' applications.).

[24] *Wages & White Lion Investments, L.L.C. v. Food & Drug Admin*., 90 F.4th 357 (5th Cir. 2024) (the court held that the FDA's denial of marketing orders was arbitrary and capricious because FDA failed to give manufacturers fair notice of the rules, did not explain or admit a change in position regarding application requirements, and disregarded the tobacco manufacturers' good faith reliance on previous FDA guidance).

[25] S. 569.002(6), F.S.

[26] "'Cigarette" means any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient. S. 210.01(1), F.S.

[27] 26 U.S.C. s. 5712.

[28] S. 210.01(6), F.S.

[29] S. 210.01(14), F.S.

Cigarette and Tobacco Products Wholesalers, Distributors, and Manufacturers

A person must obtain a permit from the Division in order to distribute tobacco products, not including cigarettes or cigars. A person must obtain a permit for each place of business. The fee for such permit is $25.[30]

A person must obtain a cigarette permit from the Division in order to import, export, manufacture, deal at wholesale, or distribute cigarettes in the state. A person must obtain a permit for each place of business in the state or its principal place of business if the person does not have a business in this state. The fee for such permit is $100. The Division may only issue permits to persons who are 18 years or older or corporations with officers who are 21 years or older.[31]

Retail Tobacco Products Dealers

In order to sell tobacco products at retail or operate a tobacco products vending machine in Florida, a person must obtain a retail tobacco products dealer permit from the Division. A tobacco products dealer permit holder is allowed to sell nicotine products and nicotine dispensing devices, in addition to tobacco products. A person must obtain a permit for each place of business or premises where tobacco products are sold. Any person who owns, leases, furnishes, or operates a vending machines that dispense tobacco products must also obtain a permit for each machine. The fee for such permit is $50.[32] The Division may only issue permits to persons who are 21 years or older or corporations with officers who are 21 years or older.[33]

Anyone who deals in tobacco products at retail or allows a vending machine on the premises without a permit is subject to a $500 fine.[34]

DBPR is required to submit an annual report to the Governor and Legislature regarding the enforcement of tobacco products, including:[35]

- The number and results of compliance visits by the Division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 21 and the results of administrative hearings on such violations; and
- The number of people under the age of 21 cited, including sanctions imposed as a result of such citation, for misrepresenting their age, purchasing tobacco products underage, and misrepresenting military service for the purpose of obtaining tobacco products underage.

Florida also has an excise tax and surcharge on cigarettes and other tobacco products, not including cigars. The tax and surcharge for cigarettes is $0.1695 to $0.42375 per pack and a surcharge of $0.50 to $1.25 per pack depending on the number of cigarettes in the pack. The excise tax for tobacco products is 25 percent of the wholesale price and the surcharge is 60 percent of the wholesale price. There is no excise tax or surcharge for nicotine products or nicotine dispensing devices.[36]

Nicotine Regulations

"Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

[30] S. 210.40, F.S.
[31] S. 210.15, F.S.
[32] S. 569.003, F.S.
[33] S. 569.003, F.S.
[34] S. 569.005, F.S.
[35] S. 569.19, F.S.
[36] Ss. 210.011, 210.02, 210.276, and 210.30, F.S.; DBPR, Alcoholic Beverages & Tobacco – Tax & Reporting Information For Licensees, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/tax-and-reporting-information-for-licensees/#1510753842753-25986d10-086f (last visited Jan. 20, 2024).

"Nicotine product" means any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means.

Retail Nicotine Products Dealers

The regulations for the sale of nicotine products and nicotine dispensing devices mirror the regulations for the sale of tobacco products. However, nicotine products **do not** have a tax or permit fee similar to tobacco products.

Administrative Penalties

The Division may suspend or revoke the permit of the retail tobacco products dealer or retail nicotine product dealer upon sufficient cause appearing of the violation of chapter 569. The Division may also assess and accept administrative fines of up to $1,000 against a dealer for each violation. The Division shall deposit all fines collected into the General Revenue Fund as collected. An order imposing an administrative fine becomes effective 15 days after the date of the order. The Division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the Division considers appropriate.[37]

Consent to inspection and search without warrant

The place or premises covered by a permit for a retail tobacco products dealer or a permit for a retail nicotine product dealer is subject to inspection and search without a search warrant by the Division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements for and dealing.[38]

Effect of the Bill

Definitions

The bill modifies the definition of "nicotine dispensing device" by providing that "each individual stock keeping unit is considered a separate nicotine product." The bill provides the following definitions:

- "Sell" or "sale" means in addition to its common usage meaning, any sale, transfer, exchange, barter, gift, or offer for sale and distribution, in any manner or by any means whatsoever.
- "Timely filed premarket tobacco product application" means either:
  - An application pursuant to 21 U.S.C. s. 387j for a nicotine dispensing device containing or utilizing nicotine derived from tobacco marketed in the United States as of August 8, 2016, that was submitted to the FDA on or before September 9, 2020, and accepted for filing; or
  - An application pursuant to 21 U.S.C. s. 387j for a nicotine dispensing device that:
    - Is not a single use electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product; and
    - Contains or utilizes nicotine derived from a non-tobacco source.
- "Nicotine product manufacturer" means any person that manufactures nicotine products.
- "Wholesale nicotine products dealer" means the holder of a wholesale nicotine products dealer permit who purchases nicotine dispensing devices or nicotine products from any nicotine product manufacturer.
- "Wholesale nicotine products dealer permit" means a permit issued by the Division under s. 569.316.

Nicotine Dispensing Device Directory

Submission of Form and Applicable Copy Page for Certification

[37] Ss. 569.006 and 569.35, F.S.
[38] Ss. 569.004 and 569.33, F.S.

By December 1, 2024, and annually thereafter, the bill requires every nicotine product manufacturer that sells nicotine dispensing devices to any person for eventual retail sale in this state to execute and deliver a form, prescribed by the Division, under penalty of perjury for each such nicotine dispensing device sold that attests to meeting either of the following criteria:

- The manufacturer of a nicotine dispensing device has submitted a timely filed premarket tobacco product application for the nicotine dispensing device pursuant to 21 U.S.C. s. 387j to the FDA and:
  - has received a marketing denial order for the nicotine dispensing device from the FDA.
  - the application either remains under review by the FDA, or
  - has received a marketing denial order that has been and remains stayed by the FDA or court order, rescinded by the FDA, or vacated by a court; or
- The nicotine product manufacturer has received a marketing granted order under 21 U.S.C. s. 387j for the nicotine dispensing device from the FDA.

The Division's form must require each nicotine product manufacturer to set forth:

- the name under which the nicotine product manufacturer transacts or intends to transact business;
- the address of the location of the nicotine product manufacturer's principal place of business;
- the nicotine product manufacturer's e-mail address; and
- the brand name of the nicotine dispensing device, the device's category (e.g., e-liquid, power unit, device, e-liquid cartridge, e-liquid pod, disposable), the device's name, and any flavor utilized with the device that is sold in this state.

Such form must be delivered to the Division.

The bill provides that the Division may allow a nicotine product manufacturer to group its nicotine products on its certification.

In addition to completing the form prescribed by the Division, the bill requires each nicotine product manufacturer to provide a copy of:

- the cover page of the granted marketing order issued by the FDA pursuant to 21 U.S.C. s. 387j for each device;
- the acceptance letter issued by the FDA pursuant to 21 U.S.C. s. 387j for a timely filed premarket tobacco product application for each device; or
- a document issued by the FDA or by a court confirming that the premarket tobacco product application has been received and denied, but the order is not yet in effect for each device.

After the nicotine product manufacturer submits the form and the applicable cover page (certification) as prescribed under the bill to the Division, the bill requires the nicotine product manufacturer to notify the Division within 30 days after any material change to the certification, including, but not limited to, issuance by the FDA of any of the following:

- A denial of a market authorization pursuant to 21 U.S.C. s. 387j;
- An order requiring a nicotine product manufacturer to remove a nicotine dispensing device or nicotine product from the market either temporarily or permanently;
- Any notice of action taken by the FDA affecting the ability of the nicotine dispensing device to be introduced or delivered in this state for commercial distribution;
- Any change in policy which results in a nicotine dispensing device becoming an FDA enforcement priority; or
- Any other change deemed material by the Division pursuant to a rule of the Division.

The bill provides that a nicotine product manufacturer that falsely represents any of the information in the form prescribed by the Division or the applicable copy page in the certification process commits a felony of the third degree for each false representation.

Directory

The bill requires the Division to develop and maintain a directory listing all the:

- nicotine product manufacturers that sell nicotine dispensing devices in this state; and
- nicotine dispensing devices certified by those manufacturers with the Division which comply with this requirement.

The bill requires the Division to:

- Make the directory available January 1, 2025, on its or DBPR's website.
- Update the directory as necessary.
- Establish a process to provide retailers, distributors, and wholesalers notice of the initial publication of the directory and changes made to the directory in the prior month.

Process for Removal from the Directory

The bill requires the Division to establish by rule a process to provide a nicotine product manufacturer notice and an opportunity to cure deficiencies before removing the manufacturer or any of its nicotine dispensing devices from the directory.

The bill prohibits the Division from removing the nicotine product manufacturer or any of its nicotine dispensing devices from the directory until at least 30 days after the nicotine product manufacturer has been given notice of an intended action. Notice is sufficient and deemed immediately received by a nicotine product manufacturer if the notice is sent either electronically or by facsimile to an e-mail address or facsimile number provided by the nicotine product manufacturer in its most recent certification.

The bill provides that the nicotine product manufacturer has 15 days from the date of service of the notice of the Division's intended action to establish that the nicotine product manufacturer or any of its nicotine dispensing devices should be included on the directory.

The bill provides that a determination by the Division not to include or to remove from the directory a nicotine product manufacturer or nicotine dispensing device is subject to review under chapter 120. If a nicotine product manufacturer seeks review of removal from the directory, the Division must keep the nicotine dispensing device on the directory until conclusion of the hearing.

The bill provides that if a nicotine dispensing device is removed from the directory:

- Each retailer and each wholesaler holding nicotine dispensing devices for eventual sale to a consumer in this state has 30 days from the day such product is removed to sell the product or remove the product from its inventory.
- After 30 days following removal, the product identified in the notice of removal is contraband and subject to s. 569.345, F.S.

Nicotine Dispensing Devices Not Listed on the Directory

The bill provides that beginning March 1, 2025, or on the date that the Division first makes the directory available for public inspection on its or the DBPR's website, whichever is later, a nicotine product manufacturer that offers for sale in this state a nicotine dispensing device not listed on the directory is subject to a fine of $1,000 per day for each individual nicotine dispensing device offered for sale in violation of this section until the offending product is removed from the market or until the offending product is properly listed on the directory.

The bill gives each retailer 60 days from the date that the Division first makes the directory available for inspection on its public website to sell products that were in its inventory and not included on the directory or remove those products from inventory.

The bill gives each distributor or wholesaler 60 days from the date that the Division first makes the directory available for inspection on its public website to remove from inventory those products intended for eventual retail sale to a consumer in this state.

Unannounced Inspections

The bill provides that each retail nicotine products dealer and wholesale nicotine products dealer is subject to unannounced inspections or audit checks by the Division for purposes of enforcing compliance with the certification process and the directory. The Division is required under the bill to conduct unannounced follow-up compliance checks of all noncompliant retail nicotine products dealers or wholesale nicotine products dealers within 30 days after a violation. The bill requires the Division to publish the results of all inspections at least annually and make the results available to the public on request.

Certification Renewal

The bill gives the Division rule making authority to develop a procedure to allow nicotine product manufacturers to renew certifications without having to resubmit all the information for the certification process.

Failure to Provide Information

The bill provides that failure of a nicotine product manufacturer to provide information or documents required may result in:

- a nicotine dispensing device not being included on the directory; or
- the removal of a nicotine dispensing device from the directory.

The bill:

- Authorizes the Division to assess an administrative fine of up to $1,000 for each nicotine dispensing device offered for sale in this state if a nicotine product manufacturer fails to provide notice to the Division of a material change to its certification within 30 days after that material change.
- Requires the Division to deposit all fines collected into the General Revenue Fund.

The bill specifies that an order imposing an administrative fine becomes effective 15 days after the date of the order.

Maintenance and Inspection of Nicotine Dispensing Device Records

The bill requires each nicotine product manufacturer that sells nicotine dispensing devices in this state to keep for a period of 3 years, at the address listed on the certification:

- a complete and accurate record of the number of sales of nicotine dispensing devices sold or delivered to a wholesaler in Florida; and
- to whom each nicotine dispensing device was sold on a wholesale basis, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold. Such records may be kept in an electronic or paper format.

The bill provides similar maintenance requirements for retail nicotine products dealers; wholesale nicotine products dealers; wholesale dealers, and distributing agent. They must keep a record of the quantity of each nicotine dispensing device received, delivered, or sold in Florida and to whom each nicotine dispensing device was sold or delivered or from whom they received each nicotine dispensing device, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold or delivered or from which each product was received. The records are allowed to kept in electronic or paper format.

The bill provides that within seven calendar days after receiving a request by the Division, a nicotine product manufacturer that sells nicotine dispensing devices in this state, including a nicotine product manufacturer selling nicotine products directly to consumers; a retail nicotine products dealer; a wholesale nicotine products dealer; a wholesale dealer, and a distributing agent provide such records, must provide to the Division or its representative, copies of records related to the nicotine dispensing

devices received, delivered, or sold in this state and to whom those nicotine dispensing devices were sold or delivered or from whom they were received.

The bill allows the Division to examine such records, issue subpoenas[39] to such persons or entities; administer oaths; and take depositions of witnesses within or outside of Florida. The bill states that the Division or its representative issue and serve subpoenas and subpoenas duces tecum[40] to compel the attendance of witnesses and the production of all materials relevant to an examination or investigation[41]. Subpoenas shall be served and enforceable in the manner provided by law and the Division may enforce such in the same manner as provided in section 210.161 regarding the examination of records for cigarettes[42]. The bill provides that issued subpoena may be used to compel such witness to:

- Appear before the Division, or its representative;
- Give his or her testimony; and
- Produce such records as may be required for examination.

The bill provides that the Division or its representative may bring a legal action against a witness who refuses to appear or testify before the circuit court. Failure to comply with such subpoena may be punishable as contempt of court.[43] Under the bill, if a person is subpoenaed, the Division may pay such attendance and mileage fees as are permitted to be paid to witnesses in civil cases appearing before the circuit court.

For each violation regarding maintenance and inspection of records, the Division is authorized to assess an administrative fine of up to $1,000. The bill requires the Division to deposit all fines collected into the General Revenue Fund, and specifies that an order imposing an administrative fine becomes effective 15 days after the date of the order.

Shipment of Unregistered Nicotine Dispensing Devices

The bill prohibits a nicotine product manufacturer from distributing nicotine dispensing devices for eventual retail sale to a consumer in Florida, in which:

- there is an FDA order requiring the nicotine product manufacturer to remove the product from the market either temporarily or permanently;
- has not submitted a timely filed premarket tobacco product application for a nicotine dispensing device that remains pending with the FDA; or
- has not submitted the certification required for such nicotine dispensing device.

The bill states that a nicotine product manufacturer who knowingly ships or receives such nicotine dispensing devices, commits a first degree misdemeanor. The bill:

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[39] A subpoena is an order to compel someone to testify. *Subpoena*, Legal Information Institute, www.law.cornell.edu/wex/subpoena (last visited Feb. 19, 2024).

[40] "A subpoena duces tecum commands the person to whom it is directed to produce the books, papers, documents or tangible things designated therein. While a subpoena duces tecum is not an order issued by a judge, it is process of the court enforceable by contempt proceedings." Fla. Att'y Gen. Op. 94-86 (1994). "A subpoena duces tecum commands production by any 'witness who has in his possession or control' a document pertinent to a pending controversy."
Whittier v. City of Sunrise, 07-60476-CIV, 2007 WL 9706152, at *4 (S.D. Fla. Aug. 22, 2007).

[41] "[A]n [state administrative agency] investigation does not determine guilt or innocence, but serves as the means by which agencies can collect the information needed to decide whether to file an action. Because liability will be determined in a later proceeding at which the defendant will be able to assert a vigorous defense, courts give agencies 'more latitude ... in considering the foundation for a subpoena." Roger B. Handberg, The Enforcement of Investigative Subpoenas Issued by Administrative Agencies an Analysis of Common Defenses, Fla. B.J., October 2002, at 40, 40–42.

[42] A subpoena "…may be enforced by writ of attachment to be issued by the division, or any employee designated by it, for such witness to compel him or her to attend before the division, or any employee designated by it, and give testimony and to bring and produce such books, papers, and documents as may be required for examination." S. 210.161, F.S. According to Black's Law Dictionary, a writ of attachment can either mean an "arrest of a person who either is in contempt of court or is to be held as security for the payment of a judgment", or "a writ ordering legal seizure of property (esp. to satisfy a creditor's claim) or of a person." ATTACHMENT, Black's Law Dictionary (11th ed. 2019).

[43] "Failure by any person without adequate excuse to obey a subpoena served on that person may be deemed a contempt of the court from which the subpoena issued." Fla. R. Civ. P. 1.410(f).

- Authorizes the Division to impose an administrative fine up to $5,000 for each violation.
- Requires the Division to deposit all fines collected into the General Revenue Fund.

The bill specifies that an order imposing an administrative fine becomes effective 15 days after the date of the order.

Wholesale Nicotine Products Dealer

The bill creates a wholesale nicotine products dealer permit which is issued by the Division. The provisions of the bill that address a wholesale nicotine products dealer permit mirror the provisions for a retail tobacco dealer and a retail nicotine dealer. The bill provides that a wholesale dealer or a distributing agent is not required to have a separate or additional wholesale nicotine products dealer permit to deal, at wholesale, in nicotine products in Florida. Furthermore, the bill states that a wholesale dealer, a distributing agent, or a tobacco products distributor, which deals, at wholesale, in nicotine products is subject to, and must be in compliance with ch. 569, F.S., regarding nicotine and tobacco.

The bill requires that wholesale nicotine products dealer may only purchase and sell for retail sale in this state nicotine dispensing devices contained on the directory created by the Division. The Division is authorized to:

- Suspend or revoke the permit of a wholesale nicotine products dealer if the dealer fails to comply.
- Impose an administrative fine up to $5,000 for each violation. The Division shall deposit all fines collected into the General Revenue Fund.

The bill specifies that an order imposing an administrative fine becomes effective 15 days after the date of the order.

The bill provides that the place or premises covered by a permit for a wholesale nicotine product dealer is subject to inspection and search without a search warrant by the Division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements.

Retail Nicotine Products Dealer

The bill adds dealing at retail in nicotine dispensing devices to the criteria that requires a retail nicotine product dealer permit.

The bill provides that retail nicotine products dealer permits may be renewed each year. Under the bill, a retail nicotine products dealer that does not timely renew its permit must pay a late fee of $5 for each month or portion of a month occurring after expiration, and before renewal, of the dealer's permit. The Division shall establish by rule a renewal procedure that, to the greatest extent feasible, combines the application and permitting procedure for permits with the application and licensing system for alcoholic beverages. The bill prohibits the Division from granting an exemption from the permit fees for any applicant.

The bill specifies that the Division's current authority to refuse to issue a permit is based on such revocations by any jurisdiction.

The bill provides that on or after March 1, 2025, it is unlawful for a person, a firm, an association, or a corporation to deal, at retail, in nicotine products that are not listed on the Division's directory. Any person who knowingly ships or receives such nicotine products commits a misdemeanor of the second degree.

The bill provides that on or after January 1, 2025, it is unlawful for a retail nicotine products dealer to purchase nicotine dispensing devices from a wholesaler, manufacturer, or other source that is not a wholesale nicotine products dealer permitholder, a wholesale dealer, a distributing agent, or a tobacco products distributor. The bill states that any person who knowingly ships or receives nicotine dispensing devices in violation of this section commits a second degree misdemeanor. The bill authorizes the

Division to suspend or revoke a retail nicotine products permit and may also assess an administrative fine of up to $1,000 for each violation.

Seizure and Destruction of Contraband Nicotine Dispensing Devices

The bill declares all nicotine dispensing devices sold in contravention of ch. 569, F.S., to be contraband. The contraband may be searched and seized per the Florida Contraband Forfeiture Act. The bill requires that a Judge order the destruction and forfeiture of contraband nicotine dispensing devices. The bill requires that the Division document the place where the contraband was seized, the kind and quantities of contraband seized, the cost of destruction, the time, place, and manner of destruction, the chain of custody of the contraband, and the cost of destruction.

The bill provides funding and positions to implement the act.

Agent for Service of Process

The bill requires any nonresident manufacturer of nicotine dispensing devices that has not registered to do business in the state as a foreign corporation or business entity to, as a condition precedent to being included on the nicotine directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of ch. 569, F.S., may be served in any manner authorized by law.

The bill:

- Provides that such service constitutes legal and valid service of process on the manufacturer.
- Requires the manufacturer to provide the name, address, telephone number, and proof of the appointment and availability of such agent to the Division.
- Requires the manufacturer to provide notice to the Division 30 calendar days before termination of the authority of an agent and further provide proof to the satisfaction of the Division of the appointment of a new agent no less than 5 calendar days before the termination of an existing agent appointment.
- Requires, in the event an agent terminates an agency appointment, the manufacturer to notify the Division of the termination within 5 calendar days and include proof to the satisfaction of the Division of the appointment of a new agent.
- Requires any manufacturer whose nicotine dispensing devices are sold in this state who has not appointed and engaged the services of an agent as required to be deemed to have appointed the Secretary of State as its agent for service of process. The appointment of the Secretary of State as agent does not satisfy the condition precedent to be included or retained on the nicotine dispensing device directory.

B. SECTION DIRECTORY:

Section 1: Amends s. 569.31, F.S., relating to definitions.

Section 2: Creates s. 569.311, F.S., relating to nicotine dispensing device directory.

Section 3: Creates s. 569.312, F.S., relating to maintenance and inspection of nicotine dispensing device records.

Section 4: Creates s. 569.313, F.S., relating to shipment of unregistered nicotine dispensing devices sold for retail sale in this state.

Section 5: Creates s. 569.316, F.S., relating to wholesale nicotine products dealer permits; application; qualifications; renewal; duplicates.

Section 6: Creates s. 569.317, F.S., relating to wholesale nicotine products dealer permitholder; administrative penalties.

Section 7: Amends s. 569.32, F.S., relating to retail nicotine products dealer permits.

Section 8: Amends s. 569.33, F.S., relating to consent to inspection and search without warrant.

Section 9: Amends s. 569.34, F.S., relating to operating without a retail nicotine products dealer permit.

Section 10: Creates s. 569.345, F.S., relating to seizure and destruction of contraband nicotine dispensing devices.

Section 11: Creates s. 569.346 Agent for service of process.

Section 12: Amends s. 569.31, F.S., relating to definitions.

Section 13: Provides appropriations.

Section 14: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill establishes new fines and penalties that the Division may impose. The revenue generated from these penalties will vary each year depending on the number of violations enforced.

2. Expenditures:

   The bill provides funding for four positions with a total salary rate of 180,000. Additionally, the bill provides $278,875 in recurring funds and $20,268 in nonrecurring funds from the Alcoholic Beverage and Tobacco Trust Fund to DBPR to implement the act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses that are distributing nicotine products and operating as manufacturers, retailers, or wholesales will be penalized by fines or a criminal offense if they are distributing nicotine products without being on the directory or without proper permitting.

D. FISCAL COMMENTS:

Collected fines established in the bill are to be deposited into the General Revenue Fund. However, the Division currently deposits fines and other revenues into the Alcoholic Beverage and Tobacco Trust Fund. These funds are used for the purposes of operating the Division as requested by DBPR in their legislative budget request.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   The bill empowers the Division to develop and maintain a directory listing all the certified nicotine products and to develop a procedure to allow nicotine products manufacturers to renew certifications without having to resubmit all the information for the certification process. The bill provides that the Division must develop a form for the nicotine manufacturers to certify their businesses and nicotine products.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to nicotine products and dispensing devices; reordering and amending s. 569.31, F.S.; revising and defining terms for purposes of part II of ch. 569, F.S.; creating s. 569.311, F.S.; requiring nicotine product manufacturers who sell nicotine dispensing products in this state to execute and deliver a form, under penalty of perjury, to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation for each dispensing device sold within this state which meets certain criteria; specifying requirements for the form prescribed by the division; requiring nicotine product manufacturers to submit certain additional materials when submitting the form to the division; requiring a manufacturer to notify the division of certain events; requiring the division to develop and maintain a directory listing certified nicotine product manufacturers and certified nicotine dispensing devices by a specified date; specifying requirements for the directory; requiring the division to establish rules to provide notice to a nicotine product manufacturer before removal of the manufacturer or any of its nicotine dispensing devices from the directory; providing for administrative

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

review of action by the division regarding the directory; providing penalties for certain violations by manufacturers; subjecting retail and wholesale nicotine products dealers to inspections or audits to ensure compliance; requiring the division to publish findings of such inspections and audits and make them available to the public; authorizing the division to adopt certain procedures by rule; authorizing the division to take certain actions against nicotine product manufacturers who fail to provide certain documents or information; requiring all fines to be deposited into the General Revenue Fund; creating s. 569.312, F.S.; requiring specified manufacturers and dealers of nicotine dispensing devices to maintain certain records for a specified timeframe; requiring such manufacturers and dealers to timely comply with division requests to produce records; authorizing the division to examine such records for specified purposes; providing for enforcement; authorizing the division to assess administrative fines for noncompliance and requiring all fines to be deposited into the General Revenue Fund; creating s. 569.313, F.S.; prohibiting the sale, shipment, or distributing of certain nicotine dispensing devices from being sold for retail sale in this state; providing a criminal

penalty; authorizing the division to assess fines and requiring all fines to be deposited into the General Revenue Fund; creating s. 569.316, F.S.; requiring persons or entities that seek to deal or sell certain nicotine products to retail dealers to obtain a wholesale nicotine products dealer permit; specifying requirements and limitations regarding the issuance of such permits; specifying conditions under which the division may refuse to issue a permit; providing requirements and limitations for permitholders; providing that a wholesale dealer or a distributing agent do not need separate or additional wholesale nicotine products permit in this state; creating s. 569.317, F.S.; requiring wholesale nicotine products dealer permitholders to purchase and sell for retail sale only nicotine dispensing devices listed in the division's directory; authorizing the division to suspend or revoke a permit if a violation is deemed to have occurred; authorizing the division to assess administrative penalties for violations and requiring all fines to be deposited into the General Revenue Fund; amending s. 569.32, F.S.; requiring that retail nicotine products dealer permits be issued annually; providing procedures for the renewal of permits; requiring the division to levy a delinquent fee under

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

certain circumstances; requiring the division to adopt by rule a certain procedure for the submittal of applications; prohibiting the division from granting exemptions from permit fees; making technical changes; amending s. 569.33, F.S.; providing that holders of a wholesale nicotine products dealer permit must consent to certain inspections and searches without a warrant; amending s. 569.34, F.S.; providing criminal penalties for the unlawful sale or dealing of unlisted nicotine dispensing devices; providing criminal penalties for the unauthorized purchase of certain nicotine dispensing devices; authorizing the division to suspend or revoke a permit of a permitholder upon sufficient cause of a violation of part II of ch. 569, F.S.; authorizing the division to assess an administrative penalty for violations and requiring all fines to be deposited into the General Revenue Fund; making technical changes; creating s. 569.345, F.S.; providing for the seizure and destruction of unlawful nicotine dispensing devices in accordance with the Florida Contraband Forfeiture Act; requiring a court with jurisdiction to take certain action; requiring the division to maintain certain records; requiring that costs be borne by the person who held the seized products; creating s. 569.346, F.S.;

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

requiring certain manufacturers of nicotine dispensing devices to appoint an agent for certain purposes; requiring such manufacturers to provide certain notice; appointing the Secretary of State as the agent to manufacturers who have not appointed an agent; amending s. 569.002, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. Section 569.31, Florida Statutes, is reordered and amended to read:

569.31 Definitions.—As used in this part, the term:

(2)~~(1)~~ "Dealer" is synonymous with the term "retail nicotine products dealer."

(3)~~(2)~~ "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(4) "FDA" means the United States Food and Drug Administration.

(5)~~(3)~~ "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar,

electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product. For purposes of this definition, each individual stock keeping unit is considered a separate nicotine product.

(6) ~~(4)~~ "Nicotine product" means any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device. The term does not include a:

(a) Tobacco product, as defined in s. 569.002;

(b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(c) Product that contains incidental nicotine.

(7) "Nicotine product manufacturer" means any person that manufactures nicotine products.

(8) ~~(5)~~ "Permit" is synonymous with the term "retail nicotine products dealer permit."

(9) ~~(6)~~ "Retail nicotine products dealer" means the holder of a retail nicotine products dealer permit.

(10) ~~(7)~~ "Retail nicotine products dealer permit" means a

permit issued by the division under s. 569.32.

(11) ~~(8)~~ "Self-service merchandising" means the open display of nicotine products, whether packaged or otherwise, for direct retail customer access and handling before purchase without the intervention or assistance of the dealer or the dealer's owner, employee, or agent. An open display of such products and devices includes the use of an open display unit.

(12) "Sell" or "sale" means in addition to its common usage meaning, any sale, transfer, exchange, barter, gift, or offer for sale and distribution, in any manner or by any means whatsoever.

(13) "Timely filed premarket tobacco product application" means either:

(a) An application pursuant to 21 U.S.C. s. 387j for a nicotine dispensing device containing or utilizing nicotine derived from tobacco marketed in the United States as of August 8, 2016, that was submitted to the FDA on or before September 9, 2020, and accepted for filing; or

(b) An application pursuant to 21 U.S.C. s. 387j for a nicotine dispensing device that:

1. Is not a single use electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product; and

2. Contains or utilizes nicotine derived from a non-tobacco source.

(14) "Wholesale nicotine products dealer" means the holder of a wholesale nicotine products dealer permit who purchases nicotine dispensing devices or nicotine products from any nicotine product manufacturer.

(15) "Wholesale nicotine products dealer permit" means a permit issued by the division under s. 569.316.

(1) ~~(9)~~ "Any person under the age of 21" does not include any person under the age of 21 who:

(a) Is in the military reserve or on active duty in the Armed Forces of the United States; or

(b) Is acting in his or her scope of lawful employment.

Section 2. Section 569.311, Florida Statutes, is created to read:

569.311 Nicotine dispensing device directory.—

(1) By December 1, 2024, and annually thereafter, every nicotine product manufacturer that sells nicotine dispensing devices to any person for eventual retail sale in this state shall execute and deliver a form, prescribed by the division, under penalty of perjury for each such nicotine dispensing device sold that attests to meeting either of the following criteria:

(a) The manufacturer of a nicotine dispensing device has submitted a timely filed premarket tobacco product application for the nicotine dispensing device pursuant to 21 U.S.C. s. 387j to the FDA, and has received a marketing denial order for the

nicotine dispensing device from the FDA, or the application either remains under review by the FDA, or has received a marketing denial order that has been and remains stayed by the FDA or court order, or that has been rescinded by the FDA or vacated by a court; or

(b) The nicotine product manufacturer has received a marketing granted order under 21 U.S.C. s. 387j for the nicotine dispensing device from the FDA.

(2) Such form shall be delivered to the division. The form prescribed by the division pursuant to subsection (1) must require each nicotine product manufacturer to set forth the name under which the nicotine product manufacturer transacts or intends to transact business, the address of the location of the nicotine product manufacturer's principal place of business, the nicotine product manufacturer's e-mail address, the brand name of the nicotine dispensing device, the device's category including e-liquid, power unit, device, e-liquid cartridge, e-liquid pod, disposable, the device's name, and any flavor utilized with the device that is sold in this state. The division may allow a nicotine product manufacturer to group its nicotine dispensing devices on its certification.

(3) In addition to completing the form prescribed by the division pursuant to subsection (1), each nicotine product manufacturer shall provide a copy of the cover page of the granted marketing order issued by the FDA pursuant to 21 U.S.C.

s. 387j for each device; a copy of the acceptance letter issued by the FDA pursuant to 21 U.S.C. s. 387j for a timely filed premarket tobacco product application for each device; or a document issued by the FDA or by a court confirming that the premarket tobacco product application has been received and denied, but the order is not yet in effect for each device.

(4) Any nicotine product manufacturer submitting a certification pursuant to subsection (1) shall notify the division within 30 days after any material change to the certification, including, but not limited to, issuance by the FDA of any of the following:

(a) A denial of a market authorization pursuant to 21 U.S.C. s. 387j;

(b) An order requiring a nicotine product manufacturer to remove a nicotine dispensing device or nicotine product from the market either temporarily or permanently;

(c) Any notice of action taken by the FDA affecting the ability of the nicotine dispensing device to be introduced or delivered in this state for commercial distribution;

(d) Any change in policy which results in a nicotine dispensing device becoming an FDA enforcement priority; or

(e) Any other change deemed material by the division pursuant to a rule of the division.

(5) The division shall develop and maintain a directory listing all nicotine product manufacturers that sell nicotine

dispensing devices in this state and the nicotine dispensing devices certified by those manufacturers with the division which comply with this section. The division shall make the directory available January 1, 2025, on its or the Department of Business and Professional Regulation's website. The division shall update the directory as necessary. The division shall establish a process to provide retailers, distributors, and wholesalers notice of the initial publication of the directory and changes made to the directory in the prior month.

(6) The division shall establish by rule a process to provide a nicotine product manufacturer notice and an opportunity to cure deficiencies before removing the manufacturer or any of its nicotine dispensing devices from the directory.

(a) The division may not remove the nicotine product manufacturer or any of its nicotine dispensing devices from the directory until at least 30 days after the nicotine product manufacturer has been given notice of an intended action. Notice is sufficient and deemed immediately received by a nicotine product manufacturer if the notice is sent either electronically or by facsimile to an e-mail address or facsimile number provided by the nicotine product manufacturer in its most recent certification filed under subsection (1).

(b) The nicotine product manufacturer has 15 days from the date of service of the notice of the division's intended action

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to establish that the nicotine product manufacturer or any of its nicotine dispensing devices should be included on the directory.

(c) A determination by the division not to include or to remove from the directory a nicotine product manufacturer or nicotine dispensing device is subject to review under chapter 120. If a nicotine product manufacturer seeks review of removal from the directory, the division must keep the nicotine dispensing device on the directory until conclusion of the hearing.

(d) If a nicotine dispensing device is removed from the directory, each retailer and each wholesaler holding nicotine dispensing devices for eventual sale to a consumer in this state has 30 days from the day such product is removed from the directory to sell the product or remove the product from its inventory. After 30 days following removal from the directory, the product identified in the notice of removal is contraband and subject to s. 569.345.

(7)(a) Except as provided in subsections (b) and (c), beginning March 1, 2025, or on the date that the division first makes the directory available for public inspection on its or the Department of Business and Professional Regulation's website, whichever is later, a nicotine product manufacturer that offers for sale in this state a nicotine dispensing device not listed on the directory is subject to a fine of $1,000 per

day for each individual nicotine dispensing device offered for sale in violation of this section until the offending product is removed from the market or until the offending product is properly listed on the directory.

(b) Each retailer shall have 60 days from the date that the division first makes the directory available for inspection on its public website to sell products that were in its inventory and not included on the directory or remove those products from inventory.

(c) Each distributor or wholesaler shall have 60 days from the date that the division first makes the directory available for inspection on its public website to remove from inventory those products intended for eventual retail sale to a consumer in this state.

(8) A nicotine product manufacturer that falsely represents any of the information required by subsection (1) or subsection (2) commits a felony of the third degree for each false representation, punishable as provided in s. 775.082 or s. 775.083.

(9) Each retail nicotine products dealer and wholesale nicotine products dealer is subject to unannounced inspections or audit checks by the division for purposes of enforcing this section. The division shall conduct unannounced follow-up compliance checks of all noncompliant retail nicotine products dealers or wholesale nicotine products dealers within 30 days

after any violation of this section. The division shall publish the results of all inspections or audits at least annually and shall make the results available to the public on request.

(10) The division may establish by rule a procedure to allow nicotine product manufacturers to renew certifications without having to resubmit all the information required by this section.

(11) The failure of a nicotine product manufacturer to provide information or documents required by this section may result in a nicotine dispensing device not being included on the directory or the removal of a nicotine dispensing device from the directory. The division may assess an administrative fine of up to $1,000 for each nicotine dispensing device offered for sale in this state if a nicotine product manufacturer fails to provide notice to the division of a material change to its certification within 30 days after that material change. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 3. Section 569.312, Florida Statutes, is created to read:

569.312 Maintenance and inspection of nicotine dispensing device records.—

(1) Each nicotine product manufacturer that sells nicotine dispensing devices in this state shall maintain and keep for a

period of 3 years, at the address listed on the certification required pursuant to s. 569.311, a complete and accurate record of the number of nicotine dispensing devices sold or delivered to a wholesaler in this state and to whom each nicotine dispensing device was sold on a wholesale basis, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold. Such records may be kept in an electronic or paper format.

(2) Each retail nicotine products dealer; wholesale nicotine product dealer; wholesale dealer, as defined in s. 210.01(6); and distributing agent, as defined in s. 210.01(14), shall maintain and keep for a period of 3 years at its principal place of business a complete and accurate record of the quantity of each nicotine dispensing device received, delivered, or sold in this state and to whom each nicotine dispensing device was sold or delivered or from whom the business received each nicotine dispensing device, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold or delivered or from which each product was received. Such records may be kept in an electronic or paper format.

(3) Nicotine product manufacturers that sell nicotine dispensing devices in this state; retail nicotine products dealers; wholesale nicotine products dealers; wholesale dealers,

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as defined in s. 210.01(6); and distributing agents, as defined in s. 210.01(14), who sell or deliver nicotine dispensing devices directly to consumers are not required to keep and maintain the name, address, e-mail address, and telephone number of consumers who purchase or receive nicotine dispensing devices.

(4) Within 7 calendar days after receiving a request by the division, a nicotine product manufacturer that sells nicotine dispensing devices in this state, including a manufacturer selling nicotine dispensing devices directly to consumers; a retail nicotine products dealer; a wholesale nicotine products dealer; a wholesale dealer, as defined in s. 210.01(6); and a distributing agent, as defined in s. 210.01(14), shall provide to the division or its duly authorized representative copies of records related to the nicotine dispensing devices received, delivered, or sold in this state and to whom those nicotine dispensing devices were sold or delivered or from whom they were received.

(5) The division, or a designated employee thereof, may examine the records required to be maintained by each nicotine product manufacturer, retail nicotine products dealer, wholesale nicotine products dealer, wholesale dealer, as defined in s. 210.01(6), and distributing agent, as defined in s. 210.01(14); issue subpoenas to such persons or entities; administer oaths; and take depositions of witnesses within or outside of this

state. The division, or a designated employee thereof, may issue and serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all records, books, papers and documents relevant to an examination or investigation. Subpoenas shall be served and enforceable in the manner provided by law and the division may enforce such in the same manner provided in s. 210.161. The subpoena issued by the division, or any designated employee, may be used to compel such witness to appear before the division, or any designated employee, and give his or her testimony, and to produce such records as may be required for examination. The division, or any designated employee, may bring an action against a witness who refuses to appear or testify before the circuit court. Failure to comply with such subpoena may be punishable as contempt of court. The division may in such cases pay such attendance and mileage fees as are permitted to be paid to witnesses in civil cases appearing before the circuit court.

(6) The division may assess an administrative fine of up to $1,000 for each violation of this section. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 4. Section 569.313, Florida Statutes, is created to read:

569.313 Shipment of unregistered nicotine dispensing

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devices sold for retail sale in this state.—

(1) A nicotine product manufacturer may not sell, ship, or otherwise distribute a nicotine dispensing device in this state for eventual retail sale to a consumer in this state for which:

(a) The FDA has entered an order requiring the nicotine product manufacturer to remove the product from the market either temporarily or permanently, which order has not been stayed by the FDA or a court of competent jurisdiction;

(b) The nicotine product manufacturer has not submitted a timely filed premarket tobacco product application for a nicotine dispensing device that remains pending with the FDA; or

(c) The nicotine product manufacturer has not submitted the certification required under this chapter for any of the nicotine dispensing devices intended for eventual retail sale to a consumer in this state.

(2) Any person who knowingly ships or receives nicotine dispensing devices in violation of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The division may also assess an administrative fine of up to $5,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 5. Section 569.316, Florida Statutes, is created

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to read:

569.316 Wholesale nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at wholesale, in nicotine products that will be sold at retail within this state, or to sell nicotine products or nicotine dispensing devices to any retail nicotine products dealer who intends to sell those nicotine products in this state, must obtain a wholesale nicotine products dealer permit for each place of business or premises at which nicotine products are sold.

(b) Application for a wholesale nicotine products dealer permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business, the applicant's e-mail address, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products or nicotine dispensing devices, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names, e-mail addresses, and addresses of the persons constituting the firm or association. If the applicant is a corporation, the application must set forth the names, e-mail addresses, and addresses of the principal officers of the

corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor; if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(2)(a) Wholesale nicotine products dealer permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

(b) The division may refuse to issue a wholesale nicotine products dealer permit to any person, firm, association, or corporation whose permit has been revoked by any jurisdiction; to any corporation an officer of which has had such permit revoked by any jurisdiction; or to any person who is or has been an officer of a corporation whose permit has been revoked by any jurisdiction. The division must revoke any wholesale nicotine products dealer permit issued to a firm, an association, or a corporation prohibited from obtaining such permit under this chapter.

(3) Upon approval of an application for a wholesale nicotine products dealer permit, the division shall issue to the

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applicant a wholesale nicotine products dealer permit for the place of business or premises specified in the application. A wholesale nicotine products dealer permit is not assignable and is valid only for the person in whose name the wholesale nicotine products dealer permit is issued and for the place designated in the wholesale nicotine products dealer permit. The wholesale nicotine products dealer permit must be conspicuously displayed at all times at the place for which it is issued.

(4) A wholesale dealer, as defined in s. 210.01(6), or a distributing agent, as defined in s. 210.01(14), is not required to have a separate or additional wholesale nicotine products dealer permit to deal, at wholesale, in nicotine dispensing devices within this state. A wholesale dealer, as defined in s. 210.01(6), a distributing agent, as defined in s. 210.01(14), or a tobacco products distributor, as defined in s. 210.25(5), which deals, at wholesale, in nicotine dispensing devices is subject to, and must be in compliance with, this chapter.

Section 6. Section 569.317, Florida Statutes, is created to read:

569.317 Wholesale nicotine products dealer permitholder; administrative penalties.—A wholesale nicotine products dealer permitholder may only purchase and sell for retail sale in this state nicotine dispensing devices contained on the directory created by the division pursuant to s. 569.311. The division may suspend or revoke the wholesale nicotine products dealer permit

of a wholesale nicotine products dealer permitholder upon sufficient cause appearing of a violation of this part by a wholesale nicotine products dealer permitholder or its agent or employee. The division may also assess an administrative fine of up to $5,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a wholesale nicotine products dealer permitholder, conditioned upon compliance with terms the division considers appropriate.

Section 7. Section 569.32, Florida Statutes, is amended to read:

569.32 Retail nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at retail, in nicotine products or nicotine dispensing devices within this ~~the~~ state, or to allow a nicotine products vending machine to be located on its premises in this ~~the~~ state, must obtain a retail nicotine products dealer permit for each place of business or premises at which nicotine products or nicotine dispensing devices are sold. Each dealer owning, leasing, furnishing, or operating vending machines through which nicotine products are sold must obtain a permit for each machine and shall post the permit in a conspicuous

place on or near the machine; however, if the dealer has more than one vending machine at a single location or if nicotine products or nicotine dispensing devices are sold both over the counter and through a vending machine at a single location, the dealer need obtain only one permit for that location.

(b) Application for a permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business within this ~~the~~ state, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products or nicotine dispensing devices within this ~~the~~ state, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names and addresses of the persons constituting the firm or association; if the applicant is a corporation, the application must set forth the names and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor; or, if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of

the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(c) Permits must be issued annually.

(d) The holder of a permit may renew the permit each year. A dealer that does not timely renew its permit must pay a late fee of $5 for each month or portion of a month occurring after expiration, and before renewal, of the dealer's permit. The division shall establish by rule a renewal procedure that, to the greatest extent feasible, combines the application and permitting procedure for permits with the application and licensing system for alcoholic beverages.

(e) The division may not grant an exemption from the permit fees prescribed in this subsection for any applicant.

(2)(a) Permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

(b) The division may refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked by any jurisdiction; to any corporation an officer of which has had his or her permit revoked by any jurisdiction; or to any person who is or has been an officer of a corporation the permit of which has been revoked by any jurisdiction. Any permit issued to a firm, an association, or a corporation prohibited from obtaining a permit under this

chapter must ~~shall~~ be revoked by the division.

(3) Upon approval of an application for a permit, the division shall issue to the applicant a permit for the place of business or premises specified in the application. A permit is not assignable and is valid only for the person in whose name the permit is issued and for the place designated in the permit. The permit must ~~shall~~ be conspicuously displayed at all times at the place for which issued.

Section 8. Section 569.33, Florida Statutes, is amended to read:

569.33 Consent to inspection and search without warrant.—An applicant for a retail nicotine products dealer permit or a wholesale nicotine products dealer permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this part.

Section 9. Section 569.34, Florida Statutes, is amended to read:

569.34 Operating without a retail nicotine products dealer permit; penalty.—

(1) It is unlawful for a person, a firm, an association, or a corporation to deal, at retail, in nicotine products, in any manner, or to allow a nicotine products vending machine to

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be located on its premises, without having a retail nicotine product dealer permit as required by s. 569.32. A person who violates this subsection ~~section~~ commits a noncriminal violation, punishable by a fine of not more than $500.

(2) A retail tobacco products dealer, as defined in s. 569.002(4), is not required to have a separate or additional retail nicotine products dealer permit to deal, at retail, in nicotine products within this ~~the~~ state, or allow a nicotine products vending machine to be located on its premises in this ~~the~~ state. Any retail tobacco products dealer that deals, at retail, in nicotine products or allows a nicotine products vending machine to be located on its premises in this ~~the~~ state, is subject to, and must be in compliance with, this part.

(3) Any person who violates subsection (1) must ~~this section shall~~ be cited for such infraction and must ~~shall~~ be cited to appear before the county court. The citation may indicate the time, date, and location of the scheduled hearing and must indicate that the penalty for a noncriminal violation is a fine of not more than $500.

(a) A person cited for a violation of subsection (1) ~~for an infraction under this section~~ may:

1. Post a $500 bond; or

2. Sign and accept the citation indicating a promise to appear.

(b) A person cited for violating this section may:

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1. Pay the fine, either by mail or in person, within 10 days after receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the scheduled hearing.

(c) If the person pays the fine or forfeits bond, the person is deemed to have admitted violating this section and to have waived the right to a hearing on the issue of commission of the violation. Such admission may not be used as evidence in any other proceeding.

(d) The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven beyond a reasonable doubt, the court may impose a civil penalty in an amount that may not exceed $500.

(e) If a person is found by the court to have committed the infraction, that person may appeal that finding to the circuit court.

(4) On or after March 1, 2025, it is unlawful for a person, a firm, an association, or a corporation in this state to deal, at retail, in nicotine dispensing devices that are not listed on the directory created pursuant to s. 569.311. Any person who knowingly ships or receives nicotine dispensing devices in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) On or after January 1, 2025, it is unlawful for a retail nicotine products dealer in this state, other than a nicotine product manufacturer that also is permitted as a retail nicotine products dealer in this state and is selling its own products directly to consumers, to buy nicotine dispensing devices from a wholesaler, manufacturer, or other source that is not a wholesale nicotine products dealer permitholder, a wholesale dealer, as defined in s. 210.01(6), a distributing agent, as defined in s. 210.01(14), or a tobacco products distributor, as defined in s. 210.25(5). Any person who knowingly ships or receives nicotine dispensing devices in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) The division may suspend or revoke the permit of a retail nicotine products dealer permitholder upon sufficient cause appearing of a violation of this part by a retail nicotine products dealer permitholder, or its agent or employee. The division may also assess an administrative fine of up to $1,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 10. Section 569.345, Florida Statutes, is created to read:

569.345 Seizure and destruction of contraband nicotine

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dispensing devices.—All nicotine dispensing devices sold, delivered, possessed, or distributed contrary to any provision of this chapter are declared to be contraband, are subject to seizure and confiscation under the Florida Contraband Forfeiture Act by any person whose duty it is to enforce the provisions of this chapter, and must be disposed of as follows:

(1) A court having jurisdiction shall order such nicotine dispensing devices forfeited and destroyed. A record of the place where such nicotine dispensing devices were seized, the kinds and quantities of nicotine dispensing devices destroyed, and the time, place, and manner of destruction must be kept, and a return under oath reporting the destruction must be made to the court by the officer who destroys them.

(2) The division shall keep a full and complete record of all nicotine dispensing devices showing:

(a) The exact kinds, quantities, and forms of such nicotine dispensing devices;

(b) The persons from whom they were received and to whom they were delivered;

(c) By whose authority they were received, delivered, and destroyed; and

(d) The dates of the receipt, disposal, or destruction, which record must be open to inspection by all persons charged with the enforcement of tobacco and nicotine product laws.

(3) The cost of seizure, confiscation, and destruction of

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contraband nicotine dispensing devices is borne by the person from whom such products are seized.

Section 11. Section 569.346, Florida Statutes, is created to read:

569.346 Agent for service of process.—

(1) Any nonresident manufacturer of nicotine dispensing devices that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to being included on the directory created in this chapter, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this chapter, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the manufacturer. The manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the division.

(2) The manufacturer shall provide notice to the division 30 calendar days before termination of the authority of an agent and shall further provide proof to the satisfaction of the division of the appointment of a new agent no less than 5 calendar days before the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the manufacturer shall notify the division of the

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termination within 5 calendar days and shall include proof to the satisfaction of the division of the appointment of a new agent.

(3) Any manufacturer whose nicotine dispensing devices are sold in this state who has not appointed and engaged the services of an agent as required by this section shall be deemed to have appointed the Secretary of State as its agent for service of process. The appointment of the Secretary of State as agent shall not satisfy the condition precedent required in subsection (1) of this subsection to be included or retained on the directory.

Section 12. Subsections (3) and (4) of section 569.002, Florida Statutes, are amended to read:

569.002 Definitions.—As used in this part, the term:

(3) "Nicotine product" has the same meaning as provided in s. 569.31 ~~s. 569.31(4)~~.

(4) "Nicotine dispensing device" has the same meaning as provided in s. 569.31 ~~s. 569.31(3)~~.

Section 13. For the 2024-2025 fiscal year, the sums of $278,875 in recurring funds and $20,268 in nonrecurring funds from the Alcoholic Beverage and Tobacco Trust Fund are appropriated to the Department of Business and Professional Regulation, and four full-time equivalent positions with associated salary rate of 180,000 are authorized, for the purpose of implementing this act

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Section 14. This act shall take effect October 1, 2024.

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COMMERCE COMMITTEE

PCS for CS/HB 1007 by Rep. Overdorf
Nicotine Products and Dispensing Devices

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Overdorf (lines 163-589):

- Clarifies the definition of “timely filed premarket tobacco product application” to ensure that illegal vape products marketed towards children are accurately captured.
- Clarifies language regarding how the Food and Drug Administration (FDA) conducts their review process.
- Clarifies the federal premarket tobacco product application criteria under which manufacturers of nicotine dispensing devices are required to attest to have met.
- Clarifies the process by which the Division of Alcoholic Beverages and Tobacco (Division) must provide a nicotine product manufacturer notice and an opportunity to cure deficiencies before removing the manufacturer or any of its nicotine dispensing devices from the nicotine dispensing device directory (directory).
- Requires the Division to keep the nicotine dispensing device on the directory until entry of a final order, instead of conclusion of the hearing, if a nicotine product manufacturer seeks review of removal from the directory.
- Clarifies requirements to maintain and inspect nicotine dispensing device records regarding the enforcement of subpoenas lawfully issued by a judge or other person duly authorized to issue subpoenas under the laws of this state in civil cases.
- Specifies that a nicotine product manufacturer may not sell, ship, or otherwise distribute a nicotine dispensing device in this state for eventual retail sale to a consumer in this state for which the nicotine product manufacturer's timely filed premarket tobacco product application for the nicotine dispensing device is no longer pending because it was not accepted by the FDA, it was denied by the FDA, or it is subject to any other order or action by the FDA or any court that negatively affects the ability of the product to be introduced or delivered into interstate commerce for commercial distribution in the United States.
- Removes the portion of the retail nicotine products dealer permit renewal procedure that requires the Division, to the greatest extent feasible, to combine the application and permitting procedure for permits with the application and licensing system for alcoholic beverages.
- Removes the provision prohibiting the Division from granting an exemption from the retail nicotine products dealer permit renewal fees for any applicant.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Overdorf offered the following:

Amendment

Remove lines 163-589 and insert:

means either:

(a) An application pursuant to 21 U.S.C. s. 387j for a nicotine dispensing device containing or utilizing nicotine derived from tobacco marketed in the United States as of August 8, 2016, which was submitted to the FDA on or before September 9, 2020, and accepted for filing; or

(b) An application pursuant to 21 U.S.C. s. 387j for a nicotine dispensing device containing or utilizing nicotine derived from a non-tobacco source that is not a single use or disposable electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, or other similar

device and that does not use a sealed, prefilled, and disposable cartridge of nicotine in a solution.

(14) "Wholesale nicotine products dealer" means the holder of a wholesale nicotine products dealer permit who purchases nicotine dispensing devices or nicotine products from any nicotine product manufacturer.

(15) "Wholesale nicotine products dealer permit" means a permit issued by the division under s. 569.316.

(1)~~(9)~~ "Any person under the age of 21" does not include any person under the age of 21 who:

(a) Is in the military reserve or on active duty in the Armed Forces of the United States; or

(b) Is acting in his or her scope of lawful employment.

Section 1. Section 569.311, Florida Statutes, is created to read:

569.311 Nicotine dispensing device directory.—

(1) By December 1, 2024, and annually thereafter, every nicotine product manufacturer that sells nicotine dispensing devices to any person for eventual retail sale in this state shall execute and deliver a form, prescribed by the division, under penalty of perjury for each such nicotine dispensing device sold that meets either of the following criteria:

(a) The manufacturer of a nicotine dispensing device has submitted a timely filed premarket tobacco product application for the nicotine dispensing device pursuant to 21 U.S.C. s. 387j

and remains stayed by a court order, or the manufacturer has filed a timely request for supervisory review with the FDA which remains under review, or the order has been rescinded by the FDA or vacated by a court; or

(b) The nicotine product manufacturer has received a marketing granted order under 21 U.S.C. s. 387j for the nicotine dispensing device from the FDA.

(2) The form prescribed by the division pursuant to subsection (1) must require each nicotine product manufacturer to set forth the name under which the nicotine product manufacturer transacts or intends to transact business, the address of the location of the nicotine product manufacturer's principal place of business, the nicotine product manufacturer's e-mail address, and the brand name of the nicotine dispensing device, the device's category (e.g., e-liquid, power unit, device, e-liquid cartridge, e-liquid pod, disposable), the device's name, and any flavor utilized with the device that is sold in this state. The division may allow a nicotine product manufacturer to group its nicotine dispensing devices on its certification.

(3) In addition to completing the form prescribed by the division pursuant to subsection (1), each nicotine product manufacturer shall provide a copy of the cover page of the granted marketing order issued by the FDA pursuant to 21 U.S.C. s. 387j for each device; a copy of the acceptance letter issued

by the FDA pursuant to 21 U.S.C. s. 387j for a timely filed premarket tobacco product application for each device; or a document issued by the FDA or by a court confirming that the premarket tobacco product application has been received and denied, but the order is not yet in effect for each device.

(4) Any nicotine product manufacturer submitting a certification pursuant to subsection (1) shall notify the division within 30 days after any material change to the certification, including, but not limited to, issuance by the FDA of any of the following:

(a) A denial of a market authorization pursuant to 21 U.S.C. s. 387j;

(b) An order requiring a nicotine product manufacturer to remove a nicotine dispensing device or nicotine product from the market either temporarily or permanently;

(c) Any notice of action taken by the FDA affecting the ability of the nicotine dispensing device to be introduced or delivered in this state for commercial distribution;

(d) Any change in policy which results in a nicotine dispensing device becoming an FDA enforcement priority; or

(e) Any other change deemed material by the division pursuant to a rule of the division.

(5) The division shall develop and maintain a directory listing all nicotine product manufacturers that sell nicotine dispensing devices in this state and the nicotine dispensing

devices certified by those manufacturers with the division which comply with this section. The division shall make the directory available January 1, 2025, on its or the Department of Business and Professional Regulation's website. The division shall update the directory as necessary. The division shall establish a process to provide retailers, distributors, and wholesalers notice of the initial publication of the directory and changes made to the directory in the prior month.

(6) The division shall establish by rule a process to provide a nicotine product manufacturer notice and an opportunity to cure deficiencies before removing the manufacturer or any of its nicotine dispensing devices from the directory.

(a) The division may not remove the nicotine product manufacturer or any of its nicotine dispensing devices from the directory until at least 30 days after the nicotine product manufacturer has been given notice of an intended action. Notice is sufficient and deemed immediately received by a nicotine product manufacturer if the notice is sent either electronically or by facsimile to an e-mail address or facsimile number provided by the nicotine product manufacturer in its most recent certification filed under subsection (1).

(b) The nicotine product manufacturer has 15 days from the date of service of the notice of the division's intended action to establish that the nicotine product manufacturer or any of

its nicotine dispensing devices must be included on the directory.

(c) A determination by the division not to include or to remove a nicotine product manufacturer or nicotine dispensing device from the directory is subject to review under chapter 120. If a nicotine product manufacturer seeks review of removal from the directory, the division must keep the nicotine dispensing device on the directory until entry of a final order.

(d) If a nicotine dispensing device is removed from the directory, each retailer and each wholesaler holding nicotine dispensing devices for eventual sale to a consumer in this state has 30 days from the day such product is removed from the directory to sell the product or remove the product from its inventory. After 30 days following removal from the directory, the product identified in the notice of removal is contraband and subject to s. 569.345.

(7)(a) Except as provided in subsections (b) and (c), beginning March 1, 2025, or on the date that the division first makes the directory available for public inspection on its or the Department of Business and Professional Regulation's website, whichever is later, a nicotine product manufacturer that offers for sale in this state a nicotine dispensing device not listed on the directory is subject to a fine of $1,000 per day for each individual nicotine dispensing device offered for sale in violation of this section until the offending product is

removed from the market or until the offending product is properly listed on the directory.

(b) Each retailer shall have 60 days from the date that the division first makes the directory available for inspection on its public website to sell products that were in its inventory and not included on the directory or remove those products from inventory.

(c) Each distributor or wholesaler shall have 60 days from the date that the division first makes the directory available for inspection on its public website to remove from inventory those products intended for eventual retail sale to a consumer in this state.

(8) A nicotine product manufacturer that falsely represents any of the information required by subsection (1) or subsection (2) commits a felony of the third degree for each false representation, punishable as provided in s. 775.082 or s. 775.083.

(9) Each retail nicotine products dealer and wholesale nicotine products dealer is subject to unannounced inspections or audit checks by the division for purposes of enforcing this section. The division shall conduct unannounced follow-up compliance checks of all noncompliant retail nicotine products dealers or wholesale nicotine products dealers within 30 days after any violation of this section. The division shall publish the results of all inspections or audits at least annually and

shall make the results available to the public on request.

(10) The division may establish by rule a procedure to allow nicotine product manufacturers to renew certifications without having to resubmit all the information required by this section.

(11) The failure of a nicotine product manufacturer to provide information or documents required by this section may result in a nicotine dispensing device not being included on the directory or the removal of a nicotine dispensing device from the directory. The division may assess an administrative fine of up to $1,000 for each nicotine dispensing device offered for sale in this state if a nicotine product manufacturer fails to provide notice to the division of a material change to its certification within 30 days after that material change. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 2. Section 569.312, Florida Statutes, is created to read:

569.312 Maintenance and inspection of nicotine dispensing device records.—

(1) Each nicotine product manufacturer that sells nicotine dispensing devices in this state shall maintain and keep for a period of 3 years, at the address listed on the certification required pursuant to s. 569.311, a complete and accurate record

of the number of nicotine dispensing devices sold or delivered to a wholesaler in this state and to which each nicotine dispensing device was sold on a wholesale basis, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold. Such records may be kept in an electronic or paper format.

(2) Each retail nicotine products dealer; wholesale nicotine product dealer; wholesale dealer, as defined in s. 210.01(6); and distributing agent, as defined in s. 210.01(14), shall maintain and keep for a period of 3 years at its principal place of business a complete and accurate record of the quantity of each nicotine dispensing device received, delivered, or sold in this state and to which each nicotine dispensing device was sold or delivered or from which the business received each nicotine dispensing device, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold or delivered or from which each product was received. Such records may be kept in an electronic or paper format.

(3) Nicotine product manufacturers that sell nicotine dispensing devices in this state; retail nicotine products dealers; wholesale nicotine products dealers; wholesale dealers, as defined in s. 210.01(6); and distributing agents, as defined in s. 210.01(14), who sell or deliver nicotine dispensing

devices directly to consumers are not required to keep and maintain the name, address, e-mail address, and telephone number of consumers who purchase or receive nicotine dispensing devices.

(4) Within 7 calendar days after receiving a request by the division, a nicotine product manufacturer that sells nicotine dispensing devices in this state, including a manufacturer selling nicotine dispensing devices directly to consumers; a retail nicotine products dealer; a wholesale nicotine products dealer; a wholesale dealer, as defined in s. 210.01(6); and a distributing agent, as defined in s. 210.01(14), shall provide to the division or its duly authorized representative copies of records related to the nicotine dispensing devices received, delivered, or sold in this state and to which those nicotine dispensing devices were sold or delivered or from which they were received.

(5) The division, or a designated employee thereof, may examine the records required to be maintained by each nicotine product manufacturer, retail nicotine products dealer, wholesale nicotine products dealer, wholesale dealer, as defined in s. 210.01(6), and distributing agent, as defined in s. 210.01(14); issue subpoenas to such persons or entities; administer oaths; and take depositions of witnesses within or outside of this state. The civil law of this state regarding enforcing obedience to a subpoena lawfully issued by a judge or other person duly

authorized to issue subpoenas under the laws of this state in civil cases applies to a subpoena issued by the division, or any designated employee thereof. The subpoena may be enforced by writ of attachment issued by the division, or any designated employee, for such witness to compel him or her to appear before the division, or any designated employee, and give his or her testimony and to bring and produce such records as may be required for examination. The division, or any designated employee, may bring an action against a witness who refuses to appear or give testimony by citation before the circuit court, which shall punish such witness for contempt as in cases of refusal to obey the orders and process of the circuit court. The division may in such cases pay such attendance and mileage fees as are permitted to be paid to witnesses in civil cases appearing before the circuit court.

(6) The division may assess an administrative fine of up to $1,000 for each violation of this section. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 3. Section 569.313, Florida Statutes, is created to read:

569.313 Shipment of unregistered nicotine dispensing devices sold for retail sale in this state.—

(1) A nicotine product manufacturer may not sell, ship, or

otherwise distribute a nicotine dispensing device in this state for eventual retail sale to a consumer in this state for which:

(a) The FDA has entered an order requiring the nicotine product manufacturer to remove the product from the market either temporarily or permanently, which order has not been stayed by the FDA or a court of competent jurisdiction, the manufacturer has filed a timely request for supervisory review with the FDA which remains under review, or the order has been rescinded by the FDA or vacated by a court;

(b) The nicotine product manufacturer has not submitted a timely filed premarket tobacco product application for the nicotine dispensing device;

(c) The nicotine product manufacturer's timely filed premarket tobacco product application for the nicotine dispensing device is no longer pending because it was not accepted by the FDA, it was denied by the FDA, or it is subject to any other order or action by the FDA or any court that negatively affects the ability of the product to be introduced or delivered into interstate commerce for commercial distribution in the United States; or

(d) The nicotine product manufacturer has not submitted the certification required under this chapter for any of the nicotine dispensing devices intended for eventual retail sale to a consumer in this state.

(2) Any person who knowingly ships or receives nicotine

dispensing devices in violation of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The division may also assess an administrative fine of up to $5,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 4. Section 569.316, Florida Statutes, is created to read:

569.316 Wholesale nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at wholesale, in nicotine products that will be sold at retail within this state, or to sell nicotine products or nicotine dispensing devices to any retail nicotine products dealer who intends to sell those nicotine products in this state, must obtain a wholesale nicotine products dealer permit for each place of business or premises at which nicotine products are sold.

(b) Application for a wholesale nicotine products dealer permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business, the applicant's e-mail address,

and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products or nicotine dispensing devices, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names, e-mail addresses, and addresses of the persons constituting the firm or association. If the applicant is a corporation, the application must set forth the names, e-mail addresses, and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor; if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(2)(a) Wholesale nicotine products dealer permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

(b) The division may refuse to issue a wholesale nicotine products dealer permit to any person, firm, association, or corporation whose permit has been revoked by any jurisdiction;

to any corporation an officer of which has had such permit revoked by any jurisdiction; or to any person who is or has been an officer of a corporation whose permit has been revoked by any jurisdiction. The division must revoke any wholesale nicotine products dealer permit issued to a firm, an association, or a corporation prohibited from obtaining such permit under this chapter.

(3) Upon approval of an application for a wholesale nicotine products dealer permit, the division shall issue to the applicant a wholesale nicotine products dealer permit for the place of business or premises specified in the application. A wholesale nicotine products dealer permit is not assignable and is valid only for the person in whose name the wholesale nicotine products dealer permit is issued and for the place designated in the wholesale nicotine products dealer permit. The wholesale nicotine products dealer permit must be conspicuously displayed at all times at the place for which it is issued.

(4) A wholesale dealer, as defined in s. 210.01(6), or a distributing agent, as defined in s. 210.01(14), is not required to have a separate or additional wholesale nicotine products dealer permit to deal, at wholesale, in nicotine dispensing devices within this state. A wholesale dealer, as defined in s. 210.01(6), a distributing agent, as defined in s. 210.01(14), or a tobacco products distributor, as defined in s. 210.25(5), which deals, at wholesale, in nicotine dispensing devices is

subject to, and must be in compliance with, this chapter.

Section 5. Section 569.317, Florida Statutes, is created to read:

569.317 Wholesale nicotine products dealer permitholder; administrative penalties.—A wholesale nicotine products dealer permitholder may only purchase and sell for retail sale in this state nicotine dispensing devices contained on the directory created by the division pursuant to s. 569.311. The division may suspend or revoke the wholesale nicotine products dealer permit of a wholesale nicotine products dealer permitholder upon sufficient cause appearing of a violation of this part by a wholesale nicotine products dealer permitholder or its agent or employee. The division may also assess an administrative fine of up to $5,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a wholesale nicotine products dealer permitholder, conditioned upon compliance with terms the division considers appropriate.

Section 6. Section 569.32, Florida Statutes, is amended to read:

569.32 Retail nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that

seeks to deal, at retail, in nicotine products or nicotine dispensing devices within this ~~the~~ state, or to allow a nicotine products vending machine to be located on its premises in this ~~the~~ state, must obtain a retail nicotine products dealer permit for each place of business or premises at which nicotine products or nicotine dispensing devices are sold. Each dealer owning, leasing, furnishing, or operating vending machines through which nicotine products are sold must obtain a permit for each machine and shall post the permit in a conspicuous place on or near the machine; however, if the dealer has more than one vending machine at a single location or if nicotine products or nicotine dispensing devices are sold both over the counter and through a vending machine at a single location, the dealer need obtain only one permit for that location.

(b) Application for a permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business within this ~~the~~ state, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products or nicotine dispensing devices within this ~~the~~ state, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names and addresses of the persons constituting the firm or

association; if the applicant is a corporation, the application must set forth the names and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor; or, if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(c) Permits must be issued annually.

(d) The holder of a permit may renew the permit each year. A dealer that does not timely renew its permit must pay a late fee of $5 for each month or portion of a month occurring after expiration, and before renewal, of the dealer's permit. The division shall establish by rule a renewal procedure.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1503 Citizens Property Insurance Corporation
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes various changes to Citizens Property Insurance Corporation (Citizens), including:

- **Surplus Lines:** permits surplus lines insurers to take out policies from Citizens issued to dwellings that are not primary residences; provides definitions to accomplish these take outs; establishes that new and renewal non-primary residential risks are not eligible for Citizens' coverage for three years following a take-out offer if the risk is offered coverage by a surplus lines insurer at the insurer's approved rate under a policy including wind coverage.

- **Flood coverage:** effective upon becoming law, requires Citizens' policyholders who must purchase flood insurance as a condition of eligibility for Citizens' coverage to purchase only dwelling coverage for a flood loss rather than dwelling and contents coverage.

- **Combining Accounts:** eliminates a significant amount of statutory language that is no longer needed because Citizens has combined the Personal Lines Account, the Commercial Lines Account, and the Coastal Account, into one Citizens Account, as of January 1, 2024.

- **Operations and Management:** allows Citizens' executive director to appoint a designee to act as its agency head; allows Citizens to share information with NICB to assist in efforts to fight insurance fraud; allows Citizens to obtain patents, copyrights, and trademarks, and to enforce related rights.

The bill has no impact on local or state government revenues or expenditures. It has a likely indeterminate positive and negative direct economic impact on the private sector.

Except as otherwise expressly provided, the bill is effective on July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Background

Citizens Property Insurance Corporation (Citizens) is a not-for-profit, tax-exempt government entity that provides property insurance to those who are unable to find affordable coverage in the private market. Citizens was created to serve as Florida's property insurer of last resort.[1] Applicants are eligible for coverage if no admitted private carrier[2] will write them a policy for a premium that is within 20 percent greater than what Citizens would offer for comparable coverage.[3]

The policies that Citizens writes include the following:

- Standard Personal Lines Policies – comprehensive multiperil policies providing full coverage of residential property equivalent to the coverage provided in the private insurance market;
- Basic Personal Lines Policies – similar to dwelling fire policies that provide coverage meeting the requirements of the secondary mortgage market, but are more limited in coverage than under a standard policy;
- Commercial Lines Residential and Nonresidential Policies – generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the private market;
- Personal Lines and Commercial Lines Residential Property Insurance Policies – cover the peril of wind only;
- Commercial Lines Nonresidential Property Insurance Policies – cover the peril of wind only.[4]

Citizens' Rates

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, did not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percentage point per year to 15 percent, as follows: [5]

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

Citizens' rate cap, also known as the "glidepath," is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private insurers and does not need to purchase as much reinsurance as private insurers because of Citizens' higher levels of capital and surplus.[6]

[1] Citizens Property Insurance Corporation (Citizens), *Programs*, https://www.citizensfla.com/programs (last visited Jan. 30, 2024).
[2] The admitted market is comprised of insurance companies licenses to transact insurance in Florida.
[3] S. 627.351(6)(c)5.a, F.S.
[4] S. 627.351(6)(c)1., F.S.
[5] S. 627.351(6)(n)5., F.S.
[6] S. 627.351(6)(t), F.S. *See also* s. 627.351(6)(c)9. for information regarding Citizens purchase of reinsurance.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.[7] In addition to the overall glidepath rate increase, Citizens can increase its rates to recover the additional reimbursement premium it pays to the Florida Hurricane Catastrophe Fund (FHCF) as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.[8]

In addition to eventually being actuarially sound, Citizens' rates must not be competitive with approved rates charged by admitted insurers so that Citizens functions as a residual market to provide insurance only when it cannot be obtained from admitted insurers.[9] This eliminates localized rate reductions among Citizens policies. Additionally, OIR must provide Citizens with the information necessary to determine whether Citizens' rates are competitive.[10]

Until Special Session 2022A, in December 2022, Citizens' rates did not differ based upon whether the property insured is a policyholders' primary residence, a policyholder's second home (e.g. a vacation home,) or occupied by a long-term tenant.[11] However, the Legislature removed the glidepath rate limitations for any new or renewal personal lines policy for non-primary residences written on or after November 1, 2023.[12] The rate for these residences rate must be no more than 50% above, but not less than, the established rate for Citizens which was in effect one year before the date of the application for coverage.[13]

Eligibility for Coverage

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for coverage from Citizens, and specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens also has additional eligibility requirements set out in their underwriting rules. These rules are approved by OIR and set out in Citizens' underwriting manuals.[14]

Citizens may cover homes if the cost of replacing the dwelling, or the dwelling and its' contents, is no more than $700,000. In Miami-Dade and Monroe counties, Citizens may insure structures valued up to $1 million as long as the Office of Insurance Regulation (OIR) continues to determine that these counties are not competitive.[15]

Eligibility for Personal and Commercial Lines Residential Coverage at Renewal

When Citizens' personal lines residential or commercial lines residential policyholders receive offers of coverage at renewal from authorized insurers, the risks are not eligible for coverage from Citizens unless the premiums from the authorized insurers are more than 20 percent greater than the rate for comparable coverage from Citizens, inclusive of surcharges and assessments being levied on the policy by Citizens.[16] The bill also establishes that policies removed from Citizens under an assumption agreement may remain on Citizen's policy forms through the end of the policy term, but policy administration and liability transfers to the assuming insurer.[17]

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[7] S. 627.351(6)(n)7., F.S.
[8] S. 627.351(6)(n)6., F.S.
[9] S. 627.351(6)(n)1., F.S.
[10] *Id.*
[11] Citizens would not issue a personal lines policy to someone using a home as a short-term vacation rental as that is considered a business use of the home. Citizens is currently prohibited from issuing wind-only policies to commercial lines residential condominiums when 50 percent or more of the units in the condominium are rented more than eight times per calendar year for less than 30 days in each rental period. S. 627.351(6)(a)6., F.S.
[12] S. 627.351(6)(n)8., F.S.
[13] *Id.*
[14] *See* Citizens, *Revised Underwriting Manuals*, https://www.citizensfla.com/-/20160329-revised-underwriting-manuals (last visited Jan. 28, 2024).
[15] S. 627.351(6)(a)3, F.S. If OIR makes a finding that other counties are not competitive, Citizens would be able to insure properties up to $1 million in value in those counties, as well.
[16] S. 627.351(6)(c)5., F.S.
[17] *Id.*

Eligibility after a Take-out Offer

Florida law requires that Citizens create programs to help return its policyholders to the private property insurance market and to reduce the risk of additional assessments for all Floridians in the event that Citizens is unable to meet its obligations.[18] In 2016, the Legislature passed requirements that by January 1, 2017, Citizens amend its operations relating to take-out agreements, whereby private insurers remove policies from Citizens.[19] As part of these requirements, a policy may not be taken out of Citizens, unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer requests to take out;[20]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take out a policy; the list must include a description of the coverage offered and the estimated premium for each take-out request;
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with Citizens. The notice must be in a format prescribed by Citizens and include, for each take-out offer:
    - The amount of the estimated premium;
    - A description of coverage; and
    - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by Citizens.[21]

When Citizens' policyholders receive take-out offers from authorized insurers that include premiums that are not more than 20 percent greater than Citizens' renewal premium for comparable coverage, inclusive of surcharges and assessments being levied on the policy by Citizens, they are no longer eligible for Citizens' coverage.[22] Citizens' must notify policyholders that they have received a take-out offer and that the offer renders their risks ineligible for Citizens' coverage.[23]

Effect of the Bill – Surplus Lines

The bill permits surplus lines insurers to take out policies from Citizens that are written on dwellings that are not primary residences.[24] The bill includes various definitions to assist Citizens with these take outs. While surplus lines insurers do not ordinarily have their rates approved by OIR, the bill requires these insurers to have rates approved for the purposes of their planned Citizens' take outs.

The bill also establishes that new and renewal non-primary residential risks are not eligible for Citizens' coverage for three years following an offer if the risk is offered coverage by a surplus lines insurer at the insurer's approved rate under a policy including wind coverage.

Flood Coverage Requirements

Until Special Session 2022A, in December 2022, Citizens could not require a policyholder or applicant to obtain flood insurance as a condition of coverage from Citizens if a policyholder or applicant signs a form affirming that Citizens does not provide flood insurance coverage, and that, if the policyholder or applicant does not obtain flood coverage in addition to a policy from Citizens, the risk is not covered for flood damage.[25] A Citizens policyholder who did not obtain flood coverage and executed such a form,

[18] S. 627.351(6)(q)3.a., F.S.
[19] Ch. 2016-229, Laws of Fla.
[20] These requests from insurers must include a description of the coverage offered and an estimated premium for it and must be submitted to Citizens in a form prescribed by Citizens.
[21] S. 627.351(6)(ii), F.S.
[22] *Id.*
[23] *Id.*
[24] Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.
[25] *See* ch. 2022-271, Laws of Fla.

and who made a claim for water damage against Citizens, had the burden of proving the damage was not caused by flooding.[26]

Under s. 627.715, F.S., authorized insurers may issue personal lines residential flood coverage. Such coverage includes, but is not limited to, standard flood insurance, which is equivalent to that provided by the National Flood Insurance Program (NFIP), and preferred and customized flood insurance, which provide additional coverage from that provided by standard flood coverage.[27]

In April 2023, Citizens began to require personal lines residential policyholders and applicants purchase and maintain flood insurance coverage that is at least equivalent to the coverage provided by the NFIP.[28] The policyholder or applicant must execute a form affirming that Citizens does not provide flood insurance and that if the policyholder or applicant does not obtain flood insurance, his or her risk will not be eligible for coverage from Citizens.[29] Citizens may deny coverage to a personal lines residential policyholder or applicant who refuses to purchase and maintain flood insurance.[30]

The purchase of flood coverage by personal lines residential policyholders and applicants has been implemented as follows:[31]

- The following Citizens' policyholders are not required to purchase flood overage as a condition of maintain their Citizens policies:
  - policyholders whose Citizens policies do not provide wind coverage; and
  - policyholders whose Citizens policies provide coverage under a condominium unit owners form.
- All policyholders whose Citizens-insured property is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:
  - At the time of initial policy issuance for all new policies issued by Citizens on or after April 1, 2023.
  - By the time of policy renewal for all personal lines residential policies renewing on or after July 1, 2023.
- All other policyholders must have flood coverage in place for policies effective on or after:
  - January 1, 2024, for property valued at $600,000 or more.
  - January 1, 2025, for property valued at $500,000 or more.
  - January 1, 2026, for property valued at $400,000 or more.
  - January 1, 2027, for all other personal lines residential property insured by Citizens.

The law requiring certain Citizens' policyholders to purchase flood coverage has been interpreted to require the purchase of both dwelling and contents coverage for flood losses. When policyholders with existing flood policies have added contents coverage to policies that covered the dwelling only, this has triggered huge premium increases under the NFIP's newly-implemented Risk Rating 2.0 pricing approach.[32]

Effect of the Bill – Flood Coverage Requirements

The bill requires Citizens' policyholders who must purchase flood insurance as a condition of eligibility for Citizens' coverage to purchase only dwelling coverage for a flood loss rather than dwelling and contents coverage. This will eliminate or avoid flood insurance rate increases triggered solely by the purchase of contents coverage under a flood insurance policy in order to maintain eligibility for Citizens' coverage.

Combining of Accounts

[26] *Id.*
[27] Current NFIP personal lines flood policies have limits of $250,000 per claim.
[28] S. 627.351(6)(aa), F.S.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *See* Federal Emergency Management Agency, *NFIP's Pricing Approach*, https://www.fema.gov/flood-insurance/risk-rating (last visited Jan. 29, 2024).

Three Accounts

Until very recently, Citizens had three different accounts through which it offered property insurance: a personal lines account (PLA), a commercial lines account (CLA), and a Coastal Account. The PLA offered personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also wrote policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners', mobile home owners', dwellings, tenants', and condominium unit owners' policies.[33]

The CLA offered commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also wrote policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.[34]

The Coastal Account offered personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.[35]

Financial Resources

Citizens' financial resources include:

- Insurance premiums
- Investment income and operating surplus from prior years
- FHCF reimbursements
- Private reinsurance
- Policyholder surcharges
- Regular assessments
- Emergency assessments

Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.[36] In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.[37] Under Florida law, if the Citizens' Board of Directors determines a Citizens' account has a projected deficit, Citizens is authorized to levy assessments[38] on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.[39] Citizens could impose three assessment tiers.[40]

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[33] *See* s. 627.351(6)(b)2.a., F.S., and *Account History and Characteristics*, Citizens Property Insurance Corporation, https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563 (March 2016) (last visited Jan. 28, 2024).
[34] *Id.*
[35] *Id.*
[36] Citizens Property Insurance Corporation, *2022 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548 (last visited Jan. 28, 2024).
[37] Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, https://www.citizensfla.com/assessments (last visited Jan. 28, 2024).
[38] Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.
[39] Accident and health insurance and policies written under the NFIP or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. S. 627.351.(6)(b)3.f.-h., F.S.
[40] Citizens Property Insurance Corporation, *Citizens Property Insurance Corporation: General Overview and Recent Issues*, p. 14 7,https://myfloridahouse.gov/api/document/house?Leaf=HouseContent/Lists/LegislatorUResources/Attachments/75/Citizens%20General%20Overview%20and%20Recent%20Issues%20Presentation%2020221206.pdf (last visited Jan. 28, 2024).

A surcharge of up to 15 percent of premium on all Citizens' policies, collected upon issuance or renewal. When Citizens had three separate accounts, this 15 percent assessment could be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account— that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.[41]

If the Citizens' surcharge was insufficient to cure the deficit for the Coastal Account, Citizens could require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate filing process of up to two percent of premium or two percent of the deficit, whichever is greater.[42] This assessment is not levied against Citizens' policyholders.

An emergency assessment provision requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders, except medical malpractice and workers' compensation, but including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, *or* 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.[43] The assessments may be cumulative.

During Special Session 2022A, the Legislature gave Citizens the authority to combine its three accounts into a single account upon Citizens eliminating all outstanding financing obligations.[44] A single account structure allows Citizens to access its entire surplus to pay claims. Previously, surplus in a particular account could only be used to pay claims in that account.

OIR approved changes to "Citizens' underwriting guidelines and application statements regarding possible assessment and surcharge amounts to support the merging of Citizens' three accounts. . ." into the Citizens Account.[45] The Citizens policyholder surcharge imposed in the event of a deficit has been revised from 15 percent per account (maximum 45 percent total) to 25 percent for the single account (an initial assessment of up to 15 percent plus a potential emergency assessment of up to 10 percent).[46] Effective January 1, 2024, Citizens combined the three accounts into the Citizens Account.[47]

Effect of the Bill – Combining Accounts

The bill eliminates a significant amount of statutory language that is no longer needed because Citizens has combined its three accounts into one account. These statutory deletions include references to the PLA, CLA, and Coastal Account. Citizens is now permitted to use its entire surplus to pay claims. The bill does not make any additional changes regarding assessments beyond those that were enacted during Special Session 2022A.

Citizens' Operations and Management

Citizens is overseen by a board and operated by an executive director. Citizens' board consists of nine individuals who must be residents of different geographical areas of Florida.[48] The Governor, Chief Financial Officer, President of the Senate, and Speaker of the House, each appoint two members of the board.[49] The Governor appoints one additional member who serves solely to advocate on behalf of

[41] Sections 627.351.(6)(b)3.i.(I) and 627.351.(6)(c)21., F.S. (2021).
[42] S. 627.351(6)(b)3.a., F.S.
[43] S. 627.351(6)(b)3.d., F.S.
[44] S. 627.351(b)(b)2.b., F.S. The PLA, CLA, and coastal accounts combined to form one account known as the Citizens account.
[45] Citizens, *Combined Assessments and Surcharge Amounts*, https://www.citizensfla.com/-/20231103-combined-assessments-and-surcharge-amounts (last visited Jan. 28, 2024).
[46] S. 627.351(6)b.5., F.S. While the text of SB 2-A (2022A) appeared to authorize Citizens to collect new, or additional surcharges, it did not. Due to drafting requirements it establishes a new surcharge framework within the law to become effective upon the combining of the accounts, but does not actually authorize higher surcharges than those presently in law. *See also* Citizens, *supra* note 42.
[47] Citizens, *supra* note 42.
[48] S. 627.351(6)(c)4., F.S.
[49] *Id.*

consumers.[50] At least one of the two members appointed by each appointing officer must have demonstrated experience in insurance.[51]

Citizens' executive director, often referred to as its president or chief executive officer, is engaged by the board and serves "at the pleasure of the board."[52] The executive director is subject to confirmation by the Senate.[53] He or she is responsible for employing other staff as Citizens requires, subject to review and agreement by the board.[54] However, current law does not specify the experience, character, or qualifications that an individual must have in order to be qualified to serve as Citizens' executive director.

The special investigative units of private insurers typically share information with the National Insurance Crime Bureau (NICB) to help fight insurance fraud.[55] However, current law does not allow Citizens to share information with NICB.

In addition, current law does not permit Citizens to obtain patents, copyrights, or trademarks, and to enforce its related rights.

Effect of the Bill – Operations and Management

The bill makes the following changes regarding Citizens' operations and management:

- Allows Citizens' executive director to appoint a designee to act as its agency head.[56]
- Allows Citizens to share information with NICB to assist in efforts to fight insurance fraud.
- Allows Citizens to obtain patents, copyrights, and trademarks, and to enforce related rights to the same.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 2. Amends s. 627.3511, F.S., relating to depopulation of Citizens Property Insurance Corporation.

Section 3. Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.

Section 4. Provides an effective date of July 1, 2024, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *See* National Insurance Crime Bureau, *Member Benefits*, https://www.nicb.org/membership/member-benefits (last visited Jan. 28, 2024).
[56] Allowing Citizens' executive director to appoint a designee is consistent with the permission granted to state agency heads to appoint designees that is found throughout ch. 287, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have an indeterminate positive and negative effect on the private sector. Citizens' policyholders who are required to purchase flood coverage will likely see a decrease in their flood insurance premiums as a result of only having to buy dwelling coverage.

It may have a negative effect on non-primary residential policyholders who must take an offer from a surplus lines carrier and end up paying more in premium than they were paying for a Citizens policy.

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:

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.351, F.S.; revising circumstances under which certain insurers' association shall levy market equalization surcharges on policyholders; removing obsolete language; providing that certain accounts for Citizens Property Insurance Corporation revenues, assets, liability, losses, and expenses are now maintained as the Citizens account; revising the requirements for certain coverages by the corporation; requiring the inclusion of quota share primary insurance in certain policies; removing provisions relating to legislative goals; conforming provisions to changes made by the act; revising the definition of the term "assessments"; removing provisions relating to surcharges and regular assessments upon determination of certain accounts' projected deficits; removing provisions relating to funds available to the corporation as sources of revenue and bonds; removing definitions; removing provisions relating to the duties of the Florida Surplus Lines Service Office; removing provisions relating to disposition of excess amounts of assessments and surcharges; providing definitions; providing nonapplicability of certain

provisions relating to personal lines residential risks coverage by the corporation; requiring insurers to pay, under certain circumstances, producing agents a certain amount or fee if the agents are unable to accept appointment due to failure to be licensed as surplus lines agents; providing nonapplicability of certain payment requirement; revising eligibility for commercial lines residential risks coverage by the corporation; providing that commercial lines residential risks are not eligible for coverage by the corporation under certain circumstances; providing that comparisons of comparable coverages under certain personal lines residential risks and commercial lines residential risks do not apply to policies that do not cover primary residences; revising the corporation's plan of operation; revising the required statements from applicants for coverage; revising the duties of the executive director of the corporation; authorizing the executive director to assign and appoint designees; removing a nonapplicability provision relating to bond requirements; removing obsolete language; requiring new insurers to pay, under certain circumstances, producing agents a certain amount or fee if the agents are unable to accept appointment due to failure to be licensed as surplus lines agents;

removing provisions relating to certain insurer assessment deferments; removing provisions relating to the intangibles of and coverage by the Florida Windstorm Underwriting Association and the corporation coastal account; authorizing the corporation and certain persons to make specified information obtained from underwriting files and confidential claims files available to licensed surplus lines agents; prohibiting such agents from using such information for specified purposes; providing nonapplicability of provisions relating to take-out offers that are part of applications to participate in depopulation; authorizing the corporation to share its claims data with a specified entity; revising the flood coverage requirements for personal lines residential policyholders; amending s. 627.3511, F.S.; conforming provisions to changes made by the act; conforming cross-references; amending s. 627.3518, F.S.; providing nonapplicability of provisions relating to noneligibility for coverage by the corporation; providing effective dates.

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

Section 1. Subsection (7) of section 627.351, Florida

Statutes, is renumbered as subsection (8), paragraph (b) of subsection (2) and subsection (6) are amended, and a new subsection (7) is added to that section, to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(b) The department shall require all insurers holding a certificate of authority to transact property insurance on a direct basis in this state, other than joint underwriting associations and other entities formed pursuant to this section, to provide windstorm coverage to applicants from areas determined to be eligible pursuant to paragraph (c) who in good faith are entitled to, but are unable to procure, such coverage through ordinary means; or it shall adopt a reasonable plan or plans for the equitable apportionment or sharing among such insurers of windstorm coverage, which may include formation of an association for this purpose. As used in this subsection, the term "property insurance" means insurance on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and including liability coverages on all such insurance, but excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1)(a) other than insurance on mobile homes used as permanent dwellings. The department shall adopt rules that provide a formula for the

recovery and repayment of any deferred assessments.

1. For the purpose of this section, properties eligible for such windstorm coverage are defined as dwellings, buildings, and other structures, including mobile homes which are used as dwellings and which are tied down in compliance with mobile home tie-down requirements prescribed by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.8325, and the contents of all such properties. An applicant or policyholder is eligible for coverage only if an offer of coverage cannot be obtained by or for the applicant or policyholder from an admitted insurer at approved rates.

2.a.(I) All insurers required to be members of such association shall participate in its writings, expenses, and losses. Surplus of the association shall be retained for the payment of claims and shall not be distributed to the member insurers. Such participation by member insurers shall be in the proportion that the net direct premiums of each member insurer written for property insurance in this state during the preceding calendar year bear to the aggregate net direct premiums for property insurance of all member insurers, as reduced by any credits for voluntary writings, in this state during the preceding calendar year. For the purposes of this subsection, the term "net direct premiums" means direct written premiums for property insurance, reduced by premium for liability coverage and for the following if included in allied

lines: rain and hail on growing crops; livestock; association direct premiums booked; National Flood Insurance Program direct premiums; and similar deductions specifically authorized by the plan of operation and approved by the department. A member's participation shall begin on the first day of the calendar year following the year in which it is issued a certificate of authority to transact property insurance in the state and shall terminate 1 year after the end of the calendar year during which it no longer holds a certificate of authority to transact property insurance in the state. The commissioner, after review of annual statements, other reports, and any other statistics that the commissioner deems necessary, shall certify to the association the aggregate direct premiums written for property insurance in this state by all member insurers.

(II) Effective July 1, 2002, the association shall operate subject to the supervision and approval of a board of governors who are the same individuals that have been appointed by the Treasurer to serve on the board of governors of the Citizens Property Insurance Corporation.

(III) The plan of operation shall provide a formula whereby a company voluntarily providing windstorm coverage in affected areas will be relieved wholly or partially from apportionment of a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

(IV) A company which is a member of a group of companies

under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its credits applied to any other company or group.

(V) There shall be no credits or relief from apportionment to a company for emergency assessments collected from its policyholders under sub-sub-subparagraph d.(III).

(VI) The plan of operation may also provide for the award of credits, for a period not to exceed 3 years, from a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II) as an incentive for taking policies out of the Residential Property and Casualty Joint Underwriting Association. In order to qualify for the exemption under this sub-sub-subparagraph, the take-out plan must provide that at least 40 percent of the policies removed from the Residential Property and Casualty Joint Underwriting Association cover risks located in Miami-Dade, Broward, and Palm Beach Counties or at least 30 percent of the policies so removed cover risks located in Miami-Dade, Broward, and Palm Beach Counties and an additional 50 percent of the policies so removed cover risks located in other coastal counties, and must also provide that no more than 15 percent of the policies so removed may exclude windstorm coverage. With the approval of the department, the association may waive these geographic criteria for a take-out plan that removes at least the lesser of 100,000 Residential Property and Casualty Joint Underwriting Association policies or

15 percent of the total number of Residential Property and Casualty Joint Underwriting Association policies, provided the governing board of the Residential Property and Casualty Joint Underwriting Association certifies that the take-out plan will materially reduce the Residential Property and Casualty Joint Underwriting Association's 100-year probable maximum loss from hurricanes. With the approval of the department, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association.

b. Assessments to pay deficits in the association under this subparagraph shall be included as an appropriate factor in the making of rates as provided in s. 627.3512.

c. The Legislature finds that the potential for unlimited deficit assessments under this subparagraph may induce insurers to attempt to reduce their writings in the voluntary market, and that such actions would worsen the availability problems that the association was created to remedy. It is the intent of the Legislature that insurers remain fully responsible for paying regular assessments and collecting emergency assessments for any deficits of the association; however, it is also the intent of

the Legislature to provide a means by which assessment liabilities may be amortized over a period of years.

d.(I) When the deficit incurred in a particular calendar year is 10 percent or less of the aggregate statewide direct written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the deficit.

(II) When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for member insurers. Any remaining deficit shall be recovered through emergency assessments under sub-sub-subparagraph (III).

(III) Upon a determination by the board of directors that a deficit exceeds the amount that will be recovered through regular assessments on member insurers, pursuant to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the board shall levy, after verification by the department, emergency assessments to be collected by member insurers and by underwriting associations created pursuant to this section which write property insurance, upon issuance or renewal of property

insurance policies other than National Flood Insurance policies in the year or years following levy of the regular assessments. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for property insurance for all member insurers and underwriting associations, excluding National Flood Insurance policy premiums, as annually determined by the board and verified by the department. The department shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, each member insurer and each underwriting association created pursuant to this section shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. The emergency assessments so collected shall be transferred directly to the association on a periodic basis as determined by the association. The aggregate amount of emergency assessments levied under this sub-sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for property insurance written by member insurers and underwriting associations for the prior year, plus

interest, fees, commissions, required reserves, and other costs associated with financing the original deficit. The board may pledge the proceeds of the emergency assessments under this sub-sub-subparagraph as the source of revenue for bonds, to retire any other debt incurred as a result of the deficit or events giving rise to the deficit, or in any other way that the board determines will efficiently recover the deficit. The emergency assessments under this sub-sub-subparagraph shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the document governing such bonds or other indebtedness. Emergency assessments collected under this sub-sub-subparagraph are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium.

(IV) Each member insurer's share of the total regular assessments under sub-sub-subparagraph (I) or sub-sub-subparagraph (II) shall be in the proportion that the insurer's net direct premium for property insurance in this state, for the year preceding the assessment bears to the aggregate statewide net direct premium for property insurance of all member insurers, as reduced by any credits for voluntary writings for

that year.

(V) If regular deficit assessments are made under sub-sub-subparagraph (I) or sub-sub-subparagraph (II), ~~or by the Residential Property and Casualty Joint Underwriting Association under sub-subparagraph (6)(b)3.a.,~~ the association shall levy upon the association's policyholders, as part of its next rate filing, or by a separate rate filing solely for this purpose, a market equalization surcharge in a percentage equal to the total amount of such regular assessments divided by the aggregate statewide direct written premium for property insurance for member insurers for the prior calendar year. Market equalization surcharges under this sub-sub-subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes; however, failure to pay a market equalization surcharge shall be treated as failure to pay premium.

e. The governing body of any unit of local government, any residents of which are insured under the plan, may issue bonds as defined in s. 125.013 or s. 166.101 to fund an assistance program, in conjunction with the association, for the purpose of defraying deficits of the association. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the association, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the

territorial jurisdiction of the local government. Revenue bonds may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue bonds as will provide relief to claimants and policyholders of the association and insurers responsible for apportionment of plan losses. Any such unit of local government may enter into such contracts with the association and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this sub-subparagraph shall be payable from and secured by moneys received by the association from assessments under this subparagraph, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the department shall require all insurers subject to assessment to purchase the bonds, which

shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the department determines that the purchase would endanger or impair the solvency of the insurer. The authority granted by this sub-subparagraph is additional to any bonding authority granted by subparagraph 6.

3. The plan shall also provide that any member with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the department, within the first 90 days of each calendar year, to qualify as a limited apportionment company. The apportionment of such a member company in any calendar year for which it is qualified shall not exceed its gross participation, which shall not be affected by the formula for voluntary writings. In no event shall a limited apportionment company be required to participate in any apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds $50 million after payment of available plan funds in any calendar year. However, a limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-sub-subparagraph 2.d.(III). The plan shall provide

that, if the department determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the department may direct that all or part of such assessment be deferred. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-sub-subparagraph 2.d.(III).

4. The plan shall provide for the deferment, in whole or in part, of a regular assessment of a member insurer under sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not for an emergency assessment collected from policyholders under sub-sub-subparagraph 2.d.(III), if, in the opinion of the commissioner, payment of such regular assessment would endanger or impair the solvency of the member insurer. In the event a regular assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

5.a. The plan of operation may include deductibles and rules for classification of risks and rate modifications consistent with the objective of providing and maintaining funds sufficient to pay catastrophe losses.

b. It is the intent of the Legislature that the rates for coverage provided by the association be actuarially sound and

not competitive with approved rates charged in the admitted voluntary market such that the association functions as a residual market mechanism to provide insurance only when the insurance cannot be procured in the voluntary market. The plan of operation shall provide a mechanism to assure that, beginning no later than January 1, 1999, the rates charged by the association for each line of business are reflective of approved rates in the voluntary market for hurricane coverage for each line of business in the various areas eligible for association coverage.

c. The association shall provide for windstorm coverage on residential properties in limits up to $10 million for commercial lines residential risks and up to $1 million for personal lines residential risks. If coverage with the association is sought for a residential risk valued in excess of these limits, coverage shall be available to the risk up to the replacement cost or actual cash value of the property, at the option of the insured, if coverage for the risk cannot be located in the authorized market. The association must accept a commercial lines residential risk with limits above $10 million or a personal lines residential risk with limits above $1 million if coverage is not available in the authorized market. The association may write coverage above the limits specified in this subparagraph with or without facultative or other reinsurance coverage, as the association determines appropriate.

d. The plan of operation must provide objective criteria and procedures, approved by the department, to be uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

(I) Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

(II) Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the association pursuant to such criteria and procedures must be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

e. If the risk accepts an offer of coverage through the market assistance program or through a mechanism established by the association, either before the policy is issued by the association or during the first 30 days of coverage by the association, and the producing agent who submitted the application to the association is not currently appointed by the insurer, the insurer shall:

(I) Pay to the producing agent of record of the policy,

for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the association; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the association's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I). Subject to the provisions of s. 627.3517, the policies issued by the association must provide that if the association obtains an offer from an authorized insurer to cover the risk at its approved rates under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the department, a basic policy including wind coverage, the risk is no longer eligible for coverage through the association. Upon termination of eligibility, the association shall provide written notice to the policyholder and agent of record stating that the association policy must be canceled as of 60 days after the date of the notice because of the offer of coverage from an authorized insurer. Other provisions of the insurance code

relating to cancellation and notice of cancellation do not apply to actions under this sub-subparagraph.

f. When the association enters into a contractual agreement for a take-out plan, the producing agent of record of the association policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(I) Pay to the producing agent of record of the association policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the association; or

(II) Offer to allow the producing agent of record of the association policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the association's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

6.a. The plan of operation may authorize the formation of a private nonprofit corporation, a private nonprofit unincorporated association, a partnership, a trust, a limited liability company, or a nonprofit mutual company which may be empowered, among other things, to borrow money by issuing bonds

or by incurring other indebtedness and to accumulate reserves or funds to be used for the payment of insured catastrophe losses. The plan may authorize all actions necessary to facilitate the issuance of bonds, including the pledging of assessments or other revenues.

b. Any entity created under this subsection, or any entity formed for the purposes of this subsection, may sue and be sued, may borrow money; issue bonds, notes, or debt instruments; pledge or sell assessments, market equalization surcharges and other surcharges, rights, premiums, contractual rights, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, and other assets as security for such bonds, notes, or debt instruments; enter into any contracts or agreements necessary or proper to accomplish such borrowings; and take other actions necessary to carry out the purposes of this subsection. The association may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (6)(q)2., in the absence of a hurricane or other weather-related event, upon a determination by the association subject to approval by the department that such action would enable it to efficiently meet the financial obligations of the association and that such financings are reasonably necessary to effectuate the requirements of this subsection. Any such entity may accumulate reserves and retain surpluses as of the end of any association

year to provide for the payment of losses incurred by the association during that year or any future year. The association shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida, to the extent that it is not inconsistent with chapter 76-96, and as subsequently modified consistent with chapter 76-96. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior to the effective date of chapter 76-96 shall be construed to be the assets and obligations of the successor plan created herein.

c. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness issued or incurred by the association or any other entity created under this subsection.

7. On such coverage, an agent's remuneration shall be that amount of money payable to the agent by the terms of his or her contract with the company with which the business is placed. However, no commission will be paid on that portion of the premium which is in excess of the standard premium of that company.

8. Subject to approval by the department, the association may establish different eligibility requirements and operational procedures for any line or type of coverage for any specified eligible area or portion of an eligible area if the board determines that such changes to the eligibility requirements and operational procedures are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the association. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

9. Notwithstanding any other provision of law:

a. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the association created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the association shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or

similar proceeding against the association under the laws of this state or any other applicable laws.

b. No such proceeding shall relieve the association of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, market equalization or other surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or any other rights, revenues, or other assets of the association pledged.

c. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, emergency assessments, market equalization or renewal surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of or after any such proceeding shall continue unaffected by such proceeding.

d. As used in this subsection, the term "financing documents" means any agreement, instrument, or other document now existing or hereafter created evidencing any bonds or other indebtedness of the association or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the association are pledged or sold to secure the repayment of such

bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation of the association related to such bonds or indebtedness.

e. Any such pledge or sale of assessments, revenues, contract rights or other rights or assets of the association shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, contract, or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the association or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, contract, or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

f. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, agents or employees of the association, members of the board of directors of the

association, or the department or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any willful tort.

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

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

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to

procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the

voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

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

~~a. Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $1 million or more, is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2013, may continue to be covered by the corporation until the end of the policy term. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph.~~

~~If a policyholder is insured by the corporation before being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.~~

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

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

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

~~the corporation until the end of the policy term.~~

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

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents of the corporation.

5.a. Effective January 1, 2009, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is not eligible for coverage by the corporation unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential

structure in that area. A residential structure is deemed to comply with this sub-subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

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

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable

insurers; however, insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.~~a.~~ All revenues, assets, liabilities, losses, and expenses of the corporation shall be maintained in the Citizens account. The Citizens account may provide ~~divided into three separate accounts as follows~~:

a.~~(I)~~ ~~A personal lines account for~~ Personal residential policies that provide ~~issued by the corporation which provides~~ comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

b.~~(II)~~ ~~A commercial lines account for~~ Commercial residential and commercial nonresidential policies that provide ~~issued by the corporation which provides~~ coverage for basic

property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

c.~~(III)~~ ~~A Coastal account for~~ Personal residential policies and commercial residential and commercial nonresidential property policies that provide ~~issued by the corporation which provides~~ coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002 ~~in the coastal account~~. ~~Effective July 1, 2014,~~ The corporation may not offer ~~shall cease offering~~ new commercial residential policies providing multiperil coverage but ~~and~~ shall ~~instead~~ continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. However, the corporation may~~, however,~~ continue to renew a commercial residential multiperil policy on a building that was ~~is~~ insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage

under this sub-subparagraph, the corporation may use its approved policy forms and rates for risks located in areas not eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas ~~the personal lines account~~. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. The following policies, which provide coverage only for the peril of wind, must also include quota share primary insurance under subparagraph (c)2.:

(I) Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm

Underwriting Association, as those areas were defined on January 1, 2002;

(II) Policies that provide multiperil coverage, if offered by the corporation, and policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002;

(III) Commercial residential wind-only policies;

(IV) Commercial residential policies excluding wind, if offered by the corporation; and

(V) Commercial residential multiperil policies on a building that was insured by the corporation on June 30, 2014 ~~It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2~~.

The area eligible for coverage with the corporation under this sub-subparagraph ~~under the coastal account also~~ includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

3. With respect to a deficit in the Citizens account:

a. Upon a determination by the board of governors that the Citizens account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

~~b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty~~

~~Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If no such financing obligations remain outstanding or if the financing documents allow for combining of accounts, the corporation may consolidate the three separate accounts into a new account, to be known as the Citizens account, for all revenues, assets, liabilities, losses, and expenses of the corporation. The Citizens account, if established by the corporation, is authorized to provide coverage to the same extent as provided under each of the three separate accounts. The authority to provide coverage under the Citizens account is set forth in subparagraph 4. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan for consolidating the three separate accounts into a single account. Once the accounts are combined into one account, this subparagraph and subparagraph 3. shall be replaced in their entirety by subparagraphs 4. and 5.~~

~~c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph~~

~~a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).~~

~~d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.~~

~~e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.~~

~~f. The income of the corporation may not inure to the benefit of any private person.~~

~~3. With respect to a deficit in an account:~~

~~a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph j., if the remaining projected deficit incurred in the coastal account in a particular calendar year:~~

~~(I) Is not greater than 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.~~

~~(II) Exceeds 2 percent of the aggregate statewide direct~~

~~written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 percent of the projected deficit or 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph e.~~

~~b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid~~

~~to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.~~

~~c. The corporation may not levy regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. if the three separate accounts in sub-sub-subparagraphs 2.a.(I)-(III) have been consolidated into the Citizens account pursuant to sub-subparagraph 2.b. However, the outstanding balance of any regular assessment levied by the corporation before establishment of the Citizens account remains payable to the corporation.~~

b.~~d.~~ After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph a. ~~j.~~, the remaining projected deficits in the Citizens ~~personal lines~~ account ~~and in the commercial lines account~~ in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph c. ~~e.~~

c.~~e.~~ Upon a determination by the board of governors that a projected deficit in the Citizens ~~an~~ account exceeds the amount that is expected to be recovered through surcharges ~~regular assessments~~ under sub-subparagraph a., ~~plus the amount that is expected to be recovered through surcharges under sub-~~

~~subparagraph j.,~~ the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance Program policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and the Citizens account ~~all accounts of the corporation~~, ~~excluding~~ National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other ~~provision of~~ law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds

shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the Citizens ~~applicable~~ account. The aggregate amount of emergency assessments levied for the Citizens ~~an~~ account in any calendar year may be less than but may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and the Citizens account ~~all accounts~~ of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

d.~~f.~~ The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit

or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes emergency ~~regular~~ assessments under sub-subparagraph c. ~~a. or subparagraph (q)1. and emergency assessments under sub-subparagraph c.~~ Emergency assessments collected under sub-subparagraph c. ~~e.~~ are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

e.~~g.~~ As used in this subsection and for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and

casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

f.~~h.~~ The Florida Surplus Lines Service Office shall annually determine ~~annually~~ the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

g.~~i.~~ The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for ~~regular assessments and~~ emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by

the corporation.

~~j. Upon determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.~~

~~(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.~~

~~(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.~~

~~(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.~~

~~(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.~~

h.~~k.~~ If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and

retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

~~4. The Citizens account, if established by the corporation pursuant to sub-subparagraph 2.b., is authorized to provide:~~

~~a. Personal residential policies that provide comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;~~

~~b. Commercial residential and commercial nonresidential policies that provide coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and~~

~~c. Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January~~

~~1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002. The corporation may not offer new commercial residential policies providing multiperil coverage, but shall continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. However, the corporation may continue to renew a commercial residential multiperil policy on a building that was insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage under this sub-subparagraph, the corporation may use its approved policy forms and rates for risks located in areas not eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of~~

~~wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. The following policies, which provide coverage only for the peril of wind, must also include quota share primary insurance under subparagraph (c)2.: Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002; policies that provide multiperil coverage, if offered by the corporation, and policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002; commercial residential wind-only policies; commercial residential policies excluding wind, if offered by the corporation; and commercial residential multiperil policies on a building that was insured by the corporation on June 30, 2014. The area eligible for coverage with the corporation under this sub-subparagraph includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal~~

~~Government property.~~

~~5. With respect to a deficit in the Citizens account:~~

~~a. Upon a determination by the board of governors that the Citizens account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.~~

~~(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.~~

~~(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.~~

~~(III) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.~~

~~b. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph a., the remaining projected deficit incurred in the Citizens account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph c.~~

~~c. Upon a determination by the board of governors that a projected deficit in the Citizens account exceeds the amount that is expected to be recovered through surcharges under sub-~~

~~subparagraph a., the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance Program policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and the Citizens account, National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the~~

~~time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the Citizens account. The aggregate amount of emergency assessments levied for the Citizens account in any calendar year may be less than, but may not exceed the greater of, 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit or 10 percent of the aggregate statewide direct written premium for subject lines of business and the Citizens accounts for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.~~

~~d. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection; or to retire any other debt incurred as a result of deficits or events giving~~

~~rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes emergency assessments under sub-subparagraph c. Emergency assessments collected under sub-subparagraph c. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.~~

~~c. As used in this subsection and for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2,~~

~~Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.~~

~~f. The Florida Surplus Lines Service Office shall annually determine the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.~~

~~g. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.~~

~~h. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount~~

~~of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.~~

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary

market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. The corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Approved surplus lines insurer" means an eligible surplus lines insurer:

(A) That has a financial strength rating of "A" or higher from A.M. Best Company;

(B) That has a personal lines residential risk program that is managed by a Florida resident surplus lines broker; and

(C) That offers coverage to applicants for new coverage from the corporation or current policyholders of the corporation through a take-out plan approved by the office.

(III) "Primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

(IV) ~~(I)~~ "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified

percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must

provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive

provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness

under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is

appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the

corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the

Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks that are primary residences, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk that is a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk

is not eligible for coverage with the corporation for policies that renew before April 1, 2023; for policies that renew on or after that date, the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the corporation's renewal premium for comparable coverage. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation after the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term. This sub-subparagraph applies only to risks that are primary residences.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before

a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and

customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the corporation's renewal premium for comparable coverage. If the risk is not able to obtain any such

offer, the risk is eligible for a policy including wind coverage issued by the corporation. A policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage

and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. For purposes of comparing the premium for comparable coverage under sub-subparagraphs a. and b., premium includes any surcharge or assessment that is actually applied to such policy. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same Coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage on a risk that is located in an area eligible for coverage by the Florida Windstorm Underwriting Association, as that area was defined on January 1, 2002, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an

authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate. However, notwithstanding any other provision of law, this sub-subparagraph does not apply to a policy that does not cover a primary residence.

d. Subject to s. 627.3517, with respect to personal lines residential risks that are not primary residences, if the risk is offered coverage from an authorized insurer at the insurer's approved rate or from an approved surplus lines insurer at the rate approved by the office as part of such surplus lines insurer's take-out plan for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation for three years following such offer for coverage. For policies that renew on or after July 1, 2024, whenever an offer of coverage for a personal lines residential risk that is not a primary residence is received for a policyholder of the corporation at renewal from an authorized

insurer at the insurer's approved rate or an approved surplus lines insurer at the rate approved by the office as part of such insurer's take-out plan, the risk is not eligible for coverage with the corporation for a period of three years following such offer for coverage. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation. If the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation after the end of the policy term for a period. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing

agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation;

or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income~~:~~

~~a.~~ for the Citizens ~~an~~ account which are attributable to a particular calendar year are in excess of projected losses and expenses for the Citizens account attributable to that year, such excess shall be held in surplus in the Citizens account. Such surplus must be available to defray deficits in the Citizens ~~that~~ account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year~~; or~~

~~b. For the Citizens account, if established by the corporation, which are attributable to a particular calendar year are in excess of projected losses and expenses for the Citizens account attributable to that year, such excess shall be held in surplus in the Citizens account. Such surplus must be~~

~~available to defray deficits in the Citizens account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year~~.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its

rate calculations even if it does not purchase catastrophe reinsurance.

10. ~~The policies issued by the corporation~~ Must provide in the policies issued by the corporation that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. ~~Corporation policies and applications~~ Must include in the corporation policies and applications a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If

coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

~~13. Must provide that:~~

~~a. With respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.c. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a~~

~~limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.c. may not be limited or deferred; or~~

~~b. With respect to the Citizens account, if established by the corporation pursuant to sub-subparagraph (b)2.b., any assessable insurer with a surplus as to policyholders of $25 million or less and writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)5.c. An emergency assessment to be collected from policyholders under sub-subparagraph (b)5.c. may not be limited or deferred.~~

13.~~14.~~ Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by at least three insurers ~~an insurer~~ who are ~~is~~ authorized to write and are ~~is~~ actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

14.~~15.~~ Must provide a premium payment plan option to its

policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

15.~~16.~~ Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

16.~~17.~~ Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

17.~~18.~~ May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

18.~~19.~~ May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

19.~~20.~~ Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

20.a.~~21.a.~~ ~~As of January 1, 2012, unless the Citizens account has been established pursuant to sub-subparagraph (b)2.b.,~~ Must require that the agent obtain from an applicant for coverage from the corporation the following ~~an~~ acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES AND ASSESSMENTS, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR

TERMINATION OF THE POLICY, AND THAT THE SURCHARGES AND ASSESSMENTS COULD BE AS HIGH AS 25 ~~45~~ PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 15 ~~45~~ PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

~~b. The corporation must require, if it has established the Citizens account pursuant to sub-subparagraph (b)2.b., that the agent obtain from an applicant for coverage from the corporation the following acknowledgment signed by the applicant, which includes, at a minimum, the following statement:~~

~~ACKNOWLEDGMENT OF POTENTIAL SURCHARGE AND ASSESSMENT LIABILITY:~~

~~1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE~~

~~CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES AND ASSESSMENTS, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES AND ASSESSMENTS COULD BE AS HIGH AS 25 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.~~

~~2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 15 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.~~

~~3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.~~

~~4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.~~

b.~~c.~~ The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of sub-

subparagraph a. ~~or sub-subparagraph b., as applicable~~.

c.~~d.~~ The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(d)1. All prospective employees for senior management positions, as defined by the plan of operation, are subject to background checks as a prerequisite for employment. The office shall conduct the background checks pursuant to ss. 624.34, 624.404(3), and 628.261.

2. On or before July 1 of each year, employees of the corporation must sign and submit a statement attesting that they do not have a conflict of interest, as defined in part III of chapter 112. As a condition of employment, all prospective employees must sign and submit to the corporation a conflict-of-interest statement.

3. The executive director, senior managers, and members of the board of governors are subject to part III of chapter 112, including, but not limited to, the code of ethics and public disclosure and reporting of financial interests, pursuant to s. 112.3145. For purposes of applying part III of chapter 112 to activities of the executive director, senior managers, and members of the board of governors, those persons shall be considered public officers or employees and the corporation shall be considered their agency. Notwithstanding s.

112.3143(2), a board member may not vote on any measure that would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the assembly the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. Senior managers and board members are also required to file such disclosures with the Commission on Ethics and the Office of Insurance Regulation. The executive director of the corporation or his or her designee shall notify each existing and newly appointed member of the board of governors and senior managers of their duty to comply with the reporting requirements of part III of chapter 112. At least quarterly, the executive director or his or her designee shall submit to the Commission on Ethics a list of names of the senior managers and members of the board of governors who are subject to the public disclosure

requirements under s. 112.3145.

4. Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law, an employee or board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the corporation or who is under consideration for a contract. An employee or board member who fails to comply with subparagraph 3. or this subparagraph is subject to penalties provided under ss. 112.317 and 112.3173.

5. Any senior manager of the corporation who is employed on or after January 1, 2007, regardless of the date of hire, who subsequently retires or terminates employment is prohibited from representing another person or entity before the corporation for 2 years after retirement or termination of employment from the corporation.

6. The executive director, members of the board of governors, and senior managers of the corporation are prohibited from having any employment or contractual relationship for 2 years after retirement from or termination of service to the corporation with an insurer that has entered into a take-out bonus agreement with the corporation.

(e) The corporation is subject to s. 287.057 for the purchase of commodities and contractual services except as otherwise provided in this paragraph. Services provided by

tradepersons or technical experts to assist a licensed adjuster in the evaluation of individual claims are not subject to the procurement requirements of this section. Additionally, the procurement of financial services providers and underwriters must be made pursuant to s. 627.3513. Contracts for goods or services valued at or more than $100,000 are subject to approval by the board.

1. The corporation is an agency for purposes of s. 287.057, except that, for purposes of s. 287.057(24), the corporation is an eligible user.

a. The authority of the Department of Management Services and the Chief Financial Officer under s. 287.057 extends to the corporation as if the corporation were an agency.

b. The executive director of the corporation is the agency head under s. 287.057~~, except for resolution of bid protests for which the board would serve as the agency head~~. The executive director may assign or appoint a designee to act on his or her behalf.

2. The corporation must provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. Such notice must contain the following statement: "Failure to file a protest within the time prescribed in this section constitutes a waiver of proceedings."

a. A person adversely affected by the corporation's

decision or intended decision to award a contract pursuant to s. 287.057(1) or (3)(c) who elects to challenge the decision must file a written notice of protest with the executive director of the corporation within 72 hours after the corporation posts a notice of its decision or intended decision. For a protest of the terms, conditions, and specifications contained in a solicitation, including provisions governing the methods for ranking bids, proposals, replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest must be filed in writing within 72 hours after posting the solicitation. Saturdays, Sundays, and state holidays are excluded in the computation of the 72-hour time period.

b. A formal written protest must be filed within 10 days after the date the notice of protest is filed. The formal written protest must state with particularity the facts and law upon which the protest is based. Upon receipt of a formal written protest that has been timely filed, the corporation must stop the solicitation or contract award process until the subject of the protest is resolved by final board action unless the executive director sets forth in writing particular facts and circumstances that require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(I) The corporation must provide an opportunity to resolve the protest by mutual agreement between the parties within 7 business days after receipt of the formal written protest.

(II) If the subject of a protest is not resolved by mutual agreement within 7 business days, the corporation's board must transmit the protest to the Division of Administrative Hearings and contract with the division to conduct a hearing to determine the merits of the protest and to issue a recommended order. The contract must provide for the corporation to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs in the manner set forth in s. 120.65(9). The division has jurisdiction to determine the facts and law concerning the protest and to issue a recommended order. The division's rules and procedures apply to these proceedings~~; the division's applicable bond requirements do not apply~~. The protest must be heard by the division at a publicly noticed meeting in accordance with procedures established by the division.

c. In a protest of an invitation-to-bid or request-for-proposals procurement, submissions made after the bid or proposal opening which amend or supplement the bid or proposal may not be considered. In protesting an invitation-to-negotiate procurement, submissions made after the corporation announces its intent to award a contract, reject all replies, or withdraw

the solicitation that amends or supplements the reply may not be considered. Unless otherwise provided by law, the burden of proof rests with the party protesting the corporation's action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge must conduct a de novo proceeding to determine whether the corporation's proposed action is contrary to the corporation's governing statutes, the corporation's rules or policies, or the solicitation specifications. The standard of proof for the proceeding is whether the corporation's action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended corporation action to reject all bids, proposals, or replies, the standard of review by the board is whether the corporation's intended action is illegal, arbitrary, dishonest, or fraudulent.

d. Failure to file a notice of protest or failure to file a formal written protest constitutes a waiver of proceedings.

3. The ~~board, acting as~~ agency head or his or her designee~~,~~ shall consider the recommended order of an administrative law judge ~~in a public meeting~~ and take final action on the protest. Any further legal remedy lies with the First District Court of Appeal.

(f) The corporation is subject to the provisions of chapter 255.

(g) The board shall determine whether it is more cost-

effective and in the best interests of the corporation to use legal services provided by in-house attorneys employed by the corporation rather than contracting with outside counsel. In making such determination, the board shall document its findings and shall consider: the expertise needed; whether time commitments exceed in-house staff resources; whether local representation is needed; the travel, lodging and other costs associated with in-house representation; and such other factors that the board determines are relevant.

(h) The corporation may not retain a lobbyist to represent it before the legislative branch or executive branch. However, full-time employees of the corporation may register as lobbyists and represent the corporation before the legislative branch or executive branch.

(i)1. The Office of the Internal Auditor is established within the corporation to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency to the policyholders and to the taxpayers of this state. The internal auditor shall be appointed by the board of governors, shall report to and be under the general supervision of the board of governors, and is not subject to supervision by an employee of the corporation. Administrative staff and support shall be provided by the corporation. The internal auditor shall be appointed without regard to political affiliation. It is the duty and

responsibility of the internal auditor to:

a. Provide direction for, supervise, conduct, and coordinate audits, investigations, and management reviews relating to the programs and operations of the corporation.

b. Conduct, supervise, or coordinate other activities carried out or financed by the corporation for the purpose of promoting efficiency in the administration of, or preventing and detecting fraud, abuse, and mismanagement in, its programs and operations.

c. Submit final audit reports, reviews, or investigative reports to the board of governors, the executive director, the members of the Financial Services Commission, and the President of the Senate and the Speaker of the House of Representatives.

d. Keep the board of governors informed concerning fraud, abuses, and internal control deficiencies relating to programs and operations administered or financed by the corporation, recommend corrective action, and report on the progress made in implementing corrective action.

e. Cooperate and coordinate activities with the corporation's inspector general.

2. On or before February 15, the internal auditor shall prepare an annual report evaluating the effectiveness of the internal controls of the corporation and providing recommendations for corrective action, if necessary, and summarizing the audits, reviews, and investigations conducted by

the office during the preceding fiscal year. The final report shall be furnished to the board of governors and the executive director, the President of the Senate, the Speaker of the House of Representatives, and the Financial Services Commission.

(j) All records of the corporation, except as otherwise provided by law, are subject to the record retention requirements of s. 119.021.

(k)1. The corporation shall establish and maintain a unit or division to investigate possible fraudulent claims by insureds or by persons making claims for services or repairs against policies held by insureds; or it may contract with others to investigate possible fraudulent claims for services or repairs against policies held by the corporation pursuant to s. 626.9891. The corporation must comply with reporting requirements of s. 626.9891. An employee of the corporation shall notify the corporation's Office of the Inspector General and the Division of Investigative and Forensic Services within 48 hours after having information that would lead a reasonable person to suspect that fraud may have been committed by any employee of the corporation.

2. The corporation shall establish a unit or division responsible for receiving and responding to consumer complaints, which unit or division is the sole responsibility of a senior manager of the corporation.

(l) The office shall conduct a comprehensive market

conduct examination of the corporation every 2 years to determine compliance with its plan of operation and internal operations procedures. The first market conduct examination report shall be submitted to the President of the Senate and the Speaker of the House of Representatives no later than February 1, 2009. Subsequent reports shall be submitted on or before February 1 every 2 years thereafter.

(m) The Auditor General shall conduct an operational audit of the corporation every 3 years to evaluate management's performance in administering laws, policies, and procedures governing the operations of the corporation in an efficient and effective manner. The scope of the review shall include, but is not limited to, evaluating claims handling, customer service, take-out programs and bonuses, financing arrangements, procurement of goods and services, internal controls, and the internal audit function. The initial audit must be completed by February 1, 2009.

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are

competitive. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

~~a. Twelve percent for 2023.~~

a.~~b.~~ Thirteen percent for 2024.

b.~~c.~~ Fourteen percent for 2025.

c.~~d.~~ Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. The following new or renewal personal lines policies written on or after November 1, 2023, are not subject to the rate increase limitations in subparagraph 5., but may not be charged more than 50 percent above, and may not be charged ~~nor~~

less than, the prior year's established rate for the corporation:

a. Policies that do not cover a primary residence;

b. New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or

c. Subsequent renewals of those policies, including the new policies in sub-subparagraph b., under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631.

9. As used in this paragraph, the term "primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

(o) If coverage in ~~an account, or~~ the Citizens account ~~if established by the corporation,~~ is deactivated pursuant to paragraph (p), coverage through the corporation shall be reactivated by order of the office only under one of the following circumstances:

1. If the market assistance plan receives a minimum of 100

applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less for residential coverage, unless the market assistance plan provides a quotation from authorized ~~admitted~~ carriers at their approved ~~filed~~ rates for at least 90 percent of such applicants. Any market assistance plan application that is rejected because an individual risk is so hazardous as to be uninsurable using the criteria specified in subparagraph (c)8. shall not be included in the minimum percentage calculation provided herein. In the event that there is a legal or administrative challenge to a determination by the office that the conditions of this subparagraph have been met for eligibility for coverage in the corporation, any eligible risk may obtain coverage during the pendency of such challenge.

2. In response to a state of emergency declared by the Governor under s. 252.36, the office may activate coverage by order for the period of the emergency upon a finding by the office that the emergency significantly affects the availability of residential property insurance.

(p)1. The corporation shall file with the office quarterly statements of financial condition, an annual statement of financial condition, and audited financial statements in the manner prescribed by law. In addition, the corporation shall report to the office monthly on the types, premium, exposure, and distribution by county of its policies in force, and shall

submit other reports as the office requires to carry out its oversight of the corporation.

2. The activities of the corporation shall be reviewed at least annually by the office to determine whether coverage shall be deactivated ~~in an account, or~~ in the Citizens account ~~if established by the corporation,~~ on the basis that the conditions giving rise to its activation no longer exist.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated, if authority to levy exists, as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action

against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or

counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.c. ~~(b)3.c.~~, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or

areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments ~~under sub-subparagraph (b)3.a~~. In addition, in the event policies are taken out by an approved surplus lines insurer, such insurer's assessable insureds may also be relieved wholly or partially from assessments. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less

than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.c. ~~(b)3.c. or sub-subparagraph (b)5.c~~.

~~4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.c. or sub-subparagraph (b)5.c., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part,~~

~~the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).~~

4.~~5.~~ Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

5.~~6.~~ Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

6.~~7.~~ For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of such policy form or endorsement.

(r) Nothing in this subsection shall be construed to preclude the issuance of residential property insurance coverage

pursuant to part VIII of chapter 626.

(s)1. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any assessable insurer or its agents or employees, the corporation or its agents or employees, members of the board of governors or their respective designees at a board meeting, corporation committee members, or the office or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to:

a. Any of the foregoing persons or entities for any willful tort;

b. The corporation or its producing agents for breach of any contract or agreement pertaining to insurance coverage;

c. The corporation with respect to issuance or payment of debt;

d. Any assessable insurer with respect to any action to enforce an assessable insurer's obligations to the corporation under this subsection; or

e. The corporation in any pending or future action for breach of contract or for benefits under a policy issued by the corporation.

2. The corporation shall manage its claim employees, independent adjusters, and others who handle claims to ensure they carry out the corporation's duty to its policyholders to

handle claims carefully, timely, diligently, and in good faith, balanced against the corporation's duty to the state to manage its assets responsibly to minimize its assessment potential.

(t) For the purposes of s. 199.183(1), the corporation shall be considered a political subdivision of the state and shall be exempt from the corporate income tax. The premiums, assessments, investment income, and other revenue of the corporation are funds received for providing property insurance coverage as required by this subsection, paying claims for Florida citizens insured by the corporation, securing and repaying debt obligations issued by the corporation, and conducting all other activities of the corporation, and shall not be considered taxes, fees, licenses, or charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government. Bonds and other debt obligations issued by or on behalf of the corporation are not to be considered "state bonds" within the meaning of s. 215.58(8). The corporation is subject to the procurement provisions of chapter 287 as provided in paragraph (e), and policies and decisions of the corporation relating to incurring debt, levying of assessments and the sale, issuance, continuation, terms and claims under corporation policies, and all services relating thereto, are not subject to the provisions of chapter 120. The corporation is not required to obtain or to hold a certificate of authority issued by the office, nor is it required to

participate as a member insurer of the Florida Insurance Guaranty Association. However, the corporation is required to pay, in the same manner as an authorized insurer, assessments levied by the Florida Insurance Guaranty Association. It is the intent of the Legislature that the tax exemptions provided in this paragraph will augment the financial resources of the corporation to better enable the corporation to fulfill its public purposes. Any debt obligations issued by the corporation, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and any political subdivision or local unit or other instrumentality thereof; however, this exemption does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations other than the corporation.

(u) Upon a determination by the office that the conditions giving rise to the establishment and activation of the corporation no longer exist, the corporation is dissolved. Upon dissolution, the assets of the corporation shall be applied first to pay all debts, liabilities, and obligations of the corporation, including the establishment of reasonable reserves for any contingent liabilities or obligations, and all remaining assets of the corporation shall become property of the state and shall be deposited in the Florida Hurricane Catastrophe Fund. However, no dissolution shall take effect as long as the

corporation has bonds or other financial obligations outstanding unless adequate provision has been made for the payment of the bonds or other financial obligations pursuant to the documents authorizing the issuance of the bonds or other financial obligations.

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

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

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association

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

4. Effective July 1, 2002, a new applicant for property insurance coverage who would otherwise have been eligible for

coverage in the Florida Windstorm Underwriting Association is eligible for coverage from the corporation as provided in this subsection.

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

~~participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal lines and commercial lines accounts, unless the corporation has established the Citizens account, shall be viewed together, for all fund purposes, as if the two accounts were one and represent a single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement.~~ The coverage provided by the fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association to the corporation.

(w) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the corporation under the laws of this state.

2. The proceeding does not relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect,

assessments, policyholder surcharges or other surcharges ~~under sub-subparagraph (b)3.j.~~, or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, policyholder surcharges or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used in this subsection, the term "financing documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation

shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

5. As long as the corporation has any bonds outstanding, the corporation may not file a voluntary petition under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and a public officer or any organization, entity, or other person may not authorize the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

6. If ordered by a court of competent jurisdiction, the corporation may assume policies or otherwise provide coverage for policyholders of an insurer placed in liquidation under chapter 631, under such forms, rates, terms, and conditions as the corporation deems appropriate, subject to approval by the office.

(x)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor

pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and

s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a file is transferred to an insurer, that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files.

Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, a licensed surplus lines agent, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed surplus lines agent or a licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a

third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any

exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(y) It is the intent of the Legislature that the amendments to this subsection enacted in 2002 should, over time, reduce the probable maximum windstorm losses in the residual markets and the potential assessments to be levied on property insurers and policyholders statewide.

(z) In enacting the provisions of this section, the Legislature recognizes that both the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association have entered into financing arrangements that obligate each entity to service its debts and maintain the capacity to repay funds secured under these financing arrangements. It is the intent of the Legislature that nothing in this section be construed to compromise, diminish, or interfere with the rights of creditors under such financing arrangements. It is further the intent of the Legislature to preserve the obligations of the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association with regard to outstanding financing arrangements, with such obligations passing entirely and unchanged to the corporation and, specifically, to the Citizens ~~applicable~~ account of the corporation. So long as any bonds, notes, indebtedness, or other

financing obligations of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association are outstanding, under the terms of the financing documents pertaining to them, the governing board of the corporation shall have and shall exercise the authority to levy, charge, collect, and receive all premiums, assessments, surcharges, charges, revenues, and receipts that the associations had authority to levy, charge, collect, or receive under the provisions of subsection (2) and this subsection, respectively, as they existed on January 1, 2002, to provide moneys, without exercise of the authority provided by this subsection, in at least the amounts, and by the times, as would be provided under those former provisions of subsection (2) or this subsection, respectively, so that the value, amount, and collectability of any assets, revenues, or revenue source pledged or committed to, or any lien thereon securing such outstanding bonds, notes, indebtedness, or other financing obligations will not be diminished, impaired, or adversely affected by the amendments made by this act and to permit compliance with all provisions of financing documents pertaining to such bonds, notes, indebtedness, or other financing obligations, or the security or credit enhancement for them, and any reference in this subsection to bonds, notes, indebtedness, financing obligations, or similar obligations, of the corporation shall include like instruments or contracts of the

Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association to the extent not inconsistent with the provisions of the financing documents pertaining to them.

(aa) Except as otherwise provided in this paragraph, the corporation shall require the securing and maintaining of flood insurance as a condition of coverage of a personal lines residential risk. The insured or applicant must execute a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured from an insurer other than the corporation and in addition to coverage by the corporation, the risk will not be eligible for coverage by the corporation. The corporation may deny coverage of a personal lines residential risk to an applicant or insured who refuses to secure and maintain flood insurance. The requirement to purchase flood insurance shall be implemented as follows:

1. Except as provided in subparagraphs 2. and 3., all personal lines residential policyholders must have flood coverage in place for policies effective on or after:

a. January 1, 2024, for a structure that has a dwelling replacement cost of $600,000 or more.

b. January 1, 2025, for a structure that has a dwelling replacement cost of $500,000 or more.

c. January 1, 2026, for a structure that has a dwelling

replacement cost of $400,000 or more.

d. January 1, 2027, for all other personal lines residential property insured by the corporation.

2. All personal lines residential policyholders whose property insured by the corporation is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:

a. At the time of initial policy issuance for all new personal lines residential policies issued by the corporation on or after April 1, 2023.

b. By the time of the policy renewal for all personal lines residential policies renewing on or after July 1, 2023.

3. Policyholders are not required to purchase flood insurance as a condition for maintaining the following policies issued by the corporation:

a. Policies that do not provide coverage for the peril of wind.

b. Policies that provide coverage under a condominium unit owners form.

The flood insurance required under this paragraph must meet, at a minimum, the dwelling coverage available from the National Flood Insurance Program or the requirements of subparagraphs s. 627.715(1)(a)1., 2., and 3.

(bb) A salaried employee of the corporation who performs

policy administration services subsequent to the effectuation of a corporation policy is not required to be licensed as an agent under the provisions of s. 626.112.

(cc) There shall be no liability on the part of, and no cause of action of any nature shall arise against, producing agents of record of the corporation or employees of such agents for insolvency of any take-out insurer.

(dd) The assets of the corporation may be invested and managed by the State Board of Administration.

(ee) The office may establish a pilot program to offer optional sinkhole coverage in one or more counties or other territories of the corporation for the purpose of implementing s. 627.706, as amended by s. 30, chapter 2007-1, Laws of Florida. Under the pilot program, the corporation is not required to issue a notice of nonrenewal to exclude sinkhole coverage upon the renewal of existing policies, but may exclude such coverage using a notice of coverage change.

(ff) In establishing replacement costs for coverage on a dwelling insured by the corporation, the corporation must accept a valuation from any of the following sources and must use the lowest valuation as the insured value of the dwelling, excluding land value, provided the valuation was completed within the 12 months before the application or renewal date of coverage:

1. A replacement cost valuation software that is specifically designed for use in establishing insurance

replacement costs and that includes an itemized calculation of the cost of reconstruction;

2. A replacement cost valuation prepared by a certified or licensed real estate appraiser under part II of chapter 475 that is specifically formulated to establish insurance replacement cost, rather than market value, and which includes an itemized calculation of the cost of reconstruction; or

3. A replacement cost valuation prepared by a general, building, or residential contractor licensed under s. 489.113, or a professional engineer licensed under s. 471.015, which includes an itemized calculation of the total price of reconstruction.

(gg) The Office of Inspector General is established within the corporation to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency. The office shall be headed by an inspector general, which is a senior management position that involves planning, coordinating, and performing activities assigned to and assumed by the inspector general for the corporation.

1. The inspector general shall be appointed by the Financial Services Commission and may only be removed from office by the commission. The inspector general shall be appointed without regard to political affiliation.

a. At a minimum, the inspector general must possess a

bachelor's degree from an accredited college or university and 8 years of professional experience related to the duties of an inspector general as described in this paragraph, of which 5 years must have been at a supervisory level.

b. The inspector general shall report to, and be under the supervision of, the chair of the board of governors. The executive director or corporation staff may not prevent or prohibit the inspector general from initiating, carrying out, or completing any audit, review, evaluation, study, or investigation.

2. The inspector general shall initiate, direct, coordinate, participate in, and perform audits, reviews, evaluations, studies, and investigations designed to assess management practices; compliance with laws, rules, and policies; and program effectiveness and efficiency. This includes:

a. Conducting internal examinations; investigating allegations of fraud, waste, abuse, malfeasance, mismanagement, employee misconduct, or violations of corporation policies; and conducting any other investigations as directed by the Financial Services Commission or as independently determined.

b. Evaluating and recommending actions regarding security, the ethical behavior of personnel and vendors, and compliance with rules, laws, policies, and personnel matters; and rendering ethics opinions.

c. Evaluating personnel and administrative policy

compliance, management and operational matters, and human resources-related matters.

d. Evaluating the application of a corporation code of ethics, providing reviews and recommendations on the design and content of ethics-related policy training courses, educating employees on the code and on appropriate conduct, and checking for compliance.

e. Evaluating the activities of the senior management team and management's compliance with recommended solutions.

f. Cooperating and coordinating activities with the chief of internal audit.

g. Maintaining records of investigations and discipline in accordance with established policies, or as otherwise required.

h. Supervising and directing the tasks and assignments of the staff assigned to assist with the inspector general's projects, including regular review and feedback regarding work in progress and providing recommendations regarding relevant training and staff development activities.

i. Directing, planning, preparing, and presenting interim and final reports and oral briefings which communicate the results of studies, reviews, and investigations.

j. Providing the executive director with independent and objective assessments of programs and activities.

k. Completing special projects, assignments, and other duties as requested by the Financial Services Commission.

1. Reporting expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the inspector general has reasonable grounds to believe there has been a violation of criminal law.

(hh) The corporation shall prepare a report for each calendar year outlining both the statewide average and county-specific details of the loss ratio attributable to losses that are not catastrophic losses for residential coverage provided by the corporation, which information must be presented to the office and available for public inspection on the Internet website of the corporation by March 1 of the following calendar year.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After January 1, 2017, a policy may not be taken out of the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies that the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation must maintain and make available to the

agent of record a consolidated list of all insurers requesting to take out a policy. The list must include a description of the coverage offered and the estimated premium for each take-out request.

3. If a policyholder receives a take-out offer from an authorized insurer, the risk is no longer eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from the corporation pursuant to sub-subparagraph (c)5.c. This subparagraph applies to take-out offers that are part of an application to participate in depopulation submitted to the office on or after January 1, 2023. This subparagraph only applies to a policy that covers a primary residence.

4. The corporation must provide written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy. The notice must be in a format prescribed by the corporation and include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

(jj) The corporation's budget allocations for the

compensation of all corporation employees and any proposed raise for an individual employee exceeding 10 percent of that employee's current salary must be approved by the board of governors. The corporation must have an overall employee compensation plan approved by the board of governors.

(kk) A corporation policyholder making a claim for water damage against the corporation has the burden of proving that the damage was not caused by flooding.

(ll) The corporation may share its claims data with the National Insurance Crime Bureau, provided that the National Insurance Crime Bureau agrees to maintain the confidentiality of such documents as otherwise provided for in paragraph (x).

(mm) ~~(ll)~~1. In addition to any other method of alternative dispute resolution authorized by state law, the corporation may adopt policy forms that provide for the resolution of disputes regarding its claim determinations, including disputes regarding coverage for, or the scope and value of, a claim, in a proceeding before the Division of Administrative Hearings. Any such policies are not subject to s. 627.70154. All proceedings in the Division of Administrative Hearings pursuant to such policies are subject to ss. 57.105 and 768.79 as if filed in the courts of this state and are not considered chapter 120 administrative proceedings. Rule 1.442, Florida Rules of Civil Procedure, applies to any offer served pursuant to s. 768.79, except that, notwithstanding any provision in Rule 1.442,

Florida Rules of Civil Procedure, to the contrary, an offer shall not be served earlier than 10 days after filing the request for hearing with the Division of Administrative Hearings and shall not be served later than 10 days before the date set for the final hearing. The administrative law judge in such proceedings shall award attorney fees and other relief pursuant to ss. 57.105 and 768.79. The corporation may not seek, and the office may not approve, a maximum hourly rate for attorney fees.

2. The corporation may contract with the division to conduct proceedings to resolve disputes regarding its claim determinations as may be provided for in the applicable policies of insurance.

(nn) ~~(mm)~~ The corporation may not determine that a risk is ineligible for coverage with the corporation solely because such risk has unrepaired damage caused by a covered loss that is the subject of a claim that has been filed with the Florida Insurance Guaranty Association. This paragraph applies to a risk until the earlier of 24 months after the date the Florida Insurance Guaranty Association began servicing such claim or the Florida Insurance Guaranty Association closes the claim.

(7) PATENTS, COPYRIGHTS, OR TRADEMARKS.—Notwithstanding any other provision of law to the contrary, the corporation may, in its own name:

(a) Perform all things necessary to secure letters of patent, copyrights, or trademarks on any work products and

enforce its rights therein.

(b) License, lease, assign, or otherwise give written consent to any person, firm, or other corporation for the manufacture or use of patents, copyrights, or trademarks on any work products and rights therein on a royalty basis or for such other consideration as the corporation deems proper.

(c) Take any action necessary, including legal action, to protect the manufacture or use of patents, copyrights, or trademarks on any work products and rights therein against improper or unlawful use or infringement.

(d) Enforce the collection of any sums due the corporation for the manufacture or use of patents, copyrights, or trademarks on any work products and rights therein by any other party.

(e) Sell any of the manufacture or use of patents, copyrights, or trademarks on any work products and rights therein and execute all instruments necessary to consummate any such sale.

(f) Do all other acts necessary and proper for the execution of powers and duties conferred upon the corporation in order to administer this subsection.

Section 2. Effective upon becoming a law, paragraph (aa) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(aa) Except as otherwise provided in this paragraph, the corporation shall require the securing and maintaining of flood insurance as a condition of coverage of a personal lines residential risk. The insured or applicant must execute a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured from an insurer other than the corporation and in addition to coverage by the corporation, the risk will not be eligible for coverage by the corporation. The corporation may deny coverage of a personal lines residential risk to an applicant or insured who refuses to secure and maintain flood insurance. The requirement to purchase flood insurance shall be implemented as follows:

1. Except as provided in subparagraphs 2. and 3., all personal lines residential policyholders must have flood coverage in place for policies effective on or after:

a. January 1, 2024, for a structure that has a dwelling replacement cost of $600,000 or more.

b. January 1, 2025, for a structure that has a dwelling replacement cost of $500,000 or more.

c. January 1, 2026, for a structure that has a dwelling replacement cost of $400,000 or more.

d. January 1, 2027, for all other personal lines residential property insured by the corporation.

2. All personal lines residential policyholders whose

property insured by the corporation is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:

a. At the time of initial policy issuance for all new personal lines residential policies issued by the corporation on or after April 1, 2023.

b. By the time of the policy renewal for all personal lines residential policies renewing on or after July 1, 2023.

3. Policyholders are not required to purchase flood insurance as a condition for maintaining the following policies issued by the corporation:

a. Policies that do not provide coverage for the peril of wind.

b. Policies that provide coverage under a condominium unit owners form.

The flood insurance required under this paragraph must meet, at a minimum, the dwelling coverage available from the National Flood Insurance Program or the requirements of subparagraphs s. 627.715(1)(a)1., 2., and 3.

Section 3. Subsections (3) and (5) and paragraphs (d), (e), and (f) of subsection (6) of section 627.3511, Florida Statutes, are amended to read:

627.3511 Depopulation of Citizens Property Insurance Corporation.—

(3) EXEMPTION FROM DEFICIT ASSESSMENTS.—

~~(a) The calculation of an insurer's assessment liability under s. 627.351(6)(b)3.a. shall, for an insurer that in any calendar year removes 50,000 or more risks from the Citizens Property Insurance Corporation, either by issuance of a policy upon expiration or cancellation of the corporation policy or by assumption of the corporation's obligations with respect to in-force policies, exclude such removed policies for the succeeding 3 years, as follows:~~

~~1. In the first year following removal of the risks, the risks are excluded from the calculation to the extent of 100 percent.~~

~~2. In the second year following removal of the risks, the risks are excluded from the calculation to the extent of 75 percent.~~

~~3. In the third year following removal of the risks, the risks are excluded from the calculation to the extent of 50 percent.~~

~~If the removal of risks is accomplished through assumption of obligations with respect to in-force policies, the corporation shall pay to the assuming insurer all unearned premium with respect to such policies less any policy acquisition costs agreed to by the corporation and assuming insurer. The term "policy acquisition costs" is defined as costs of issuance of~~

~~the policy by the corporation which includes agent commissions, servicing company fees, and premium tax. This paragraph does not apply to an insurer that, at any time within 5 years before removing the risks, had a market share in excess of 0.1 percent of the statewide aggregate gross direct written premium for any line of property insurance, or to an affiliate of such an insurer. This paragraph does not apply unless either at least 40 percent of the risks removed from the corporation are located in Miami-Dade, Broward, and Palm Beach Counties, or at least 30 percent of the risks removed from the corporation are located in such counties and an additional 50 percent of the risks removed from the corporation are located in other coastal counties.~~

~~(b) An insurer that first wrote personal lines residential property coverage in this state on or after July 1, 1994, is exempt from regular deficit assessments imposed pursuant to s. 627.351(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c., of the Citizens Property Insurance Corporation until the earlier of the following:~~

~~1. The end of the calendar year in which it first wrote 0.5 percent or more of the statewide aggregate direct written premium for any line of residential property coverage; or~~

~~2. December 31, 1997, or December 31 of the third year in which it wrote such coverage in this state, whichever is later.~~

~~(c) Other than an insurer that is exempt under paragraph~~

~~(b), an insurer that in any calendar year increases its total structure exposure subject to wind coverage by 25 percent or more over its exposure for the preceding calendar year is, with respect to that year, exempt from deficit assessments imposed pursuant to s. 627.351(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c., of the Citizens Property Insurance Corporation attributable to such increase in exposure.~~

~~(d)~~ Any exemption or credit from regular assessments authorized by this section shall last no longer than 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

(5) APPLICABILITY.—

~~(a)~~ The take-out bonus provided by subsection (2) applies ~~and the exemption from assessment provided by paragraph (3)(a) apply~~ only if the corporation policy is replaced by a standard policy including wind coverage or, if consistent with the insurer's underwriting rules filed with the office, a basic policy including wind coverage; however, for risks located in areas where coverage through the coastal account of the

corporation is available, the replacement policy need not provide wind coverage. The insurer must renew the replacement policy at approved rates on substantially similar terms for four additional 1-year terms, unless canceled or not renewed by the policyholder. If an insurer assumes the corporation's obligations for a policy, it must issue a replacement policy for a 1-year term upon expiration of the corporation policy and must renew the replacement policy at approved rates on substantially similar terms for four additional 1-year terms, unless canceled or not renewed by the policyholder. For each replacement policy canceled or nonrenewed by the insurer for any reason during the 5-year coverage period, the insurer must remove from the corporation one additional policy covering a risk similar to the risk covered by the canceled or nonrenewed policy. In addition, the corporation must place the bonus moneys in escrow for 5 years; such moneys may be released from escrow only to pay claims. If the policy is canceled or nonrenewed before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. A take-out bonus provided by subsection (2) or subsection (6) is not premium income for purposes of taxes and assessments under the Florida Insurance Code and remains the property of the corporation, subject to the prior security interest of the insurer under the escrow agreement until it is released from escrow; after it is released from escrow it is considered an

asset of the insurer and credited to the insurer's capital and surplus.

~~(b) It is the intent of the Legislature that an insurer eligible for the exemption under paragraph (3)(a) establish a preference in appointment of agents for those agents who lose a substantial amount of business as a result of risks being removed from the corporation.~~

(6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.—

~~(d) The calculation of an insurer's regular assessment liability under s. 627.351(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.e., shall, with respect to commercial residential policies removed from the corporation under an approved take-out plan, exclude such removed policies for the succeeding 3 years, as follows:~~

~~1. In the first year following removal of the policies, the policies are excluded from the calculation to the extent of 100 percent.~~

~~2. In the second year following removal of the policies, the policies are excluded from the calculation to the extent of 75 percent.~~

~~3. In the third year following removal of the policies, the policies are excluded from the calculation to the extent of 50 percent.~~

~~(e) An insurer that first wrote commercial residential~~

~~property coverage in this state on or after June 1, 1996, is exempt from regular assessments under s. 627.351(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c., with respect to commercial residential policies until the earlier of:~~

~~1. The end of the calendar year in which such insurer first wrote 0.5 percent or more of the statewide aggregate direct written premium for commercial residential property coverage; or~~

~~2. December 31 of the third year in which such insurer wrote commercial residential property coverage in this state.~~

~~(f) An insurer that is not otherwise exempt from regular assessments under s. 627.351(6)(b)3.a. with respect to commercial residential policies is, for any calendar year in which such insurer increased its total commercial residential hurricane exposure by 25 percent or more over its exposure for the preceding calendar year, exempt from regular assessments under s. 627.351(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c., attributable to such increased exposure.~~

Section 4. Subsections (5), (6), and (7) of section 627.3518, Florida Statutes, are amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to

implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold for applicants for new coverage established in s. 627.351(6)(c)5.a. An applicant for new coverage from the corporation on a risk that is not a primary residence is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program if such offer would render the risk ineligible pursuant to s. 627.351(6)(c)5.d. Whenever an offer of coverage for a personal lines risk that is a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer through the program which is at or below the eligibility threshold for policyholders of the corporation established in s. 627.351(6)(c)5.a., the risk is not eligible for coverage with the corporation. Whenever an offer of coverage for a personal lines risk that is not a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer through the program, the risk is not eligible for coverage with the corporation if such offer would render the risk ineligible pursuant to s. 627.351(6)(c)5.d. In the event an offer of coverage on a primary residence for a new applicant is received from an authorized

insurer through the program, and the premium offered exceeds the eligibility threshold for applicants for new coverage established in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk that is a primary residence is received from an authorized insurer at renewal through the program, and the premium offered exceeds the eligibility threshold for policyholders of the corporation established in s. 627.351(6)(c)5.a., the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. As used in this subsection, the term "primary residence" has the same meaning as in s. 627.351(6)(c)2.a.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B) or s. 627.351(6)(c)5.d.(I)(B) and (II)(B). Such ownership is granted

for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) May enter into either a standard or limited agency agreement with the insurer, at the insurer's option.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or unable, to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information

directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B) or s. 627.351(6)(c)5.d.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must only facilitate the placement of an offer of coverage from an insurer whose limited servicing agreement is approved by that exclusive agent's exclusive insurer.

(d) May enter into a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or

unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

Section 5. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2024.

COMMERCE COMMITTEE

PCS for CS/HB 1503 by Esposito
Citizens Property Insurance Corporation

AMENDMENT SUMMARY
February 22, 2024

Amendment 1 by Rep. Esposito (Line 1353): The amendment:

- Changes the minimum A.M. Best rating that a surplus lines insurer must have in order to participate in the Citizens Property Insurance Corporation (Citizens) take-out program from “A” to “A-”; and
- Removes the 3-year prohibition against policies taken out by surplus lines insurer carriers from returning to Citizens.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 1353-1733 and insert:

(A) That has a financial strength rating of "A-" or higher from A.M. Best Company;

(B) That has a personal lines residential risk program that is managed by a Florida resident surplus lines broker; and

(C) That offers coverage to applicants for new coverage from the corporation or current policyholders of the corporation through a take-out plan approved by the office.

(III) "Primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

(IV) ~~(I)~~ "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were

eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels

for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing

insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected

recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one

of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks that are primary residences, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk that is a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation for policies that renew before April 1, 2023; for policies that renew on or after that date, the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the corporation's renewal premium for comparable coverage. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage

regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation after the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term. This sub-subparagraph applies only to risks that are primary residences.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the corporation's renewal premium for comparable coverage. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. A policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of

the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. For purposes of comparing the premium for comparable coverage under sub-subparagraphs a. and b., premium includes any surcharge or assessment that is actually applied to such policy. A comparison may be made solely of the

premium with respect to the main building or structure only on the following basis: the same Coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage on a risk that is located in an area eligible for coverage by the Florida Windstorm Underwriting Association, as that area was defined on January 1, 2002, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by

the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate. However, notwithstanding any other provision of law, this sub-subparagraph does not apply to a policy that does not cover a primary residence.

d. If the risk could not be insured under a standard