State Administration & Technology Appropriations Subcommittee

Thursday, January 25, 2024
3:00 PM - 6:00 PM
Webster Hall (212 Knott)

MEETING PACKET

Paul Renner
Speaker

Demi Busatta Cabrera
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Administration & Technology Appropriations Subcommittee

Start Date and Time: Thursday, January 25, 2024 03:00 pm

End Date and Time: Thursday, January 25, 2024 06:00 pm

Location: Webster Hall (212 Knott)

Duration: 3.00 hrs

Consideration of the following bill(s):

CS/HB 95 Yacht and Ship Brokers' Act by Regulatory Reform & Economic Development Subcommittee, LaMarca
CS/HB 149 Continuing Contracts by Constitutional Rights, Rule of Law & Government Operations Subcommittee, Alvarez
CS/HB 585 Access to Financial Institution Customer Accounts by Insurance & Banking Subcommittee, Rommel
HB 779 United States-produced Iron and Steel in Public Works Projects by Griffitts

Consideration of the following proposed committee bill(s):

PCB SAT 24-01 -- Trust Funds/Federal Law Enforcement Trust Fund/FGCC
PCB SAT 24-02 -- Property Seized by the Florida Gaming Control Commission

Chair's Budget Proposal for FY 2024-2025

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 01/23/2024 3:59PM by EHP

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAT 24-01 Trust Funds/Federal Law Enforcement Trust Fund/FGCC
SPONSOR(S): State Administration & Technology Appropriations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Administration & Technology Appropriations Subcommittee		Helpling	Topp

SUMMARY ANALYSIS

The bill conforms current law to the proposed House of Representatives' Fiscal Year 2024-2025 General Appropriation Act (GAA). The Florida Gaming Control Commission (Commission) may use the trust fund created in the bill to deposit funds collected through gaming enforcement activities. The use of the funds may be requested in the commission's Legislative Budget Request which must be approved by the Legislature and included in the General Appropriations Act.

Section 16.71, F.S., establishes the Commission, within the Department of Legal Affairs (DLA). The commission is a separate budget entity and the commissioners serve as the agency head for all purposes. The commission is not subject to control, supervision, or direction by DLA.

The Division of Gaming Enforcement (DGE) is created within the commission. The DGE is considered a criminal justice agency. The DGE and its investigators are authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. Contraband includes any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, Internet domain name, gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was obtained, received, used, attempted to be used, or intended to be used in violation of the gambling laws of the state.

The Commission does not currently have an established Federal Law Enforcement Trust Fund to deposit revenues received as a result of federal criminal, administrative, or civil forfeiture proceedings and receipts and revenues received from federal asset-sharing programs.

The bill creates a Federal Law Enforcement Trust Fund within the Commission. The bill states that the Commission may deposit into the trust fund receipts and revenues received as a result of federal criminal, administrative, or civil forfeiture proceedings and receipts and revenues received from federal asset-sharing programs.

The bill takes effect July 1, 2024.

The bill does not indirectly impact state revenues or expenditures. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Gaming Control Commission

Section 16.71, F.S., establishes the Florida Gaming Control Commission (Commission), within the Department of Legal Affairs (DLA). The Commission is a separate budget entity and the commissioners serve as the agency head for all purposes. The Commission is not subject to control, supervision, or direction by DLA.

The Division of Gaming Enforcement (DGE) is created within the Commission, and requires the commissioners to appoint a director of the DGE who is qualified by training and experience in law enforcement or security to supervise, direct, coordinate, and administer all activities of the DGE. The DGE is considered a criminal justice agency within the definition of s. 943.045, F.S.[1] The DGE director and all investigators employed by DGE are designated law enforcement officers and have the power to detect, apprehend, and arrest for any alleged violation of chapter 24, part II of chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849, F.S., or any rule adopted pursuant thereto, or any law of this state.[2]

DGE law enforcement officers are authorized to enter upon any premises at which gaming activities are taking place in the state for the performance of their lawful duties and may take with them any necessary equipment.[3] In any instance in which there is reason to believe that a violation has occurred, DGE law enforcement officers have the authority, without warrant, to search and inspect any premises where the violation is alleged to have occurred or is occurring, and may, consistent with the United States and Florida Constitutions, seize or take possession of any papers, records, tickets, currency, or other items related to any alleged violation.

DGE and its investigators are authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. Contraband includes any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, Internet domain name, gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was obtained, received, used, attempted to be used, or intended to be used in violation of the gambling laws of the state.[4]

Federal Law Enforcement Trust Funds

Multiple state agencies responsible for law enforcement have Federal Law Enforcement Trust Funds that have been statutorily created for various deposits related to criminal, administrative and civil forfeiture proceedings. Some of the agencies include the Department of Law Enforcement,[5] the Department of Financial Services,[6] the Department of Business and Professional Regulation,[7] the

[1] Section 119.01(4), F.S., defines a "criminal justice agency" to mean any law enforcement agency, court, or prosecutor; any other agency charged by law with criminal law enforcement duties; any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or the Department of Corrections.
[2] S. 16.711(3), F.S.
[3] *Id*.
[4] S. 932.701(2)(a)2, F.S.
[5] S. 943.365, F.S.
[6] S. 17.43, F.S.
[7] S. 561.027, F.S.

Department of Agriculture and Consumer Services,[8] the Department of Military Affairs,[9] and the Department of Highway Safety and Motor Vehicles.[10]

The Commission does not currently have an established Federal Law Enforcement Trust Fund to deposit revenues received as a result of federal criminal, administrative, or civil forfeiture proceedings and receipts and revenues received from federal asset-sharing programs.

Effect of the Bill:

The bill creates a Federal Law Enforcement Trust Fund within the Commission. The bill states that the Commission may deposit into the trust fund receipts and revenues received as a result of federal criminal, administrative, or civil forfeiture proceedings and receipts and revenues received from federal asset-sharing programs. Further, the bill states that funds deposited into the trust fund may be used for the operation of the Commission.

The bill takes effect July 1, 2024.

B. SECTION DIRECTORY:

Section 1: creates s. 16.717, F.S., creating the Federal Law Enforcement Trust Fund within the Florida Gaming Control Commission.

Section 2: provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

[8] S. 570.205, F.S.
[9] S. 250.175, F.S.
[10] S. 932.705, F.S.

The bill does not directly impact state revenues or expenditures. However, the creation of the trust fund will allow funds that are acquired through the Commission's gaming enforcement activities to be deposited by the Commission. Once there are sufficient funds within the trust fund, the Commission may request budget authority to use the funds as part of their Legislative Budget Request.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

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 trust funds; creating s. 16.717, F.S.; creating the Federal Law Enforcement Trust Fund within the Florida Gaming Control Commission; providing for sources of funds and purpose; authorizing any unexpended balance at a specified time to remain in such trust fund for certain purpose; providing for future review and termination or re-creation of the trust fund; providing an effective date.

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

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

16.717 Federal Law Enforcement Trust Fund.—

(1) The Federal Law Enforcement Trust Fund is created within the Florida Gaming Control Commission. The commission may deposit into the trust fund receipts and revenues received as a result of federal criminal, administrative, or civil forfeiture proceedings and receipts and revenues received from federal asset-sharing programs. Deposited funds may be used for the operation of the Florida Gaming Control Commission in accordance with ss. 16.71-16.716. The trust fund is exempt from the service charges imposed by s. 215.20.

(2) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(3) In accordance with s. 19(f)(2), Art. III of the State Constitution, the Federal Law Enforcement Trust Fund shall, unless terminated sooner, be terminated on July 1, 2028. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

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

PCB SAT 24-02

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAT 24-02 Property Seized by the Florida Gaming Control Commission
SPONSOR(S): State Administration & Technology Appropriations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Administration & Technology Appropriations Subcommittee		Helpling	Topp

SUMMARY ANALYSIS

The bill conforms current law to the proposed House of Representatives' Fiscal Year 2024-2025 General Appropriation Act (GAA). The Florida Gaming Control Commission (Commission) may use the specified funds in the bill for gaming enforcement activities. The use of the funds may be requested in the Commission's Legislative Budget Request which must be approved by the Legislature and included in the General Appropriations Act.

The Division of Gaming Enforcement (DGE) is created within the Commission. The DGE is considered a criminal justice agency. The DGE and its investigators are authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. Contraband includes any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, Internet domain name, gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was obtained, received, used, attempted to be used, or intended to be used in violation of the gambling laws of the state.

Currently, property rights from confiscated machines and money and other things of value therein are forfeited to the county in which the seizure was made and must be placed in the fine and forfeiture fund of the county.

If the seizing agency is a state agency, the remaining proceeds after satisfaction of liens, costs incurred with the storage, maintenance, security, and forfeiture of such property, and payment of court costs incurred in a forfeiture procedure, must be deposited into the General Revenue Fund.

The bill specifies that the property rights in machines and money and other things of value therein confiscated by the Commission are forfeited to the Commission and deposited into the Pari-Mutuel Wagering Trust Fund. The bill further specifies sums received from a sale or other disposition of property that is seized by the Commission shall be deposited into the Pari-Mutuel Wagering Trust Fund.

The bill provides an exemption from the requirement that the Commission pay excess proceeds from forfeiture proceedings to the General Revenue Fund. The bill specifies that proceeds accrued pursuant to the Florida Contraband Forfeiture Act are to be deposited into the Pari-Mutual Wagering Trust Fund or into the Commission's Federal Law Enforcement Trust Fund. The bill authorizes such proceeds to be used for the operation of the Commission.

The bill does not directly impact state revenues or expenditures. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Gaming Control Commission

Section 16.71, F.S., establishes the Florida Gaming Control Commission (Commission), within the Department of Legal Affairs (DLA). The Commission is a separate budget entity and the commissioners serve as the agency head for all purposes. The Commission is not subject to control, supervision, or direction by DLA.

The Division of Gaming Enforcement (DGE) is created within the Commission, and requires the commissioners to appoint a director of the DGE who is qualified by training and experience in law enforcement or security to supervise, direct, coordinate, and administer all activities of the DGE. The DGE is considered a criminal justice agency within the definition of s. 943.045, F.S.[1] The Division director and all investigators employed by the Division are designated law enforcement officers and have the power to detect, apprehend, and arrest for any alleged violation of chapter 24, part II of chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849, F.S., or any rule adopted pursuant thereto, or any law of this state.[2]

DGE law enforcement officers are authorized to enter upon any premises at which gaming activities are taking place in the state for the performance of their lawful duties and may take with them any necessary equipment.[3] In any instance in which there is reason to believe that a violation has occurred, DGE law enforcement officers have the authority, without warrant, to search and inspect any premises where the violation is alleged to have occurred or is occurring, and may, consistent with the United States and Florida Constitutions, seize or take possession of any papers, records, tickets, currency, or other items related to any alleged violation.

The division and its investigators are authorized to seize any contraband in accordance with the Florida Contraband Forfeiture Act. Contraband includes any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, Internet domain name, gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was obtained, received, used, attempted to be used, or intended to be used in violation of the gambling laws of the state.[4]

Disposition of Confiscated Items

Currently, property rights in confiscated machines and money and other things of value therein are forfeited to the county in which the seizure was made and must be placed in the fine and forfeiture fund of the county.[5] All sums received from the sale of seized property is paid into the county fine and forfeiture fund in which the seizure was made.[6] If the seizure occurs within a municipality that has

[1] Section 119.01(4), F.S., defines a "criminal justice agency" to mean any law enforcement agency, court, or prosecutor; any other agency charged by law with criminal law enforcement duties; any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or the Department of Corrections.
[2] S. 16.711(3), F.S.
[3] *Id*.
[4] S. 932.701(2)(a)2, F.S.
[5] S. 849.19, F.S.
[6] S. 849.44, F.S.

forfeiture ordinances, the sums received from sale of the seized property is deposited into the municipality's general operating fund.[7]

Pari-Mutuel Wagering Trust Fund

Section 550.0951(5), F.S., establishes the Pari-mutuel Wagering Trust Fund (trust fund). Specified license fee revenues[8] deposited into the trust fund and other collections are used to fund the operation of the Commission in accordance with authorized appropriations.[9] Additionally, slot machine license fees and other specified fees are used to fund the direct and indirect operating expenses of the Commission's operations and to provide funding for law enforcement activities in accordance with authorized appropriations.[10]

Disposition of Liens and Forfeited Property

Under the Florida Contraband Forfeiture Act, an agency that receives final judgment granting forfeiture of real property or personal property may elect to:

- Retain the property for the agency's use;
- Sell the property at public auction or by sealed bid to the highest bidder, except for real property which should be sold in a commercially reasonable manner after appraisal by listing on the market; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.[11]

If the forfeited property is subject to a lien, the agency must sell the property and use the proceeds to satisfy any liens or may have the lien satisfied prior to taking the above actions.[12]

The proceeds from the sale of forfeited property must be disbursed in the following priority:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.
- Payment of court costs incurred in the forfeiture proceeding.[13]

If the seizing agency is a state agency, the remaining proceeds after satisfaction of liens, costs incurred with the storage, maintenance, security, and forfeiture of such property, and payment of court costs incurred in a forfeiture procedure, must be deposited into the General Revenue Fund.[14] However, various state agencies are provided an exemption, allowing the proceeds accrued pursuant to the provisions of the Florida Contraband Forfeiture Act to be deposited into specified trust funds created within those agencies.[15] The Florida Gaming Control Commission does not currently have this exemption.

Effect of Proposed Changes

The bill amends s. 849.19, F.S., to specify that the of property rights in machines and money and other things of value therein confiscated by the Commission are forfeited to the Commission and deposited into the Pari-Mutuel Wagering Trust Fund. The bill amends s. 849.44, F.S., to specify sums received from a sale or other disposition of property that is seized by the Commission shall be deposited into the Pari-Mutuel Wagering Trust Fund.

[7] *Id.*
[8] S. 550.0951(1), F.S.
[9] S. 550.135(1), F.S.
[10] S. 550.135(2), F.S.
[11] S. 932.7055(1), F.S.
[12] S. 932.7055(3), F.S.
[13] S. 932.7055(4), F.S
[14] S. 932.7055(6), F.S.
[15] *Id.*

The bill amends s. 932.7055, F.S., to provide an exemption from the requirement that the Commission pay excess proceeds from forfeiture proceedings to the General Revenue Fund. The bill specifies that proceeds accrued pursuant to the Florida Contraband Forfeiture Act are to be deposited into the Pari-Mutual Wagering Trust Fund or into the Commission's Federal Law Enforcement Trust Fund. The bill authorizes such proceeds to be used for the operation of the Commission.

The bill takes effect July 1, 2024.

B. SECTION DIRECTORY:

Section 1: amends s. 849.19, F.S., specifying deposits into the Pari-Mutuel Wagering Trust Fund.

Section 2: amends s. 849.44, F.S, specifying proceeds to be placed into the Pari-Mutuel Wagering Trust Fund.

Section 3: amends s. 932.7055, F.S., providing an exemption under the Florida Contraband Forfeiture Act.

Section 4: provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill does not impact state revenues or expenditures directly. However, the authorization to deposit funds into the Pari-Mutuel Trust Fund will allow funds that are acquired through the Commission's gaming enforcement activities to be used for operations of the Commission. Once there are sufficient funds within the trust fund, the commission may request budget authority to use the funds as part of their Legislative Budget Request.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

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 property seized by the Florida Gaming Control Commission; amending s. 849.19, F.S.; providing that any seized machine and the cash therein shall be deposited into the Florida Gaming Control Commission Pari-Mutuel Wagering Trust Fund; amending s. 849.44, F.S.; providing that the proceeds from a sale or other disposition of seized property shall be deposited into the Florida Gaming Control Commission Pari-Mutuel Wagering Trust Fund; amending s. 932.7055, F.S.; providing an exemption for the proceeds accrued under the provisions of the Florida Contraband Forfeiture Act; providing an effective date.

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

Section 1. Section 849.19, Florida Statutes, is amended to read:

849.19 Property rights in confiscated machine.—The right of property in and to any machine, apparatus or device as defined in s. 849.16 and to all money and other things of value therein, is declared not to exist in any person, and the same shall be forfeited and deposited into the Florida Gaming Control Commission's Pari-Mutuel Wagering Trust Fund if the Florida Gaming Control Commission is the seizing agency. Otherwise, ~~and~~

such money or other things of value shall be forfeited to the county in which the seizure was made and shall be delivered forthwith to the clerk of the circuit court and shall by her or him be placed in the fine and forfeiture fund of said county.

Section 2. Section 849.44, Florida Statutes, is amended to read:

849.44 Disposition of proceeds of forfeiture.—All sums received from a sale or other disposition of ~~the seized~~ property that is seized by the Florida Gaming Control Commission shall be deposited into the Pari-Mutuel Wagering Trust Fund. Otherwise, all sums received from a sale or other disposition of the seized property shall be deposited ~~paid~~ into the county fine and forfeiture fund ~~and shall become a part thereof~~; provided, however, that in instances where the seizure is by a municipal police officer within the limits of any municipality having an ordinance requiring such vehicles, vessels or conveyances to be forfeited, the city attorney shall act in behalf of the city in lieu of the state attorney and shall proceed to forfeit the property as herein provided, and all sums received ~~therefrom~~ shall be deposited ~~go~~ into the city's general operating fund ~~of the city~~.

Section 3. Paragraph (n) is added to subsection (6) of section 932.7055, Florida Statutes, to read:

932.7055 Disposition of liens and forfeited property.—

(6) If the seizing agency is a state agency, all remaining

proceeds shall be deposited into the General Revenue Fund. However, if the seizing agency is:

(n) The Florida Gaming Control Commission, the proceeds accrued pursuant to the Florida Contraband Forfeiture Act shall be deposited into the Pari-mutuel Wagering Trust Fund established by s. 550.0951(5) or into the Florida Gaming Control Commission's Federal Law Enforcement Trust Fund established by s. 16.717, as applicable, to be used for the operation of the Florida Gaming Control Commission in accordance with ss. 16.71-16.716.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 95 Yacht and Ship Brokers' Act
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 92

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

SUMMARY ANALYSIS

The Florida Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (division), regulates yacht and ship brokers and salespersons. For the purposes of the practice act, “yacht” means any vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which weighs less than 300 gross tons.

A yacht and ship “broker” is a person who, for or in expectation of compensation: sells, offers, or negotiates to sell; buys, offers, or negotiates to buy; solicits or obtains listings of; or negotiates the purchase, sale, or exchange of, yachts for other persons. A person may not be licensed as a broker unless they have been a salesperson for at least 2 consecutive years.

A license is not required for:
- A person who sells his or her own yacht,
- An attorney at law for services rendered in his or her professional capacity,
- A receiver, trustee, or other person acting under a court order,
- A transaction involving the sale of a new yacht, or
- A transaction involving the foreclosure of a security interest in a yacht.

The bill expands the definition of “yacht” by:
- Increasing the number of vessels included by removing the vessel weight limit, and
- Requiring that the vessel be:
  - Manufactured or operated primarily for pleasure; or
  - Leased, rented, or chartered to someone other than the owner for the other person's pleasure.

The bill provides that a license is not required for a person who regularly conducts business as a yacht or ship broker or salesperson in another state who engages in the purchase or sale of a yacht in Florida, if the transaction is executed with a Florida broker or salesperson.

The bill amends the requirements to become a broker by:
- Removing the requirement that the applicant be licensed as a salesperson for two years, and
- Requiring that the applicant has been a salesperson and can either:
  - Demonstrate direct involvement in at least four transactions that resulted in the sale of a yacht, or
  - Certify that he or she has obtained at least 20 education credits.

See Fiscal Analysis & Economic Impact Statement for fiscal impact of the bill.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Yacht and Ship Brokers

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses various businesses and professionals in Florida through 12 divisions, including the Division of Florida Condominiums, Timeshares, and Mobile Homes (division).[1]

The division provides consumer protection for Florida residents through education, complaint resolution, mediation and arbitration, and developer disclosure.[2] The division has limited 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.[3]

For the purposes of the practice act, "yacht" means any vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which weighs less than 300 gross tons.[4]

A yacht and ship "broker" is a person who, for or in expectation of compensation: sells, offers, or negotiates to sell; buys, offers, or negotiates to buy; solicits or obtains listings of; or negotiates the purchase, sale, or exchange of, yachts for other persons.[5] A person may not be licensed as a broker unless they have been a salesperson for at least 2 consecutive years.[6]

A yacht and ship "salesperson" is a person who, for or in expectation of compensation, is employed by a broker to perform any acts of a broker.[7]

Yacht and ship brokers, salespersons, and related business organizations are regulated under ch. 326, F.S., and by the division.[8] A person may not act as a broker or salesperson in Florida unless they are licensed by the division.[9]

An applicant for a license as a broker or salesperson must demonstrate or provide the following to the division:[10]

- Proof of good moral character.
- Proof that they have never been convicted of a felony.
- A $25,000 bond for broker or a $10,000 bond for salespersons to the division.
- Proof that they are a resident of Florida or that they conduct business in Florida.
- A full set of fingerprints taken within the 6 months immediately preceding the submission of the application.
- Proof that they have not operated as a broker or salesperson without a license.

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[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 Nov. 12, 2022).
[3] *Id*.
[4] S. 326.002(4), F.S.
[5] S. 326.002(1), F.S.
[6] S. 326.004(8), F.S.
[7] S. 326.002(3), F.S.
[8] Ch. 326, F.S.
[9] S. 326.004(1), F.S.
[10] S. 326.004(6), F.S.

A license is not required for:[11]

- A person who sells his or her own yacht,
- An attorney at law for services rendered in his or her professional capacity,
- A receiver, trustee, or other person acting under a court order,
- A transaction involving the sale of a new yacht, or
- A transaction involving the foreclosure of a security interest in a yacht.

Currently, there are 2,818 licensed salespersons and 1,270[12] licensed brokers. Last fiscal year, there were 29 yacht and ship broker complaints to the division, and there was one[13] disciplinary action.[14]

There are no provisions for a license by endorsement, or licensure for persons who are licensed in another jurisdiction.

Effect of the Bill

The bill expands the definition of "yacht" by:

- Increasing the number of vessels included by removing the vessel weight limit, and
- Requiring that the vessel be:
  - Manufactured or operated primarily for pleasure; or
  - Leased, rented, or chartered to someone other than the owner for the other person's pleasure.

The bill provides that a license is not required for a person who regularly conducts business as a yacht or ship broker or salesperson in another state who engages in the purchase or sale of a yacht in Florida, if the transaction is executed with a broker or salesperson licensed in this state.

The bill amends the requirements to become a broker by:

- Removing the requirement that the applicant first be licensed as a salesperson for at least two consecutive years, and
- Requiring that the applicant has been a salesperson and can either:
  - Demonstrate that he or she has been directly involved in at least four transactions that resulted in the sale of a yacht, or
  - Certify that he or she has obtained at least 20 education credits approved by the division.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 326.002, F.S.; relating to a definition.
Section 2: Amends s. 326.004, F.S.; relating to a licensing exception and a licensing requirement.
Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[11] S. 362.004(3), F.S.
[12] There are 938 employing brokers and 332 yacht and ship brokers.
[13] The division issued one warning letter.
[14] Email from Chris Kingry, Deputy Director of Legislative Affairs, Department of Business and Professional Regulation, RE: Yachts (Nov. 14, 2023).

The bill may have an insignificant negative fiscal impact related to licensing fees collected by the division due to fewer out-of-state yacht and ship brokers needing to have a Florida license to do business in Florida in certain circumstances. However, the bill amends the requirements for an individual to become a broker which may increase fees as a result in increased licensure.

2. Expenditures:

DBPR estimates that 4.00 new FTE will be needed to implement the requirements in the bill including $286,776 in salaries and benefits and $54,526 in expense budget authority.[15] However, as of January 2, 2024, the Division of Florida Condominiums, Timeshares and Mobile Homes, which oversees the Yacht and Ship Program, had 28.5 vacant FTE. Of these FTE, 12.5 have been vacant in excess of 150 days.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will bring very large and heavy yachts under the regulatory practice act. The bill may allow more out-of-state yacht and ship brokers to do business in Florida. Applicants for a broker license who opt to qualify for a license by completing 20 hours of education will incur costs related to completing those education hours.

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 division will need to adopt rules to approve education credits.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the agency analysis for a similar bill last year, DBPR notes that "[t]he term "pleasure" is undefined, and thus rulemaking authority is required to define such a term. Moreover, "primarily" would need to be defined by either statute or rule relative to the scope of use. Otherwise, there is no standard by which to discern whether the yacht in question is a yacht for which the division has regulatory authority."[16]

[15] Florida Department of Business and Professional Regulation, Agency Analysis of 2023 Senate Bill 92, p. 4 (November 2, 2023).
[16] Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for HB 83* at 3 (Feb. 17, 2023).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On November 16, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute clarifies that pre-licensure education is not “continuing” education.

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

A bill to be entitled

An act relating to the Yacht and Ship Brokers' Act; amending s. 326.002, F.S.; revising the definition of the term "yacht"; amending s. 326.004, F.S.; exempting a person who conducts business as a broker or salesperson in another state from licensure in this state for specified transactions; requiring, rather than authorizing, the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to deny licenses for applicants who fail to meet certain requirements; revising requirements for licensure as a broker; providing an effective date.

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

Section 1. Subsection (4) of section 326.002, Florida Statutes, is amended to read:

326.002 Definitions.—As used in ss. 326.001-326.006, the term:

(4) "Yacht" means any vessel that ~~which~~ is propelled by sail or machinery in the water, ~~which~~ exceeds 32 feet in length, and is:

(a) Manufactured or operated primarily for pleasure; or

(b) Leased, rented, or chartered to someone other than the

owner for the other person's pleasure ~~which weighs less than 300 gross tons~~.

Section 2. Subsections (6) and (8) of section 326.004, Florida Statutes, are amended, and paragraph (f) is added to subsection (3) of that section, to read:

326.004 Licensing.—

(3) A license is not required for:

(f) A person who conducts business as a broker or salesperson in another state as his or her primary profession and engages in the purchase or sale of a yacht under this act if the transaction is executed in its entirety with a broker or salesperson licensed in this state.

(6) The division must ~~may~~ deny a license to any applicant who does not meet all of the following requirements:

(a) Furnish proof satisfactory to the division that he or she is of good moral character.

(b) Certify that he or she has never been convicted of a felony.

(c) Post the bond required by the Yacht and Ship Brokers' Act.

(d) Demonstrate that he or she is a resident of this state or that he or she conducts business in this state.

(e) Furnish a full set of fingerprints taken within the 6 months immediately preceding the submission of the application.

(f) Have a current license and has operated as a broker or

salesperson without a license.

(8) A person may not be licensed as a broker unless he or she has been licensed as a salesperson and can demonstrate that he or she has been directly involved in at least four transactions that resulted in the sale of a yacht or can certify that he or she has obtained at least 20 education credits approved by the division ~~for at least 2 consecutive years, and may not be licensed as a broker unless he or she has been licensed as a salesperson for at least 2 consecutive years~~.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 149 Continuing Contracts
SPONSOR(S): Constitutional Rights, Rule of Law & Government Operations Subcommittee, Alvarez
TIED BILLS: **IDEN./SIM. BILLS:** SB 656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee	15 Y, 0 N, As CS	Villa	Miller
2) State Administration & Technology Appropriations Subcommittee		Mullins	Topp
3) State Affairs Committee			

SUMMARY ANALYSIS

In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA), which requires state and local government agencies to procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price.

The CCNA explicitly states it does not prohibit a continuing contract between a firm and an agency. A continuing contract is a contract for professional services entered into in accordance with the CCNA between a government agency and a firm whereby the firm provides professional services to the agency for several projects. The CCNA prohibits firms that are parties to a continuing contract from being required to bid against one another. Current law authorizes the use of a continuing contract for construction projects in which the estimated construction cost of each project does not exceed $4 million, for study activities if the fee for professional services for each study does not exceed $500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except the contract must include a termination clause.

Rules adopted by the Florida Department of Transportation (FDOT) establish minimum qualification standards by type of work for consultants who seek to provide professional services to FDOT, including for geotechnical and materials testing. Geotechnical testing involves testing soil and rock for the purpose of classifying materials and identifying their physical properties. Materials testing involves testing or investigating various types of highway materials and products and reporting results and recommendations.

The bill increases the maximum limit for continuing contracts covered by the CCNA from an estimated per-project construction cost of $4 million to $7.5 million plus an annual increase based on the Consumer Price Index (CPI) beginning with the CPI announced for the year 2026.

The bill also provides that, for a geotechnical and materials testing continuing contract, FDOT must select at least three qualified firms and award work to the selected firms on a sequential, rotating basis provided such distribution is not detrimental to the state interests. If the work is not awarded on such basis, FDOT must certify in writing the reasons for awarding the project out-of-sequence and publish the certification on its website and provide a copy to each selected firm.

The bill may have a positive, yet indeterminate fiscal impact on state and local government expenditures by increasing the dollar threshold for entering into continuing contracts. There is a minimal fiscal impact of requiring FDOT to select three qualified firms for geotechnical and materials testing continuing contracts and award work on a sequential, rotational basis. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Consultant's Competitive Negotiation Act

In 1972, Congress passed the Brooks Act,[1] which requires federal agencies to use a qualifications-based selection process for architectural, engineering, and associated services, such as mapping and surveying. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price.

In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA),[2] which is modeled after the Brooks Act. The CCNA requires state and local government agencies[3] to procure the professional services[4] of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process.[5]

CCNA Procurement Process

The CCNA establishes a three-phrase process for procuring professional services:

- Phase 1 – Public announcement and qualification.
- Phase 2 – Competitive solicitation.
- Phase 3 – Competitive negotiation.

During Phase 1, the public announcement and qualification phase, state and local agencies must publicly announce each occasion when professional services will be purchased for one of the following:

- A project,[6] when the basic construction cost is estimated by the agency to exceed $325,000; or
- A planning or study activity, when the fee for professional services exceeds $35,000.[7]

The public notice must include a general description of the project and indicate how interested firms[8] may apply for consideration.[9] A firm that wishes to provide professional services to an agency must first be certified by the agency as qualified to provide the needed services pursuant to law and the agency's regulations.[10] In determining whether a firm is qualified, the agency must consider the capabilities, adequacy of personnel, past record, and experience of the firm as well as whether the firm is a certified minority business enterprise.[11] Each agency must encourage firms desiring to provide professional services to the agency to submit annual statements of qualifications and performance data.[12]

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[1] Pub. L. 92-582, 86 Stat. 1278 (1972).
[2] Ch. 73-19, Laws of Fla., codified as s. 287.055, F.S.
[3] "Agency" means the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S. S. 287.055(2)(b), F.S.
[4] "Professional services" means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice. S. 287.055(2)(a), F.S.
[5] S. 287.055, F.S.
[6] (f) "Project" means that fixed capital outlay study or planning activity described in the public notice of the state or a state agency under s. 287.055(3)(a), F.S. A project may include:
- A grouping of minor construction, rehabilitation, or renovation activities.
- A grouping of substantially similar construction, rehabilitation, or renovation activities. S. 287.055(2)(f), F.S.

[7] S. 287.055(3)(a)1., F.S. As used in the statute, CATEGORY TWO refers to purchases of $35,000 or more and CATEGORY FIVE refers to purchases of $325,000 or more. S. 287.017, F.S.
[8] "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state. S. 287.055(2)(c), F.S.
[9] S. 287.055(3)(a)1., F.S.
[10] S. 287.055(3)(c), F.S.
[11] S. 287.055(3)(c) and (d), F.S.
[12] S. 287.055(3)(b), F.S.

During Phase 2, the competitive selection phase, an agency must evaluate the qualifications and past performance of interested firms and conduct discussions with at least three firms regarding their qualifications, approach to the project, and ability to furnish the required services.[13] The agency must then select at least three firms, ranked in order of preference, that it considers the most highly qualified to perform the required services. In determining whether a firm is qualified, the agency must consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firm; and the volume of work previously awarded to each firm by the agency, with the goal of equitably distributing contracts among qualified firms, provided such distribution does not violate the principle of selecting the most highly qualified firms. During this phase, the CCNA prohibits the agency from requesting, accepting, or considering proposals for the compensation[14] to be paid.[15,16]

During Phase 3, the competitive negotiation phase, an agency must first negotiate compensation with the highest ranked firm. If the agency is unable to negotiate a satisfactory contract with that firm at a price the agency determines to be fair, competitive, and reasonable, negotiations with the firm must be formally terminated. The agency must then negotiate with the remaining ranked firms, in order of rank, and follow the same process until an agreement is reached. If the agency is unable to negotiate a satisfactory contract with any of the ranked firms, the agency must select additional firms, ranked in the order of competence and qualification without regard to price, and continue negotiations until an agreement is reached.[17]

Continuing Contracts under the CCNA

The CCNA expressly does not prohibit a continuing contract[18] between a firm and an agency.[19] A continuing contract is one for professional services entered into in accordance with the CCNA between an agency and a firm whereby the firm provides professional services to the agency for projects where the estimated cost of each project does not exceed a specified amount.[20] The CCNA prohibits firms that are parties to a continuing contract from being required to bid against one another.[21]

Current law authorizes the use of a continuing contract for construction projects in which the estimated construction cost of each individual project under the contract does not exceed $4 million, for study activities if the fee for professional services for each individual study under the contract does not exceed $500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except the contract must include a termination clause.[22] The maximum per-project and per-study limits were put in place by the Legislature in 1988[23] and subsequently increased three times. In 1988, the maximum per-project and per-study limits were $500,000 and $25,000, respectively.[24] In 2002, the limits were increased to $1 million and $50,000,[25] in 2009, the limits were increased to $2 million and $200,000,[26] and in 2020, the last revision, the limits were increased to $4 million and $500,000.[27]

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[13] S. 287.055(4)(a), F.S.
[14] "Compensation" means the amount paid by the agency for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated. S. 287.055(2)(d), F.S.
[15] S. 287.055(4)(b), F.S.
[16] The CCNA did not prohibit discussion of compensation in the competitive selection phase until 1988, when the Legislature enacted a provision that allows consideration of compensation to occur only during the competitive negotiation phase. Ch. 88-108, L.O.F.
[17] S. 287.055(5), F.S.
[18] *See* s. 287.055(2)(g), F.S.
[19] S. 287.055(4)(d), F.S.
[20] S. 287.055(2)(g), F.S.
[21] *Id.*
[22] S. 287.055(2)(g), F.S. An entity may not use a continuing contract for work of a specified nature to exceed the monetary limits placed on construction projects and study activities. Op. Fla. Att'y Gen. 2013-28 (2013).
[23] Ch. 88-108, Laws of Fla.
[24] *Id.*
[25] Ch. 2002-20, Laws of Fla.
[26] Ch. 2009-227, Laws of Fla.
[27] Ch. 2020-127, Laws of Fla.

Construction and Program Management Entities

Current law authorizes governmental entities[28] to contract with a construction management entity or a program management entity.[29] A construction management entity is responsible for construction project scheduling and coordination in both preconstruction and construction phases and is generally responsible for the successful, timely, and economical completion of a construction project.[30] A program management entity is responsible for schedule control, cost control, and coordination in providing or procuring planning, design, and construction services.[31] Both construction and program management entities must be procured pursuant to the CCNA and must consist of, or contract with, licensed or registered professionals for the specific fields or areas of construction.[32] The governmental entity procuring the services of a construction management or program management entity may choose to enter into a continuing contract[33] pursuant to the CCNA for construction projects where the estimated construction cost of each project does not exceed $4 million.[34]

Construction Cost

Construction costs have seen an upswing since 2020, largely driven by a confluence of factors exacerbated by the COVID-19 pandemic.[35] Escalating prices of essential materials, such as steel and lumber, influenced by disruptions in global supply chains, are prominent contributors as well as general inflation in the economy. In addition, labor shortages have led to higher wages, further impacting costs. However, construction input prices[36] have stabilized recently, falling about one percentage point from October 2022 to October 2023. The following chart shows the percent change to certain construction input and commodity prices as of October 2023:[37]

[28] "Governmental entity" means a county, municipality, school district, special district as defined in ch. 189, F.S., or political subdivision of the state. S. 255.103(1), F.S.
[29] S. 255.103, F.S.
[30] S. 255.103(2), F.S.
[31] S. 255.103(3), F.S.
[32] S. 255.103, F.S.
[33] A continuing contract, for purposes of procuring a construction or program management entity, means a contract for work during a defined period on construction projects described by type, which may or may not be identified at the time of entering into the contract. S. 255.103(4), F.S.
[34] S. 255.103(4), F.S.
[35] Point Acquisitions, *Construction Costs Rising in 2022: Here's Why It's Happening*, https://pointacquisitions.com/2022-rising-construction-costs/ (last visited November 30, 2023).
[36] Construction input prices refer to the costs associated with materials, labor, and other resources used in the construction industry.
[37] *See* United States Department of Labor Bureau of Labor Statistics, *Producer Price Index Detailed Reports for February 2020 and October 2023*, available at: https://www.bls.gov/ppi/detailed-report/#2023 (last visited December 1, 2023).

	1-month	12-month	Since Feb. 2020
Inputs to Industries			
Inputs to construction	-1.2%	-1.1%	33.1%
Inputs to multifamily construction	-0.9%	0.8%	32.4%
Inputs to nonresidential construction	-1.1%	-0.7%	33.6%
Inputs to commercial construction	-0.7%	-0.3%	33.6%
Inputs to healthcare construction	-0.7%	-0.2%	33.4%
Inputs to industrial construction	-0.9%	1.1%	30.7%
Inputs to other nonresidential construction	-1.2%	-0.9%	33.7%
Inputs to maintenance and repair construction	-1.3%	-2.0%	31.8%
Inputs to highway and street construction	-1.2%	0.0%	31.4%
Commodities			
Adhesives and sealants	0.1%	1.8%	28.9%
Concrete products	0.7%	9.7%	30.5%
Construction machinery and equipment	0.0%	6.0%	23.6%
Copper wire and cable	-1.3%	2.7%	24.2%
Crude petroleum	-2.9%	-3.0%	56.9%
Fabricated structural metal products	0.8%	-0.7%	42.3%
Insulation materials	-0.3%	1.6%	31.0%
Iron and Steel	-2.3%	-6.1%	40.79%
Lumber and wood products	-0.3%	-6.5%	22.3%
Natural gas	10.9%	-54.9%	40.8%
Plumbing fixtures and brass fittings	0.5%	1.4%	16.1%
Prepared asphalt, tar roofing, and siding products	0.7%	3.9%	34.4%
Steel mill products	-2.5%	-9.9%	47.0%
Switchgear, switchboard, industrial controls equipment	0.2%	6.3%	32.0%
Unprocessed energy materials	-0.3%	-16.2%	60.2%

Consumer Price Index

The Consumer Price Index (CPI) compiled by the United States Department of Labor, measures the average change over time in the prices paid by urban consumers for a specified grouping of consumer goods and services. The CPI encompasses various categories including food, housing, clothing, medical care, and transportation, providing a comprehensive view of price movements. It serves as a key indicator of inflation and aids policymakers, businesses, and the public by offering insights into inflation trends and potential economic impacts.[38] The CPI increased by approximately 19 percent from February 2020 to October 2023. Comparatively, the CPI increased approximately three percent from October 2022 to October 2023.[39]

Department of Transportation

The Florida Department of Transportation (FDOT) is a decentralized agency[40] headed by the Secretary of Transportation. The Secretary is appointed by the Governor from among three persons nominated by the Florida Transportation Commission and subject to confirmation by the Senate.[41] FDOT is the primary agency responsible for planning, designing, building, operating, and maintaining Florida's transportation system, including the state's roadways, bridges, airports, seaports, and other transportation-related infrastructure.[42]

FDOT rules establish minimum qualification standards by type of work for consultants who seek to provide professional services to FDOT, including the following:

[38] United States Department of Labor Bureau of Labor Statistics, *Consumer Price Indexes Overview*, https://www.bls.gov/cpi/overview.htm (last visited December 1, 2023).
[39] *See* United States Department of Labor Bureau of Labor Statistics, *CPI Inflation Calculator*, https://www.bls.gov/data/inflation_calculator.htm (last visited December 1, 2023).
[40] S. 20.23, F.S.
[41] S. 20.23(1)(a), F.S.
[42] *See* s. 334.044, F.S.; *see also* Florida Department of Transportation, *About FDOT*, https://www.fdot.gov/agencyresources/aboutfdot.shtm (last visited November 28, 2023).

- Geotechnical Classification Lab Testing, which includes conducting tests on soil and rock according to FDOT specifications for the purpose of classifying materials. This type of work requires one professional engineer with a minimum of five years of experience in activities normally associated with geotechnical testing. In addition, the consultant must have at least one technician with a limerock bearing ratio technician qualification with at least two years of experience in geotechnical testing, and certain specialized equipment.[43]
- Geotechnical Specialty Lab Testing, which includes conducting tests on soil and rock according to FDOT specifications for the purpose of identifying their physical properties. FDOT requires the consultant to have at least one staff member with four years of experience performing such tests, or an equivalent bachelor's degree, and certain specialized equipment.[44]
- Highway Materials Testing, which includes sampling and testing various materials and reporting results and recommendations. This type of work requires one professional engineer with a minimum of five years of experience in activities normally associated with highway materials testing. In addition, the consultant's personnel must include an individual with a limerock bearing ratio technician qualification, an asphalt plant level I qualification, a concrete field-testing technician level I qualification, and a nuclear gauge operator certification as provided by a gauge manufacturer, as well as certain specialized equipment.[45]
- Construction Materials Testing, which includes conducting inspections and investigations of various highway materials or products and reporting results and recommendations. This type of work requires one professional engineer with at least three years of experience in bridge or roadway construction inspection.[46]

As of December 4, 2023, approximately 183 entities are qualified to do types of geotechnical and materials testing for FDOT, with many qualified to perform multiple types of work, including:

- Geotechnical Classification Lab Testing: approximately 58 companies.
- Geotechnical Specialty Lab Testing: approximately 30 companies.
- Highway Materials Testing: approximately 43 companies.
- Construction Materials Testing: approximately 155 companies.[47]

Effect of the Bill

The bill increases the maximum limit for continuing contracts covered by the CCNA from an estimated per-project construction cost of $4 million to $7.5 million plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for the year 2026.

The bill also provides that FDOT must, for a geotechnical and materials testing continuing contract, select at least three qualified firms and award work to the selected firms on a sequential, rotating basis with the goal of equally distributing the work amongst the selected firms, provided such distribution is not detrimental to the interests of the state. If a project is not awarded on a sequential, rotating basis, at the time the project is awarded FDOT must certify in writing the reasons for awarding the project out-of-sequence, must publish the certification on its website for at least 30 days, and must provide a copy to each of the selected firms under the contract.

B. SECTION DIRECTORY:

Section 1 amends s. 255.103, F.S., relating to construction management or program management entities.

[43] R. 14-75.003(5)(h)1.b. and (5)(h)2.b., F.A.C.
[44] R. 14-75.003(5)(h)1.e. and (5)(h)2.d.(III), F.A.C.
[45] R. 14-75.003(5)(h)1.c. and (5)(h)2.c., F.A.C.
[46] R. 14-75.003(5)(i)1.c. and (5)(i)2.c., F.A.C.
[47] *See* Florida Department of Transportation Consultant Information (12/4/2023), at https://ssrs.fdot.gov/Reports/report/PDA%20Reports/Public%20Reports/InternetGroupX (last visited Dec. 4, 2023).

Section 2 amends s. 287.055, F.S., relating to acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.

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:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive, yet indeterminate fiscal impact on private sector businesses that provide professional services as defined in the CCNA, or that provide construction management or project management services, by allowing those entities to enter into larger contracts for projects under a continuing contract. Specifically, increasing the threshold for entering into continuing contracts would save those entities contractual and workload expenditures associated with having to undergo the CCNA procurement process for projects that exceed the current statutory threshold.

The fiscal impact on the private sector of requiring FDOT to select at least three qualified firms and award work on a sequential, rotational basis for certain continuing contracts is indeterminate at this time. Tying continuing contract limits to the Consumer Price Index (CPI) could ensure that contractors are compensated fairly over time, considering the impact of inflation on the cost of goods and services.

D. FISCAL COMMENTS:

The bill may have a positive, yet indeterminate fiscal impact on state and local government expenditures by allowing the state or local government to enter into larger continuing contracts under the CCNA. By retaining a larger continuing contract under the CCNA, the state or a local government could potentially save on contractual and workload expenditures associated with the procurement of services on a per-project basis. Governments, however, may spend more on these contracts as they are adjusted based on CPI increases.

The fiscal impact on the state of requiring FDOT to select at least three qualified firms and award work on a sequential, rotational basis for geotechnical and materials testing continuing contracts is indeterminate at this time. The requirement for FDOT to certify in writing its reasons for awarding certain contracts out-of-sequence and publish the certification on its website and provide a copy to the selected firms will have a minimal fiscal impact on the agency that will be absorbed as part of its day-to-day operations.

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 provides nor requires any additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 11, 2024, the Constitutional Rights, Rule of Law & Government Operations Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from the bill in that it increases the maximum limit for continuing contracts covered by the CCNA to an estimated per-project construction cost of $7.5 million plus an annual percentage increase based on the Annual Consumer Price Index. The PCS also requires FDOT, for certain continuing contracts, to select at least three firms and award work on a rotating basis provided the distribution is not detrimental to the state interest. If work is awarded other than in the established rotation, FDOT must publish on its website a written explanation for the award for at least 30 days and provide a copy to each firm in the rotation.

A bill to be entitled

An act relating to continuing contracts; amending s. 255.103, F.S.; revising the maximum estimated construction cost of construction projects for which a governmental entity may enter into a continuing contract; amending s. 287.055, F.S.; revising the definition of the term "continuing contract"; requiring the Department of Transportation to select a certain number of qualified firms and authorize work in a specified manner for certain continuing contracts; providing an effective date.

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

Section 1. Subsection (4) of section 255.103, Florida Statutes, is amended, and subsections (2) and (3) of that section are republished, to read:

255.103 Construction management or program management entities.—

(2) A governmental entity may select a construction management entity, pursuant to the process provided by s. 287.055, which is to be responsible for construction project scheduling and coordination in both preconstruction and construction phases and generally responsible for the successful, timely, and economical completion of the

construction project. The construction management entity must consist of or contract with licensed or registered professionals for the specific fields or areas of construction to be performed, as required by law. The construction management entity may retain necessary design professionals selected under the process provided in s. 287.055. At the option of the governmental entity, the construction management entity, after having been selected and after competitive negotiations, may be required to offer a guaranteed maximum price and a guaranteed completion date or a lump-sum price and a guaranteed completion date, in which case, the construction management entity must secure an appropriate surety bond pursuant to s. 255.05 and must hold construction subcontracts. If a project, as defined in s. 287.055(2)(f), solicited by a governmental entity under the process provided in s. 287.055 includes a grouping of substantially similar construction, rehabilitation, or renovation activities as permitted under s. 287.055(2)(f), the governmental entity, after competitive negotiations, may require the construction management entity to provide for a separate guaranteed maximum price or a separate lump-sum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the project.

(3) A governmental entity may select a program management entity, pursuant to the process provided by s. 287.055, which is

to be responsible for schedule control, cost control, and coordination in providing or procuring planning, design, and construction services. The program management entity must consist of or contract with licensed or registered professionals for the specific areas of design or construction to be performed as required by law. The program management entity may retain necessary design professionals selected under the process provided in s. 287.055. At the option of the governmental entity, the program management entity, after having been selected and after competitive negotiations, may be required to offer a guaranteed maximum price and a guaranteed completion date or a lump-sum price and guaranteed completion date, in which case the program management entity must secure an appropriate surety bond pursuant to s. 255.05 and must hold design and construction subcontracts. If a project, as defined in s. 287.055(2)(f), solicited by a governmental entity under the process provided in s. 287.055 includes a grouping of substantially similar construction, rehabilitation, or renovation activities as permitted under s. 287.055(2)(f), the governmental entity, after competitive negotiations, may require the program management entity to provide for a separate guaranteed maximum price or a lump-sum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the project.

(4) A governmental entity's authority under subsections (2) and (3) includes entering into a continuing contract for construction projects, pursuant to the process provided in s. 287.055, in which the estimated construction cost of each individual project under the contract does not exceed $7.5 ~~$4~~ million plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for the year 2026. For purposes of this subsection, the term "continuing contract" means a contract with a construction management or program management entity for work during a defined period on construction projects described by type which may or may not be identified at the time of entering into the contract.

Section 2. Subsections (10) and (11) of section 287.055, Florida Statutes, are renumbered as subsections (11) and (12), respectively, paragraph (g) of subsection (2) is amended, and a new subsection (10) is added to that section, to read:

287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.—

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

(g) A "continuing contract" is a contract for professional services entered into in accordance with all the procedures of

this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed $7.5 ~~$4~~ million plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for the year 2026;~~,~~ for study activity if the fee for professional services for each individual study under the contract does not exceed $500,000;~~,~~ or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.

(10) APPLICABILITY TO DEPARTMENT OF TRANSPORTATION.—Notwithstanding any other provision of this section to the contrary, for a geotechnical and materials testing continuing contract, the Department of Transportation must select at least three qualified firms and award work under the contract to the selected firms on a sequential, rotating basis with the goal of equally distributing the work amongst the selected firms, provided such distribution is not detrimental to the interests of the state. If a project is not awarded on a sequential,

rotating basis, at the time the project is awarded the department shall certify in writing the reasons for awarding the project out-of-sequence, publish the certification on the department's website for at least 30 days, and provide a copy to each of the selected firms under the contract.

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

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: State Administration & Technology Appropriations Subcommittee
Representative Alvarez offered the following:

Amendment (with directory and title amendments)
Remove lines 117-130

D I R E C T O R Y A M E N D M E N T

Remove lines 90-93 and insert:
Section 2. Paragraph (g) of subsection (2) of section 287.055, Florida Statutes, is amended to read:

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

Remove lines 8-11 and insert:

17 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 585 Access to Financial Institution Customer Accounts
SPONSOR(S): Insurance & Banking Subcommittee, Rommel
TIED BILLS: HB 587 **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The federal Bank Secrecy Act (BSA) establishes reporting, recordkeeping, and related requirements for federal and state-chartered financial institutions to help detect and prevent money laundering. Under the BSA, financial institutions are required to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. These types of reports are known as "suspicious activity reports" (SARs) and are filed with the Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury.

Florida's codification of the BSA is the Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act (Act). The Act requires financial institutions to submit to the Office of Financial Regulation (OFR) certain reports and maintain certain records of customers, accounts, and transactions involving currency or monetary instruments or suspicious activities in accordance with the policies of the BSA.

Subject to limited exceptions, the bill requires financial institutions to file a report with OFR whenever the financial institution suspends, terminates, or takes similar action restricting access to a customer's or member's account.

In connection with the termination-of-access report, the bill also:

- Requires OFR to investigate the report to determine whether the financial institution's action was made in bad faith;
- Requires OFR to report a bad faith determination to the Department of Financial Services, the Attorney General, and the customer or member;
- Creates a private right of action for the recovery of damages against the financial institution if a bad faith determination is made, including award of attorney fees; and
- Provides that a qualified public depository's (QPD) bad faith suspension, termination, or similar action restricting account access is grounds for suspension or disqualification from the QPD program, as well as grounds for the Chief Financial Officer to impose an administrative penalty on the QPD in lieu of a suspension or disqualification.

The bill has no impact on state revenues or local government revenues and expenditures, but has an indeterminate negative impact on state expenditures 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

Financial Institutions Codes

Florida's Financial Institutions Codes are codified under Title XXXVIII of the Florida Statutes.[1] 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.[2] 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.[3]

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.[4] 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.[5] 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.[6]

Bank Secrecy Act

The federal Bank Secrecy Act (BSA)[7] establishes reporting, recordkeeping, and related requirements for federal and state-chartered[8] financial institutions to help detect and prevent money laundering.[9] 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).[10]

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[1] S. 655.005(1)(k), F.S.
[2] S. 655.001(1), F.S.
[3] S. 655.001(2), F.S.
[4] Florida Office of Financial Regulation, *About Our Agency*, https://flofr.gov/sitePages/AboutOFR.htm (last visited Dec. 4, 2023).
[5] *Id.*
[6] 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.
[7] 31 U.S.C. § 5311 et seq.
[8] *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).
[9] U.S. Treasury Financial Crimes Enforcement Network, *FinCEN's Legal Authorities*, https://www.fincen.gov/resources/fincens-legal-authorities (last visited Dec. 6, 2023).
[10] *Id.*

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.[11]

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.[12]

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.[13] 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.[14]

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.[15] 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.[16] However, in no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.[17]

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[18] (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:[19]

- 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.[20] Any change in a financial institution's BSA/AML compliance officer must be reported to OFR.[21]

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[11] 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).
[12] *Id*.
[13] U.S. Treasury Financial Crimes Enforcement Network, *supra* note 9.
[14] 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).
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] S. 655.50, F.S.
[19] S. 655.50(2), F.S.
[20] S. 655.50(4), F.S.
[21] *Id*.

Additionally, the Act requires financial institutions to maintain:[22]

- 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[23] 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.[24]

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.[25]

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.[26]

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.[27]

VIOLATIONS OF THE ACT

A person who willfully violates the Act commits a misdemeanor of the first degree,[28] 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. [29]
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.[30]

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[22] S. 655.50(8), F.S.

[23] *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.

[24] S. 655.50(5), F.S.

[25] S. 655.50(5)(c), F.S.

[26] Ss. 655.50(9)(a)-(c), F.S.

[27] S. 655.50(9)(d), F.S.

[28] S. 655.50(10)(a), F.S.

[29] 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.

[30] S. 655.50(10)(c), F.S.

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.[31]

Effects of Banks' Termination of Account Access

In 2022, banks filed over 1.8 million SARs, which is a 50% increase in two years.[32] Multiple SARs often result in a financial institution terminating, suspending, or otherwise restricting a customer's account access.[33] 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.[34]

As a result, customers do not know why they were ever under suspicion.[35] Interviews with individuals who had lost access to their accounts revealed behaviors that may have caused their banks to "drop" them.[36] Specifically, a few of the interviews revealed the following:[37]

- 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.

[31] Ss. 655.50(10)(d)-(e), F.S.
[32] 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).
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*

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).[38]

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;[39]
- 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.[40]

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.[41] 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.[42] 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.[43]

Effect of the Bill

Termination-of-Access Reports

The bill amends Florida's Financial Institutions Codes to require a financial institution that terminates, suspends, or takes similar action restricting a customer's or member's account to file a termination-of-access report with OFR, unless such termination, suspension, or similar action was due to:

- The customer or member initiating the access change themselves;
- A lack of activity in the account; or
- The property is presumed unclaimed pursuant to ch. 717, F.S.[44]

The bill provides that the termination-of-access report shall be filed at such time and must contain such information as the Commission requires by rule.

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[38] S. 280.01, F.S. The Florida Security for Public Deposits Act is codified under ch. 280, F.S.
[39] 12 U.S.C.A. Ch. 16.
[40] S. 280.02(26), F.S.
[41] S. 280.054(1), F.S.
[42] S. 280.054(1)(b), F.S.
[43] *Id.*
[44] 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).

OFR INVESTIGATION AND DETERMINATION

Within 90 days after receipt of a 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 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 sending the report 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 timely file a termination-of-access report altogether, 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 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 timely file a termination-of-access report altogether, 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 timely file a termination-of-access report altogether, are each deemed a knowing and willful violation by the QPD.

B. SECTION DIRECTORY:

Section 1. Amends s. 280.051, F.S., relating to grounds for suspension or disqualification of a qualified public depository.

Section 2. Amends s. 280.054, F.S., relating to administrative penalty in lieu of suspension or disqualification.

Section 3. Creates s. 655.49, F.S., relating to termination-of-access reports by financial institutions; investigations by the Office of Financial Regulation.

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:

   The bill may have an indeterminate negative impact on OFR given the investigatory obligations imposed upon OFR by the bill. See Fiscal Comments, below.

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. The bill may lead to fewer financial institutions suspending, terminating, or taking similar action restricting customers' or members' account access in bad faith.

D. FISCAL COMMENTS:

The bill could increase the workload of OFR, depending on how many termination-of-access reports are filed with OFR. It is currently unknown whether additional resources would be needed to address the additional workload. However, if additional resources are needed, the OFR could include the required resources in their FY 2025-2026 Legislative Budget Request, due to the Legislature and the Governor, October 15, 2024.

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:

Not applicable.

B. RULE-MAKING AUTHORITY:

The bill provides rule-making authority to the Commission. Specifically, the bill provides that the termination-of-access report required under the proposed s. 655.40, F.S., shall be filed at such time and must contain such information as the Commission requires by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 13, 2023, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment clarifies that a financial institution's bad faith termination, suspension, or other action restricting account access is a violation of the financial institutions codes.

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

A bill to be entitled

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 depositors which are subject to certain penalties; creating s. 655.49, F.S.; requiring financial institutions that take actions to restrict customers' and members' account access to file termination-of-access reports with the Office of Financial Regulation; providing exceptions from the reporting requirements; requiring such reports to be filed at such time and to contain such information as required by the Financial Services Commission; providing duties of the Office of Financial Regulation; providing reporting requirements for the office; providing violations and penalties; authorizing the office to provide the reports and certain 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; providing an effective date.

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

Section 1. 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 timely file a termination-of-access report with the office as required under s. 655.49.

Section 2. 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 timely file a termination-of-access report required under s. 655.49.

Section 3. Section 655.49, Florida Statutes, is created to read:

655.49 Termination-of-access reports by financial institutions; investigations by the Office of Financial

Regulation.—

(1) A financial institution that terminates, suspends, or takes similar action restricting a customer's or member's account access must file a termination-of-access report with the office, unless the termination, suspension, or similar action restricting access was due to:

(a) The customer or member initiating the access change;

(b) A lack of activity in the account; or

(c) The account is presumed unclaimed pursuant to chapter 717.

The termination-of-access report shall be filed at such time and must contain such information as the commission requires by rule.

(2) The office must:

(a) Within 90 days after receipt of a termination-of-access report, 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; and

(b) Within 30 days after making the determination required under paragraph (a), report to the Attorney General and the Chief Financial Officer a 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 sending the report 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.

(3) A financial institution's bad faith termination, suspension, or similar action restricting a customer's or member's account access, as determined by the office pursuant to subsection (2), or a financial institution's failure to timely file a termination-of-access report as required under subsection (1), 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.

(4) The office shall provide any report filed pursuant to this section, or 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.

(5) If the office determines that a financial institution has acted in bad faith pursuant to subsection (2), the aggrieved

customer or member of the financial institution has a cause of action against such 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. 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 (2) shall bar recovery of any filed claims thereafter.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 779 United States-produced Iron and Steel in Public Works Projects
SPONSOR(S): Griffitts
TIED BILLS: **IDEN./SIM. BILLS:** SB 674

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee	14 Y, 0 N	Poreda	Miller
2) State Administration & Technology Appropriations Subcommittee		Helpling	Topp
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida law specifies the process for procuring construction services on public property and public owned buildings and directs the Department of Management Services (DMS) to establish certain applicable procedures.

Federal law and regulations impose numerous restrictions, in certain circumstances, requiring federal agencies to procure domestic end products and construction materials produced or manufactured in the United States and require the use of specific United States made construction materials in certain federally funded infrastructure-related projects. Such laws and regulations permit waivers under specific circumstances.

The bill requires a government entity, as defined by the bill, entering into a contract for a public works project (project) or for the purchase of materials for a project to include a requirement that any iron or steel product permanently incorporated in the project be produced in the United States. The bill waives the required contract term if the governmental entity administering the funds for a project or the purchase of materials for a project solely determines that any of the following apply:

- Iron or steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality;
- The use of iron or steel products produced in the United States will increase the total cost of the project by more than 20 percent; or
- Compliance is inconsistent with the public interest.

The bill specifies circumstances where the minimal use of foreign steel and iron materials are permitted and exempts certain electrical components. The bill further provides that it must be applied in a manner consistent with the state's obligations under any international agreement and may not be construed to impair any such obligations.

Finally, the bill grants rulemaking authority to DMS and the Department of Transportation to implement the bill.

The bill has an indeterminate, but likely significant, negative fiscal impact on state and local government expenditures. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Procurement of Construction Services

Florida Law specifies the process for procuring construction services for public property and public owned buildings.[1] The Department of Management Services (DMS) is responsible for establishing by rule:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts;
- Procedures for awarding each state agency construction projects to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state. These procedures include prequalification of bidders, criteria for developing requests for proposals, accelerated scheduling, and evaluating proposals and awarding contracts considering factors such as price, quality, and concept of the proposal.[2]

State contracts for construction projects that are estimated to cost in excess of $200,000 must be competitively bid.[3] A county, municipality, special district, or other political subdivision seeking to construct or improve a public building must competitively bid the project if the estimated cost exceeds $300,000.[4]

Current law requires the solicitation of competitive bids or proposals for any state construction project that is estimated to cost more than $200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening. If the cost of the construction project is estimated to exceed $500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the bid opening.[5]

In contrast, construction projects under the Department of Transportation (DOT) are governed separately.[6] Any person who wants to bid for a construction contract in excess of $250,000 must be certified by DOT as qualified.[7] Certification is also required to bid on a road, bridge, or public transportation construction project of more than $250,000.[8] The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders "with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification."[9]

[1] Ch. 255, F.S.
[2] S. 255.29, F.S.
[3] *See* s. 255.0525, F.S.; *see also* R. 60D-5.002 and 60D-5.0073, F.A.C.
[4] S. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost over $75,000.
[5] For counties, municipalities, and political subdivisions, similar publishing provisions apply. *See* s. 255.0525(2), F.S.
[6] Ch. 337, F.S.
[7] S. 337.14(1), F.S. and Ch. 14-22, F.A.C
[8] S. 337.14(2), F.S.
[9] S. 337.14(1), F.S.

Public Works Projects

Current law prohibits the state and political subdivisions from taking certain actions when procuring for public works projects except as required by federal or state law. The state and political subdivisions may not:

- Prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on the geographic location of the company, offices, or residences of employees;
- Require the contractor, subcontractor, or material supplier or carrier to pay employees a predetermined amount of wages or prescribe any wage rate; provide a specified type, amount, or rate of employee benefits to employees; control, limit, or expand staffing; or employ individuals from a designated, restricted, or single source; or
- Prohibit a contractor, subcontractor, or material supplier or carrier who is able, qualified, licensed, or certified to perform such work from receiving information about public works opportunities or from submitting such bids.[10]

DMS manages projects throughout the state, including new construction, renovations, and consulting services for various public works projects. Currently, DMS follows guidelines established by The Leadership in Energy and Environmental Design (LEED) Green Building Rating System, which recommends that steel and iron be purchased from within a 100-mile radius.[11]

Federal Laws and Regulations

Federal law and regulations impose numerous restrictions (domestic preference restrictions) requiring federal agencies to procure, in certain circumstances, domestic end products and construction materials produced or manufactured in the United States[12] and requires the use of specific United States made construction materials in certain federally funded infrastructure-related projects.[13]

Buy American Act of 1933: Restrictions on Federal Agency Procurement

The Buy American Act of 1933[14] (BAA) generally requires federal agencies to purchase "domestic end products"[15] and use "domestic construction materials"[16] for public use[17] and contracts above the micro-purchase threshold (typically $10,000).[18] The standard for what is considered a domestic end product or domestic construction material differs depending on whether the product in question is unmanufactured or manufactured and whether it consists predominantly of iron or steel. In order to qualify as domestic for BAA purposes, unmanufactured end products or construction materials not consisting primarily of iron or steel must be mined or produced in the United States. Non-iron/steel manufactured end products and construction materials qualify as domestic if manufactured in the United States and either the cost of the components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all components or the materials are commercially available off-the-shelf.[19] Manufactured end products or construction materials predominantly comprised of iron or steel are considered domestic if the domestic iron or steel constitutes at least 95% of the cost of all components used in the product.[20]

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[10] S. 255.0992, F.S.

[11] S. 255.253(7), F.S. and U.S. Green Building Council, *Local Valuation Factor,* available at www.usgbc.org/guide/bdc (last visited January 4, 2024).

[12] *The Buy American Act and Other Federal Procurement Domestic Content Restrictions*, Congressional Research Service, *available at* https://crsreports.congress.gov/product/pdf/R/R46748 (last visited January 4, 2024).

[13] *Congress Expands Buy America Requirements in the Infrastructure Investment and Jobs Act*, Congressional Research Service, *available at* https://crsreports.congress.gov/product/pdf/IF/IF11989 (last visited January 4, 2024).

[14] 41 U.S.C. §§ 8301–8305.

[15] 48 CFR §25.003 (definition of "domestic end products").

[16] 48 CFR §25.003 (definition of "domestic construction materials").

[17] 41 U.S.C. s. 8302.

[18] 41 U.S.C. § 8302(a)(2)(C); *See also* 41 U.S.C. § 1902(a)(1).

[19] *The Buy American Act, supra* n. 12, p. 3. *See generally* 48 C.F.R. s. 2.101.

[20] For domestic end products, this excludes commercially available off-the-shelf fasteners. 48 CFR §25.003 (definition of "Domestic end product").

Determining whether a product is "manufactured" or not is a fact-specific question as this term has not been defined for BAA purposes. However, manufactured articles and materials of iron and steel are deemed manufactured in the United States only if all processes involved in the production of such iron and steel, from initial melting stage to application of coatings, occurs in the U.S.[21] Determining the cost of components is generally based upon certain costs the contractor incurs when purchasing or manufacturing the components. The BAA generally requires that a construction contract for public buildings or public works include a requirement that the contractor acquire domestic construction materials. The methodology for considering whether an end product is domestic under the BAA applies to construction materials.[22]

Federal law provides exceptions to the BAA where the statutory requirements may be waived and allow the purchase of non-domestic end products or allow the use of non-domestic construction materials. These exceptions apply when:

- Compliance would be impracticable or inconsistent with public interest;
- Domestic end products or construction materials are not available "in sufficient and reasonably available commercial quantities and of a satisfactory quality;"
- The goods are acquired specifically for commissary resale;
- The agency procures information technology that is a commercial item;
- The value of the procurements is at or below the micro-purchase threshold;[23]
- The items are procured for use outside the United States; or
- The procuring agency determines that the cost of domestic end products or construction materials would be "unreasonable."[24]

The "unreasonable" standard under BAA is determined by the procuring agency applying a price preference for domestic construction materials and end products.[25] If the domestic offer is not the lowest offer and BAA restrictions apply to the lowest offer, the procuring agency must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer (non-domestic offer):

- If it is an end product, 20 percent of the low offer, if the lowest domestic offer is from a large business;
- If it is an end product, 30 percent of the low offer, if the lowest domestic offer is from a small business; or
- If it is a construction material, 20 percent of the low offer.[26]

The domestic offer's price is considered reasonable if it does not exceed the price of the low offer following the calculation with the appropriate percentage.[27]

BAA requirements may also be waived under the Trade Agreements Act of 1979 (TAA). The TAA generally authorizes the waiver of the application of any law, regulation, procedure, or practice regarding government procurement that would result in eligible products from countries with a United States trade agreement, or that meet certain other criteria, being treated less favorably than domestic products and suppliers.[28]

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[21] 41 U.S.C. §8303(c)(1).
[22] *The Buy American Act, supra* n. 12, at p. 5.
[23] 41 U.S.C. §8302(a)(2)(C); *See also* 41 U.S.C. §1902(a)(1).
[24] *See*, generally, 41 U.S.C. §§8302, 8303. *See also The Buy American Act, supra* n. 12, at p. 6.
[25] 48 C.F.R. §25.105(b).
[26] 48 C.F.R. §25.204.
[27] 48 C.F.R. §25.105(c).
[28] *The Buy American Act – Preferences for "Domestic" Supplies: In Brief*, Congressional Research Service, *available at* https://sgp.fas.org/crs/misc/R43140.pdf (last visited January 4, 2024).

Buy America

"Buy America," in contrast to BAA, does not refer to one specific law but pertains to several statutes and regulations applicable to federal financial assistance used to support certain infrastructure-related projects carried out by state and local governments.[29] Recipients of federal funds are responsible for complying with Buy America statutes and regulations.[30] Historically, Buy America has generally required the procurement and use of United States made iron and steel and the domestic production and assembly of certain other manufactured goods in covered federally funded projects. This applies to airports and other aviation related infrastructure, highways, intercity passenger rail, public transportation, and certain water-related infrastructure projects.

Under the recent Infrastructure Investment and Jobs Act (IIJA),[31] Buy America requirements have expanded to apply to other federally-funded infrastructure projects, including broadband infrastructure, real property and buildings, structures and equipment of electric utilities, and transmission facilities. The IIJA also expanded requirements to apply not only to iron, steel, and certain manufactured goods, but to other construction materials, such as nonferrous metals, plastic and polymer-based products, glass, lumber, and drywall.[32]

Laws and regulations governing Buy America requirements differ depending on the specific federal funding program and administering agency.[33] Waivers may be granted in limited circumstances at the discretion of the administering agency. Waivers authorized under previous Buy America laws are also authorized under the IIJA, including waiving Buy America requirements when such requirements are inconsistent with the public interest, when domestic end products and materials are not available in sufficient quantities or of satisfactory quality, and if the use of domestic products will increase the project cost by a specific threshold.[34]

Several Buy America laws and regulations prohibit the administering agency from imposing funding restrictions on federal assistance that restricts a state's ability to impose stricter requirements on the federal financial assistance.[35] In addition, several states have enacted their own Buy America laws.

State Revolving Fund American Iron and Steel (AIS) Requirement

The Clean Water State Revolving Fund (CWSRF) is a federal-state partnership that provides communities low-cost financing for a wide range of water quality infrastructure projects. The United States Environmental Protection Agency (EPA) provides grants to all states to capitalize the loan programs. The states then contribute an additional 20 percent to match the federal grants. States are responsible for operating their specific programs and may provide various types of assistance, including loans, refinancing, purchasing, or guaranteeing local debt and purchasing bond insurance, and have flexibility to target financial assistance to their community and environmental needs. The CWSRF funds a wide range of water infrastructure projects.[36]

The Drinking Water State Revolving Fund (DWSRF) is also a partnership between the EPA and states where the EPA provides grants to the states and then states contribute an additional 20 percent to match the federal grants. This program provides low interest loans to eligible recipients. Assistance through this program has been provided for improving drinking water treatment, fixing leaky or old

[29] *Buy America, Transportation Infrastructure, and American Manufacturing*, Congressional Research Service, *available at* https://www.everycrsreport.com/reports/IF10628.html (last visited January 4, 2024).
[30] *Congress Expands Buy America Requirements in the Infrastructure Investment and Jobs Act*, Congressional Research Service, *available at* https://crsreports.congress.gov/product/pdf/IF/IF11989 (last visited January 4, 2024).
[31] Infrastructure Investment and Jobs Act of 2021, Pub. L. No. 117-58, H.R. 3684, 117th Cong. (Nov. 15, 2021).
[32] *Congress Expands Buy America Requirements in the Infrastructure Investment and Jobs Act*, *supra*, n. 38, p. 1.
[33] *Buy America, Transportation Infrastructure, and American Manufacturing*, *supra,* n. 37.
[34] *Congress Expands Buy America Requirements in the Infrastructure Investment and Jobs Act*, *supra*, n. 38, p. 2.
[35] 23 U.S.C. §313(d); 49 U.S.C. §5323(j)(9); 49 U.S.C. §22905(8).
[36] United States Environmental Protection Agency, *Clean Water State Revolving Fund (CWSRF)*, *available at* https://www.epa.gov/cwsrf (last visited January 4, 2024).

pipes, improving source of water supply, replacing or constructing finished water storage tanks, and other public health infrastructure projects.[37]

An AIS requirement has been applied to these programs through various appropriations acts.[38] As such, CWSRF and DWSRF assistance recipients are required to use United States produced iron and steel products for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works.

Federal law provides circumstances where the EPA may waive AIS requirements.[39] The agency may issue waivers where it finds:

- Compliance would be inconsistent with public interest;
- Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- Use of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.[40]

Other federal programs are subject to an AIS requirement as well.[41]

Effect of the Bill

The bill requires a governmental entity[42] entering into a contract for a public works project (project), or for the purchase of materials for a project, include a requirement that any iron or steel product permanently incorporated in the project be produced in the United States.[43] The bill waives this requirement if the governmental entity administering the funds for the project solely determines that any of the following apply:

- Iron or steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality;
- The use of United States produced iron or steel products will increase the total cost of the project by more than 20 percent; or
- Compliance is inconsistent with public interest.

The bill defines "public works projects" to mean an activity paid for with any state-appropriated funds or state funds administered by the state that consist of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any governmental entity.

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[37] United States Environmental Protection Agency, *How the Drinking Water State Revolving Fund Works*, *available at* https://www.epa.gov/dwsrf/how-drinking-water-state-revolving-fund-works#tab-1 (last visited January 4, 2024).
[38] United States Environmental Protection Agency, *State Revolving Fund American Iron and Steel (AIS) Requirement*, *available at* https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement (last visited January 4, 2024).
[39] 33 U.S.C. §1388.
[40] *Id*.
[41] *See generally* United States Department of Agriculture, *American Iron and Steel Requirement Overview (AIS)*, *available at* https://www.rd.usda.gov/water-and-waste-disposal-programs-american-iron-and-steel-requirement (last visited January 4, 2024).
[42] The bill defines "governmental entity" to mean the state, or any office, board, bureau, commission, department, branch, division, or institution thereof, or a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The bill specifies that the term includes counties, cities, departments, commissions, authorities, school districts, taxing districts, water management districts, boards, public corporations, institutions of higher education, and other public agencies or bodies thereof authorized to expend public funds for the construction, maintenance, repair, renovation, remodeling, or improvement of public works.
[43] The bill defines the phrase "produced in the United States" to mean to require all manufacturing processes, from initial melting through application of coatings, to occur in the United States. The bill provides an exception under this definition, excluding metallurgical processes to refine steel additives. Accordingly, the bill also defines "manufacturing process" to mean the application of a process to alter the form or function of materials or elements of a product in a manner that adds value and transforms the materials or elements into a new finished product that is functionally different from a finished product produced merely from assembling materials or elements into a product without applying such process.

The bill defines “iron or steel products” to mean product primarily made of iron or steel, including but not limited to, lined or unlined pipes and fittings; bars and rods; wire, wire ropes and link chains; forgings; grating and drainage products; access covers, hatches, manhole covers and other castings; hydrants; electric transmission and distribution poles; tanks; flanges; pipe clamps and restraints; valves; structural steel and other steel mill products; materials made primarily of iron and steel within precast concrete; and other construction materials made primarily of iron or steel.

The bill permits the minimal use of foreign steel and iron materials if such materials are incidental or ancillary to the primary product and are not separately identified in the project specifications and the cost[44] of such materials does not exceed one-tenth of one percent of the total contract cost or $2,500, whichever is greater. Additionally, the bill provides that electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system, necessary for operation or concealment, except transmission and distribution poles, are not considered iron or steel products and are exempt from the requirements of the bill.

The bill provides that state law must be applied in a manner consistent with the state’s obligations under any international agreement and may not be construed to impair any such obligations. The bill also requires DMS to develop guidelines and procedures by rule to implement the bill, except in public works projects administered by DOT, in which case DOT must develop guidelines and procedures by rule.

The bill provides a legislative declaration that the act fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1 creates s. 255.0993, F.S., relating to public works projects.

Section 2 declares that the act fulfills an important state interest.

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:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have an indeterminate significant positive fiscal impact on domestic entities that produce iron and steel.

[44] The cost of such materials is that shown to be the value of the iron or steel products as they are delivered to the project.

D. FISCAL COMMENTS:

The bill requires governmental entity contracts for public works projects, or for the purchase of materials for a public works project, to require that any iron or steel product permanently incorporated in the project be produced in the United States, unless a specified circumstance exists. To the extent that state and local governments are unable to apply one of the exceptions provided in the bill, overall project costs will potentially increase due to purchasing iron or steel that may be more expensive. While the amount of potential cost increases is unknown, the bill could have an indeterminate but likely significant negative fiscal impact on state and local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of article VII, section 18 of the Florida Constitution may apply, because this bill requires governmental entities, including local governments, to contract for the use of iron or steel products produced in the United States when contracting for a public works project. Such requirement may require these governmental entities to spend more funds than they would absent the bill requirements. An exemption may apply if the fiscal impact of the bill is insignificant. In addition, an exception may apply because the bill applies to similarly situated governmental entities and provides an important state interest determination.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DMS and DOT to develop guidelines and procedures by rule 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 United States-produced iron and steel in public works projects; creating s. 255.0993, F.S.; providing definitions; requiring governmental entities to include a requirement in certain contracts that certain iron or steel products must be produced in the United States; providing exceptions; authorizing the use of foreign steel and iron materials in certain circumstances; requiring the Department of Management Service and the Department of Transportation to adopt rules; providing a legislative finding and declaration of important state interest; providing construction; providing an effective date.

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

Section 1. Section 255.0993, Florida Statutes, is created to read:

255.0993 Public works projects; United States-produced iron and steel products.—

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

(a) "Governmental entity" means the state, or any office, board, bureau, commission, department, branch, division, or institution thereof, or a separate agency or unit of local government created or established by law or ordinance and the

officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for the construction, maintenance, repair, renovation, remodeling, or improvement of public works.

(b) "Iron or steel products" means products made primarily of iron or steel, including, but not limited to, lined or unlined pipes and fittings; bars and rods; wire, wire ropes and link chains; forgings; grating and drainage products; access covers, hatches, manhole covers and other castings; hydrants; electric transmission and distribution poles; tanks; flanges; pipe clamps and restraints; valves; structural steel and other steel mill products; materials made primarily of iron and steel within precast concrete; and other construction materials made primarily of iron or steel.

(c) "Manufacturing process" means the application of a process to alter the form or function of materials or elements of a product in a manner that adds value and transforms the materials or elements into a new finished product that is functionally different from a finished product produced merely from assembling materials or elements into a product without applying such a process.

(d) "Produced in the United States" means, with respect to iron and steel, all manufacturing processes, from initial melting through application of coatings, occur in the United States, other than metallurgical processes to refine steel additives.

(e) "Public works project" means an activity that is paid for with any state-appropriated funds or state funds administered by a governmental entity and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of, a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any governmental entity.

(2) UNITED STATES-PRODUCED IRON AND STEEL REQUIREMENT.—

(a) Notwithstanding any other provision of law, a governmental entity entering into a contract for a public works project or for the purchase of materials for a public works project must include in the contract a requirement that any iron or steel product permanently incorporated in the project be produced in the United States.

(b) Paragraph (a) does not apply if the governmental entity administering the funds for a public works project or the purchase of materials for a public works project determines

that:

1. Iron or steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality;

2. The use of iron or steel products produced in the United States will increase the total cost of the project by more than 20 percent; or

3. Complying with paragraph (a) is inconsistent with the public interest.

(c) Paragraph (a) does not prevent a minimal use of foreign steel and iron materials in a public works project if:

1. Such materials are incidental or ancillary to primary iron or steel products and are not separately identified in the project specifications.

2. The cost of such materials does not exceed 0.1 percent of the total contract cost or $2,500, whichever is greater. For purposes of this subparagraph, the cost of such materials is that shown to be the value of the iron or steel products as they are delivered to the project.

(d) Electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system, necessary for operation or concealment, except transmission and distribution poles, are not considered iron or steel products and are exempt from the requirements of paragraph (a).

(3) INTERNATIONAL AGREEMENTS.—This section shall be applied in a manner consistent with and may not be construed to impair the state's obligations under any international agreement.

(4)(a) Except as otherwise provided in this subsection, the Department of Management Services shall develop guidelines and procedures by rule to implement this section.

(b) The Department of Transportation shall develop guidelines and procedures by rule to implement this section for public works projects administered by the Department of Transportation.

Section 2. The Legislature determines and declares that this act fulfills an important state interest.

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