Commerce Committee

Tuesday, January 30, 2024
10:00 AM - 12:00 PM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Tuesday, January 30, 2024
10:00 am – 12:00 pm
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

CS/HB 85 Pub. Rec./New State Banks and New State Trust Companies by Insurance & Banking Subcommittee, Barnaby

CS/HB 175 Judgment Liens by Civil Justice Subcommittee, Benjamin

CS/HB 311 Securities by Insurance & Banking Subcommittee, Barnaby

HB 479 Alternative Mobility Funding Systems by Robinson, W.

CS/HB 675 State Recognition of Indian Tribes and Bands by Local Administration, Federal Affairs & Special Districts Subcommittee, Salzman

CS/HB 943 Pub. Rec./My Safe Florida Home Program by Ethics, Elections & Open Government Subcommittee, LaMarca

CS/HB 1569 Exemption from Regulation for Bona Fide Nonprofit Organizations by Insurance & Banking Subcommittee, Grant

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 85 Pub. Rec./State Banks and State Trust Companies
SPONSOR(S): Insurance & Banking Subcommittee, Barnaby
TIED BILLS: **IDEN./SIM. BILLS:** SB 1014

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N, As CS	Herrera	Lloyd
2) Ethics, Elections & Open Government Subcommittee	14 Y, 0 N	Rando	Toliver
3) Commerce Committee		Herrera	Hamon

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry. To apply for authority to organize a new state-chartered bank or state-chartered trust company, the proposed directors must file a written application with the OFR. The application includes information such as the name, residence, and occupation of each proposed director; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank is to be located; the total initial capital; the proposed business plan; and pro forma financial statements. Additionally, each proposed executive officer, director, and controlling shareholder must complete and submit detailed biographical and financial information, including, but not limited to, names, home addresses, current and past employment, and statements of assets, liabilities, and total net worth. The OFR utilizes this information to ascertain whether the proposed directors and executives have the kind of experience, ability, standing, and reputation that indicates a reasonable promise of successful operation.

While some existing public record exemptions may apply to certain records received by the OFR pursuant to an application to organize a new bank, current Florida law does not provide any public record exemptions specifically directed at such records. On the federal level, several exemptions exist to protect this information from disclosure. Presently, with the exception of some material for which the applicant may claim trade secret status, the majority of information contained within such an application is subject to public inspection and copying.

The bill creates a public record exemption for certain information received by the OFR in an application for authority to organize a new state bank or new trust company. This information includes:

- Personal financial information;
- A driver license number, passport number, military identification number, or any other number or code issued on a government document used to verify identity;
- Books and records of a current or proposed financial institution;
- The proposed state bank's or proposed state trust company's proposed business plan; and
- The personal identifying information of a prospective officer or director, currently affiliated with another financial institution, obtained through an application for a new state bank or state trust company, is confidential and exempt from public record requirements until the application is approved and the charter is issued. This includes names, addresses, emails, phone numbers, relatives' names, work history, professional licenses, education, and photographs.

The bill provides for repeal of the exemption on October 2, 2029, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

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

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.[1] The Legislature, however, may provide by general law an exemption[2] from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.[3]

Current law also addresses the public policy regarding access to government records by guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.[4] Furthermore, the Open Government Sunset Review (OGSR) Act[5] provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."[6] An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.[7]

Pursuant to the OGSR Act, a new public record exemption, or the substantial amendment of an existing public record exemption, is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.[8]

Office of Financial Regulation (OFR)

The OFR regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[9] The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes (Codes) and the rules promulgated thereunder.[10] The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions

[1] Art. I, s. 24(a), FLA. CONST.
[2] A "public record exemption" means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. *See* s. 119.011(8), F.S.
[3] Art. I, s. 24(c), FLA. CONST.
[4] *See* s. 119.01, F.S.
[5] S. 119.15, F.S.
[6] S. 119.15(6)(b), F.S.
[7] *Id.*
[8] S. 119.15(3), F.S.
[9] S. 20.121(3)(a)2., F.S.
[10] Chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.

- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 662, F.S. – Family Trust Companies
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Capital Stock Associations
- Chapter 667, F.S. – Savings Banks

As of September 30, 2023, the Division of Financial Institutions regulates 198 financial institutions:[11]

- 58 banks
- 66 credit unions
- 22 international bank offices
- 13 trust companies
- 27 family trust companies
- 10 qualified limited service affiliates

Regulation of Banks

Under the dual banking system in the United States, banks may be chartered under either state or federal law:

- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered. State-chartered banks have both a state regulator, which for banks chartered by the State of Florida is the OFR, and a federal regulator. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB), and the primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation (FDIC).[12]
- *National banks* are chartered by the Office of the Comptroller of the Currency (OCC) under the National Bank Act.[13] As such, the OCC is the primary federal regulator for national banks.[14]

Confidential Treatment of Applications to Charter a National Bank

The federal Freedom of Information Act (FOIA)[15] sets forth the process for obtaining federal agency records, unless the records or any portion thereof are protected from disclosure by one of the FOIA's nine exemptions or by one of its three special law enforcement record exclusions. The OCC has set forth its policies regarding the availability of information under FOIA, as well as procedures for requesting information, within 12 CFR Part 4, Subpart B. Under the OCC's FOIA regulations, the following records, or portions thereof, are exempt from disclosure:[16]

1) A record that is specifically authorized, under criteria established by an executive order, to be kept secret in the interest of national defense or foreign policy, and that is properly classified pursuant to that executive order;
2) A record relating solely to the internal personnel rules and practices of an agency;
3) A record specifically exempted from disclosure by statute (other than 5 U.S.C. § 552b), provided that the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; establishes particular criteria for withholding, or refers to particular types of matters to be withheld; and, if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to 5 U.S.C. § 552(b)(3);
4) A record that is privileged or contains trade secrets, or commercial or financial information, furnished in confidence, that relates to the business, personal, or financial affairs of any person;[17]

[11] Email from Ash Mason, Legislative and Cabinet Affairs Director, Office of Financial Regulation, RE: Request for Updated Numbers on HB 85 (Jan 10. 2024).
[12] 12 U.S.C. § 1813(q).
[13] 12 U.S.C. § 38.
[14] 12 U.S.C. § 1813(q).
[15] 5 U.S.C. § 552 *et. seq*.
[16] 12 C.F.R. § 4.12(b).
[17] Notice requirements regarding disclosure of confidential commercial information are contained in 12 C.F.R. § 4.16.

5) An intra-agency or interagency memorandum or letter not routinely available by law to a private party in litigation, including memoranda, reports, and other documents prepared by OCC employees, and records of deliberations and discussions at meetings of OCC employees, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;
6) A personnel, medical, or similar record, including a financial record, or any portion thereof, where disclosure would constitute a clearly unwarranted invasion of personal privacy;
7) A record or information compiled for law enforcement purposes, but only to the extent that the OCC reasonably believes that producing the record or information may:
    i. Interfere with enforcement proceedings;
    ii. Deprive a person of the right to a fair trial or an impartial adjudication;
    iii. Constitute an unwarranted invasion of personal privacy;
    iv. Disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis;
    v. Disclose information furnished by a confidential source, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation;
    vi. Disclose techniques and procedures for law enforcement investigations or prosecutions, or disclose guidelines for law enforcement investigations or prosecutions if such disclosure reasonably could be expected to risk circumvention of the law; or
    vii. Endanger the life or physical safety of any individual;
8) A record contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the OCC or any other agency responsible for regulating or supervising financial institutions; and
9) A record containing or relating to geological and geophysical information and data, including maps, concerning wells.

An applicant submitting information to the OCC may request that specific information be treated as confidential when the materials are submitted.[18] If the OCC does not consider the information to be confidential, the OCC may include that information in the public file after providing notice to the submitter.[19] In addition, the OCC may, at its own initiative, determine that certain information should be treated as confidential and withhold that information from the public file.[20] While a filing is pending with the OCC, the OCC licensing office may provide the *public* portion of a filing to any person who requests it.[21] The public file consists of those portions of the filing, supporting data, and supplementary information that was submitted by the applicant and by interested persons and not afforded confidential treatment.[22]

An applicant is encouraged to request confidential treatment for portions of a filing containing personally identifiable information (PII).[23] The term "PII" refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.[24] Examples of PII include an individual's first name or first initial and last name, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics (for example, fingerprints), date or place of birth, mother's maiden name, or medical data.[25]

[18] Office of the Comptroller of the Currency, *Comptroller's Licensing Manual: General Policies and Procedures (Apr. 2022)* at 4, https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-general-policies-and-procedures.html (last visited Jan. 19, 2024).
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.* at 6.
[23] *Id.* at 4.
[24] *Id.*
[25] *Id.*

Each organizing group must disclose its proposed CEO to the OCC at the time the group files the charter application.[26] If the proposed CEO wants to have his or her name withheld from the public until the OCC grants preliminary conditional approval, the organizers should:[27]

- Include a request for confidential treatment with the materials submitted in the charter application;
- Provide support for their request that disclosure would constitute an unwarranted invasion of personal privacy under exemption six of FOIA[28] or result in substantial competitive harm to the organizers or the proposed CEO under exemption four of FOIA;[29]
- List in the application the criteria that were used in the selection process;
- Provide a detailed description of the person's background, experience, and qualifications in the public portion of the application that is sufficiently specific to permit matching the application information with the person once his or her identity is disclosed; and
- Discuss the proposed terms of employment for the CEO, including compensation and benefits.

Formation of a De Novo (New) State-Chartered Bank or State-Chartered Bank Trust Company

In order to apply for authority to organize a new state-chartered bank or state-chartered trust company, the proposed directors must file a written application with the OFR on form OFR-U-1.[30] The application includes such information as the name, residence, and occupation of each proposed director; the proposed corporate name; the community, including the street and number, if available, where the principal office of the proposed bank or trust company is to be located; the total initial capital; the proposed business plan; and pro forma financial statements.[31] Additionally, each proposed executive officer, director, and major shareholder must complete and submit an Interagency Biographical and Financial Report, Form OFR-U-10.[32] This form requires extensive personal identification information and personal financial information, including, but not limited to names, home addresses, current and past employment, and statements of assets, liabilities, and total net worth.

Within 21 days after receipt of an application, the OFR must file notice of the application in the Florida Administrative Register, and any person may request a hearing within 21 days after publication of the notice.[33] If a hearing is requested, the applicant must publish at its own expense a notice of the hearing in a newspaper of general circulation in the area affected by the application.[34]

The OFR utilizes the information contained in the application in order to make an investigation of:[35]

1) The character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors.
2) The need for bank facilities or additional bank facilities, as the case may be, in the primary service area where the proposed bank is to be located.
3) The ability of the primary service area to support the proposed bank and all other existing bank facilities in the primary service area.

After making such investigation, the OFR must approve an application if it finds the following:[36]

1) Local conditions indicate reasonable promise of successful operation for the proposed state bank.
2) The proposed capitalization is adequate, but at least $8 million.

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[26] Office of the Comptroller of the Currency, *Comptroller's Licensing Manual: Charters (Dec. 2021)* at 15-16, https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/charters.pdf (last visited Jan. 19, 2024).
[27] *Id.*
[28] 12 C.F.R. § 4.12(b)(6).
[29] 12 C.F.R. § 4.12(b)(4).
[30] S. 658.19(1), F.S.; rule 69U-105.202(1), F.A.C. The form is available at https://flofr.gov/sitePages/CommercialBanks.htm (last visited Jan. 19, 2024).
[31] *Id.*
[32] *Id.*
[33] S. 120.80(3)(a)1., F.S.
[34] *Id.*
[35] S. 658.20(1), F.S.
[36] S. 658.21, F.S.

3) The proposed capital structure is in such form as the OFR may require, subject to certain minimum requirements.
4) Regarding officers and directors:
    a. The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation.
    b. None of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, F.S., relating to the control of money laundering and terrorist financing; ch. 896, F.S., relating to offenses related to financial institutions; or similar state or federal law.
    c. At least two of the proposed directors who are not also proposed officers have had at least one year of direct experience as an executive officer, regulator, or director of a financial institution within the five years before the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than five years before the date of the application, the OFR may allow the applicant to have only one director who has direct financial institution experience within the last five years.
    d. The proposed president or chief executive officer must have had at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last five years.
5) The corporate name of the proposed state bank or trust company is approved by the OFR.
6) Provision has been made for suitable quarters at the location in the application.

Upon approval of an application, the OFR issues a bank charter or trust company that is public record and contains the names of the banks officers and members of the board of directors. The names of bank shareholders would continue to be confidential and exempt[37] from public record requirements pursuant to s. 655.057(2) and (8), F.S.[38]

Current Public Record Exemptions Related to Financial Institutions

Presently, s. 655.057, F.S., contains a number of public record exemptions for certain records relating to OFR's regulation of financial institutions:

- Subsection 655.057(1), F.S., makes confidential and exempt records and information relating to active investigations. The records remain confidential and exempt after the investigation is completed or ceases to be active to the extent disclosure would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.
- Subsection 655.057(2), F.S., makes confidential and exempt reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the OFR or any other state agency or federal agency responsible for the regulation or supervision of financial institutions. However, this exemption provides for the following release of such reports:
    - The reports may be released to specified persons such as the financial institution under examination (or its holding company) and certain proposed acquirers of a financial institution.

[37] There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 04-09 (2004).

[38] However, the name of a foreign national who proposes to own or control 10 percent or more of any class of a bank's voting securities, would become public pursuant to s. 120.80(3)(a)4., F.S.

    - The reports must be released within one year after the appointment of a liquidator, receiver, or conservator to the financial institution, except that portions of the reports which identify specified individuals such as depositors and stockholders remain confidential and exempt.
- Subsection 655.057(3), F.S., makes confidential and exempt the OFR's informal enforcement actions to the extent that disclosure would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.
- Subsection 655.057(4), F.S., makes confidential and exempt trade secrets, as defined in s. 688.002, F.S., which comply with s. 655.0591, F.S., and are held by the OFR in accordance with its statutory duties.
- Subsections 655.057(7) and (8), F.S., make confidential and exempt a list of stockholders or members of a financial institution.

Subsections 655.057(5) and (6), F.S., permit the following release of records or information which otherwise fall under exemptions provided in the statute:

- Publishing specified reports that are required to be submitted to the OFR or that are required by applicable federal statutes or regulations to be published.
- Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions.
- Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.
- Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement and prosecutorial agencies.
- Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to ch. 280, F.S.
- Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and the OFR.
- Providing records or information pursuant to an order of a court or an administrative law judge or pursuant to a legislative subpoena, according to specified procedures and restrictions.

While some of the above public record exemptions, or other public record exemptions provided in ch. 119, F.S., may apply to certain records received by the OFR pursuant to an application to organize a new bank or trust company, current statutes do not provide a public record exemption specifically directed at such applications. Presently, with the exception of some material for which the applicant may claim trade secret status pursuant to s. 655.0591, F.S., all of the information received by the OFR on form OFR-U-1 is subject to public inspection and copying. Additionally, significant portions of the information received by the OFR on form OFR-U-10 are subject to public inspection and copying, with only certain information, such as social security numbers, passport numbers, home county identification numbers, immigration file numbers, and certain financial disclosures being exempt from public record requirements.

Effect of the Bill:

The bill creates a public record exemption within s. 655.057, F.S., for certain information received by the OFR pursuant to an application for authority to organize a new state bank or new trust company. Specifically, the bill provides that, *except for those portions that are otherwise public record*, the following information received by the OFR pursuant to an application for authority to organize a new state bank or new trust company under ch. 658, F.S., is confidential and exempt from public record requirements:

- Personal financial information;

- A driver license number, passport number, military identification number, or any other number or code issued on a government document used to verify identity;
- Books and records of a current or proposed financial institution;
- The proposed state bank's or proposed state trust company's proposed business plan; and
- The personal identifying information of a prospective officer or director, currently affiliated with another financial institution, obtained through an application for a new state bank or state trust company, is confidential until the application is approved and the charter is issued. This includes names, addresses, emails, phone numbers, relatives' names, work history, professional licenses, education, and photographs.

These exemptions either expand, or create more specific exemptions for the subject records. For example, driver license numbers are confidential and exempt for several purposes,[39] but there is not an exemption for driver license numbers held by the OFR.

The exemption created in the bill only provides protection for information that is not otherwise public record. Upon approval of an application, the OFR issues a bank charter or state trust that is a public record and contains the names of the banks officers and members of the board of directors. The names of bank shareholders would continue to be confidential and exempt from public record requirements pursuant to s. 655.057(2) and (8), F.S.[40]

The exemption is subject to the Open Government Sunset Review Act, and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 655.057, F.S., relating to records; limited restrictions upon public access.

Section 2. Provides a statement of public necessity.

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:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[39] Pursuant to section 97.0585(1)(c), F.S., driver license numbers which are held by an agency and obtained for the purpose of voter registration, are confidential and exempt from public record requirements. They are also made confidential and exempt if contained in a uniform traffic citation held by an agency. See section 316.650(11)(b)1., F.S..

[40] See *supra* note 38.

The proposed public record exemption may encourage and attract the formation of new banks or trust companies as Florida-chartered institutions, in which case the bill would have a positive impact on investment, employment, economic growth, and consumer access to financial services. However, the impact to the private sector is indeterminate.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would likely be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement
Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement. The public necessity statement states, in part, that the Legislature finds that the exemption is necessary to ensure the OFR's ability to administer its regulatory duties while preventing unwarranted damage to the proposed state bank or proposed state trust company, certain proposed officers or proposed directors of the proposed state bank or trust company, and other financial institutions in the state.

Breadth of Exemption
Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for certain information received by the OFR pursuant to an application for authority to organize a new state bank. The purpose of the exemption is to protect sensitive personal, financial, and business information that the OFR receives in conjunction with its duties related to the review of applications for the organization or establishment of new state banks. As such, the bill appears to be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 11, 2024, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Narrowed the type of documents proposed to be confidential and exempt from public record to the only the business plan instead of the business plan and any attached or supporting documentation.
- Narrowed the scope of personal identifying information that is proposed to be confidential and exempt from public record to only that of a proposed officer or proposed director who works for another financial institution. As filed, the bill would make confidential and exempt from public record the personal identifying information of a shareholder, subscriber, proposed officer, or proposed director.
- Eliminated the requirement that applicants designate certain information confidential when submitting their applications.
- Made additional changes to conform the bill to its Senate companion.

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

A bill to be entitled

An act relating to public records; amending s. 655.057, F.S.; providing an exemption from public records requirements for certain information received by the Office of Financial Regulation relating to an application for authority to organize a new state bank or new state trust company; providing an exemption from public records requirements for certain information received by the office relating to an application for authority to organize a new state bank or new state trust company until specified conditions are met; defining the term "personal identifying information"; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

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

Section 1. Present subsections (5) through (13) of section 655.057, Florida Statutes, are redesignated as subsections (6) through (14), respectively, and a new subsection (5) is added to that section, to read:

655.057 Records; limited restrictions upon public access.—

(5)(a) Except as otherwise provided in this section and except for those portions that are otherwise public record, the

following information received by the office pursuant to an application for authority to organize a new state bank or new state trust company under chapter 658 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Personal financial information.

2. A driver license number, a passport number, a military identification number, or any other number or code issued on a government document used to verify identity.

3. Books and records of a current or proposed financial institution.

4. The proposed state bank's or proposed state trust company's proposed business plan.

(b) The personal identifying information of a proposed officer or proposed director who is currently employed by, or actively participates in the affairs of, another financial institution received by the office pursuant to an application for authority to organize a new state bank or new state trust company under chapter 658 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the application is approved and the charter is issued. As used in this paragraph, the term "personal identifying information" means names, home addresses, e-mail addresses, telephone numbers, names of relatives, work experience, professional licensing and educational backgrounds, and photographs.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that certain information received by the Office of Financial Regulation pursuant to an application for authority to organize a new state bank or new state trust company under chapter 658, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to the extent that disclosure would reveal personal financial information; reveal a driver license number, a passport number, a military identification number, or any other number or code issued on a government document used to verify identity; reveal books and records of a current or proposed financial institution; or reveal a proposed state bank's or proposed state trust company's business plan and any attached supporting documentation. The Legislature further finds that it is a public necessity that the personal identifying information of a proposed officer or proposed director who is currently employed by, or actively participates in the affairs of, another financial institution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the duration of the application process, until the application is approved and a

charter is issued. The office may receive sensitive personal, financial, and business information in conjunction with its duties related to the review of applications for the organization or establishment of new state banks and new state trust companies. These exemptions from public records requirements are necessary to ensure the office's ability to administer its regulatory duties while preventing unwarranted damage to the proposed state bank or proposed state trust company, or certain proposed officers or proposed directors of the proposed state bank or proposed state trust company, and other financial institutions in this state. The release of information that could lead to the identification of an individual involved in the potential establishment of a new state bank or new state trust company may subject such individual to retribution and jeopardize his or her current employment with, or participation in the affairs of, another financial institution. Thus, the public availability of such information has a chilling effect on the establishment of new state banks and new state trust companies. Further, the public availability of the books and financial records of a current or proposed financial institution in this state presents an unnecessary risk of harm to the business operations of such institution. Finally, the public availability of a proposed state bank's or proposed state trust company's business plan may cause competitive harm to such bank's or trust company's future

business operations and presents an unfair competitive advantage for existing financial institutions that are not required to release such information.

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

CS/HB 175

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 175 Judgment Liens
SPONSOR(S): Civil Justice Subcommittee, Benjamin
TIED BILLS: **IDEN./SIM. BILLS:** SB 984

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N, As CS	Mawn	Jones
2) Commerce Committee		Wright	Hamon
3) Judiciary Committee			

SUMMARY ANALYSIS

When a plaintiff in a civil lawsuit obtains a monetary judgment in its favor and becomes a "judgment creditor," either the defendant ("judgment debtor") will pay the judgment creditor the money owed or the judgment creditor may seek to satisfy the judgment from the judgment debtor's property which is not exempt from a creditor's reach. To assist in judgment satisfaction, Florida law has long authorized a judgment creditor to obtain a lien on the judgment debtor's non-exempt real and tangible personal property. However, until July 1, 2023, Florida law did not allow a judgment lien to attach to a judgment debtor's intangible personal property, including payment intangibles and accounts and the proceeds thereof, which could be pledged as collateral for a security agreement under Article 9 of the Uniform Commercial Code ("UCC"), codified in Ch. 679, F.S. This changed with the passage of 2023 CS/HB 27, which, in pertinent part:

- Allowed a judgment lien to attach to payment intangibles and accounts and the proceeds thereof;
- Specified such a judgment lien's priority as against pre-existing security agreements; and
- Clarified when a third party owing money to a judgment debtor under payment intangibles or accounts ("account debtor") must stop paying the judgment debtor, and specified how such an account debtor may thereafter discharge his or her payment obligations.

Once a judgment lien is secured, the judgment lienholder has numerous judicial remedies available to enforce the lien. However, Florida law provides that a judgment lien on a motor vehicle or vessel, though enforceable against the judgment debtor, is not enforceable against creditors or subsequent purchasers unless the lien is noted on the vehicle or vessel's title certificate. 2023 CS/HB 27 created two statutory mechanisms for lien notation on title certificates.

CS/HB 175:

- Clarifies when a judgment lien may attach to payment intangibles or accounts.
- Clarifies that the filing of a noncompliant judgment lien certificate does not preclude the subsequent filing of a compliant certificate.
- Clarifies that the priority of conflicting rights between a secured party and a judgment lienholder or a judgment creditor without an enforceable lien is determined under Ch. 679, F.S.
- Clarifies that, if a judgment debtor's personal property includes a motor vehicle or vessel, Ch. 679, F.S., may be used where appropriate to determine a judgment lien's enforceability.
- Provides that, where an account debtor is served with a complaint or petition by a judgment creditor seeking judicial relief with respect to payment intangibles or accounts, the account debtor may thereafter discharge its payment obligation in accordance with a settlement agreement.
- Changes the phrase "be primed as to" to "take priority over" as it relates to a judgment lien's effect to conform the terminology with terminology used elsewhere in Florida law and the UCC.

The bill does not appear to have a fiscal impact on local governments but may have a limited fiscal impact on the state court system. The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Judgment Liens

Creation and Enforcement

When a plaintiff in a civil lawsuit obtains a monetary judgment in its favor and becomes a "judgment creditor," either the defendant ("judgment debtor") will pay the judgment creditor the money owed or the judgment creditor may seek to satisfy the judgment from the judgment debtor's property which is not exempt from the reach of creditors.[1] To assist in judgment satisfaction, Florida law has long authorized a judgment creditor to obtain a lien[2] on the judgment debtor's non-exempt:[3]

- Real property, secured by recording a certified copy of the judgment in the county in which the real property is located.[4]
- Tangible personal property,[5] secured by recording a judgment lien certificate with the Florida Department of State ("DOS").[6]

The main benefit of a judgment lien is that the judgment debtor can no longer easily sell the liened property because any purchaser would, generally speaking, acquire the property subject to the lien. In other words, a purchaser would assume the obligation to satisfy the lien, making the property unappealing to buy, or else face the possibility that the judgment lienholder may foreclose on the lien. Additionally, a judgment creditor seeking to enforce a judgment lien on personal property has several judicial remedies, including an order, known as a writ of execution, issued by the clerk of the circuit court directing the sheriff to take into possession a judgment debtor's non-exempt property to satisfy the lien.[7]

Further, where the clerk has issued a writ of execution but the judgment remains unsatisfied, a judgment creditor may bring a proceeding supplementary to execution in which the court may summon the judgment debtor and any involved third parties to be questioned about property that may be the subject of the writ and issue an order that the sheriff seize such property.[8] A proceeding supplementary to execution is a continuation of the original lawsuit that resulted in the judgment and, thus, a judgment creditor is not required to file a separate action to initiate the proceeding.[9]

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[1] S. 55.141, F.S.

[2] A lien is a claim against property that evidences a debt, obligation, or duty. Fla. Jur. 2d Liens s. 37:1.

[3] A judgment debtor that is an individual may choose to exempt one motor vehicle worth $1,000 or less and, if the debtor does not claim or receive a homestead exemption, additional personal property items with an aggregate worth of $4,000 or less. Corporations and other business entities are not entitled to exemptions. Ss. 55.201-55.209 and 222.25(1) and (4), F.S.; art. X, s. 4, Fla. Const.; s. 55.10(1), F.S.

[4] Recording the certified copy of the judgment establishes the lien's priority; in other words, the recording of the judgment generally guarantees that the lienholder will be paid before lienholders with later-recorded liens on the same property. However, homestead property is exempt from the reach of creditors. S. 55.10(1), F.S.; art. X, s. 4, Fla. Const.; s. 55.10(1), F.S.

[5] "Tangible personal property" is property which is capable of being taken into possession by the sheriff. Examples include motor vehicles, vessels, mobile homes, furniture, jewelry, stocks, and artwork. S. 56.061, F.S.

[6] The judgment lien certificate establishes the lien's priority; in other words, the filing of a judgment lien certificate generally guarantees that the lienholder will be paid before lienholders with later-perfected liens on the judgment debtor's tangible personal property.

[7] Other judicial remedies include attachment under ch. 76, F.S; garnishment under ch. 77, F.S.; and a charging order under ss. 605.0503, 620.1703, or 620.8504, F.S. Legal Information Institute, *Writ of Execution*, https://www.law.cornell.edu/wex/writ_of_execution (last visited Jan. 11, 2024).

[8] Judicial process is important for lien satisfaction as it gives the judgment debtor an opportunity to go before the court and argue that specific property the judgment creditor is trying to obtain is exempt from seizure and should not be taken to satisfy the lien. S. 56.29, F.S.

[9] *Id.*

Judgment Liens on Intangible Personal Property

Before July 1, 2023, Florida law did not allow a judgment lien to attach to intangible personal property, such as royalty rights and the right to receive rents or payments for the sale of goods or services.[10] Thus, a judgment debtor's intangible personal property remained outside the reach of a judgment creditor even though the value of such property might have been significant and sufficient to satisfy the judgment lien. However, during the 2023 Legislative Session, the Legislature passed CS/HB 27 which, in pertinent part, allowed a judgment lien to attach to certain types of intangible personal property (specifically payment intangibles and accounts and the proceeds thereof) and specified the priority of such liens as against pre-existing security agreements in which such property was pledged as collateral to secure the loan.[11]

Judgment Liens on Motor Vehicles and Vessels

Florida law provides that a judgment lien on a motor vehicle or vessel, though enforceable against the judgment debtor, is not enforceable against creditors or subsequent purchasers for value unless the lien is noted on the title certificate.[12] Thus, where a judgment creditor obtains a lien on a motor vehicle or vessel and the lien is not noted on the title certificate, the judgment debtor may sell the subject property free of the lien.

Before July 1, 2023, a judgment creditor's only remedy was to petition the court to order the Department of Highway Safety and Motor Vehicles ("DHSMV") to note the lien on the title certificate; however, this process was not spelled out in statute and confusion existed as to whether the judgment creditor needed to institute a separate action to obtain such an order or merely initiate a proceeding supplementary to execution. 2023 CS/HB 27 provided two statutory mechanisms by which a judgment creditor may cause a judgment lien to be noted on the title certificate of a judgment debtor's motor vehicle or vessel, thereby ensuring that a subsequent purchaser of the vehicle or vessel takes title to such property subject to the lien.

Secured Transactions Under the UCC

The Uniform Commercial Code ("UCC"), adopted in all fifty states, is a set of laws governing and providing uniformity in commercial transactions.[13] Florida's UCC provisions are codified in chapters 670-680 of the Florida Statutes.

Article 9 of the UCC (codified in ch. 679, F.S.) governs secured transactions, meaning transactions involving the granting of credit under a security agreement in exchange for the borrower's pledge of personal property ("collateral") which the secured party may take possession of if the debtor defaults on the loan.[14] In addition to tangible personal property, collateral recognized by the UCC includes:

- Accounts, meaning a right to payment of a monetary obligation:
  - For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
  - For services rendered or to be rendered;
  - For a policy of insurance issued or to be issued;
  - For a secondary obligation incurred or to be incurred;
  - For energy provided or to be provided;
  - For the use or hire of a vessel under a charter or other contract;
  - Arising out of the use of a credit or charge card; or

[10] S. 56.061, F.S.
[11] Ch. 2023-300, L.O.F.
[12] "Title certificate" means the record that is evidence of ownership of a vehicle, whether a paper certificate authorized by the Department of Highway Safety and Motor Vehicles or a certificate consisting of information that is stored in an electronic form in the department's database. Ss. 319.001(1) and 319.27(2), F.S.
[13] Chs. 670-680, F.S.; Uniform Law Commission, *Uniform Commercial Code*, https://www.uniformlaws.org/acts/ucc (last visited Jan. 11, 2024).
[14] For example, a mortgage loan is typically a secured transaction wherein the home is pledged as collateral for the loan; in other words, if the borrower defaults on his or her mortgage payments, the mortgage company may (through appropriate legal process) take possession and ownership of the purchased home. *Id.*

- As winnings in a lottery or other game of chance operated or sponsored by a state or its governmental unit.[15]
- Payment intangibles, meaning general intangibles[16] under which the account debtor's[17] principal obligation is a monetary obligation.[18]

Under 2023 CS/HB 27, accounts and payment intangibles are forms of intangible personal property to which a judgment lien may now attach. Further, CS/HB 27 clarified that a third party owing money to a judgment debtor under payment intangibles or accounts ("account debtor") must stop paying the judgment debtor only when the account debtor is served by process with a complaint or petition by the judgment creditor seeking judicial relief with respect to the payment intangibles or accounts. Thereafter, the account debtor may discharge the account debtor's payment obligation only in accordance with a final order or judgment.

Effect of Proposed Changes

Judgment Liens

CS/HB 175 amends s. 55.202(2), F.S., to clarify that, for a judgment lien to attach to payment intangibles or accounts, the judgment debtor must be located in the state (as established by s. 679.3071, F.S., which provision establishes rules for determining a debtor's location). Thus, the bill attempts to forestall jurisdictional or due process disputes which could otherwise arise if a judgment creditor inappropriately tried to enforce a judgment lien across state lines. The bill also amends this subsection to clarify that the filing of a non-compliant judgment lien certificate, which certificate is permanently void and of no effect by operation of law, does not preclude the subsequent filing of a compliant judgment lien certificate. Thus, the bill ensures that a judgment creditor is able to preserve his or her rights by filing a statutorily-compliant judgment lien certificate even if the judgment creditor first files a non-compliant certificate.

Further, the bill amends s. 55.202(3), F.S., to clarify that the priority of conflicting rights as between a judgment lienholder and a secured party will be determined under Article 9 of the UCC, as codified in Ch. 679, F.S. Thus, the bill continues to prevent a judgment lienholder's rights from taking priority over the rights of a secured party whose security interest predated the filing off the judgment lien certificate unless Ch. 679, F.S., specifies otherwise.

Similarly, the bill amends s. 55.205(1), F.S. to clarify that, where a judgment creditor who has not acquired a judgment lien or whose lien has lapsed decides to proceed against the judgment debtor's property through appropriate judicial process, the judgment creditor may do so subject to the priority of conflicting rights under Ch. 679, F.S. Thus, the bill continues to prevent the rights of a judgment creditor without an enforceable judgment lien from taking priority over the rights of a secured party whose security interest predated the establishment of the judgment creditor's rights unless Ch. 679, F.S., specifies otherwise.

Finally, the bill amends s. 55.205(5)(a), F.S., to clarify that, if a judgment debtor's personal property includes a motor vehicle or vessel, the enforceability of a judgment lien against the creditors or subsequent purchasers of such vehicle or vessel may be determined under Ch. 679, F.S., in addition to the title statutes already provided for in current law. Thus, the bill continues to preserve the rights of creditors and subsequent purchasers of a vehicle or vessel on which a judgment lien attached.

[15] The term includes healthcare receivables but does not include rights to payment evidenced by chattel paper or an instrument; commercial tort claims; deposit accounts; investment property; letter-of-credit rights or letters of credit; or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card. S. 9-102(2), UCC; s. 679.1021(1), F.S.
[16] "General intangibles" are any form of intangible personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. Examples include partnership interests, various licenses (such as a liquor license), publication rights, and intellectual property (such as copyrights). S. 9-102, UCC; s. 679.1021(1)(pp), F.S.
[17] "Account debtor" means a person obligated on an account, chattel paper, or general intangible but does not include a person obligated to pay a negotiable instrument. S. 9-102, UCC; s. 679.1021(1)(c), F.S.
[18] S. 9-406, UCC; s. 679.1021(1), F.S.

Secured Transactions Under the UCC

The bill amends s. 55.205(7), F.S., to provide that, where an account debtor is served with a complaint or petition by a judgment creditor seeking judicial relief with respect to payment intangibles or accounts, the account debtor may thereafter discharge the account debtor's payment obligation in accordance with a settlement agreement. Thus, where there is a dispute as to an account debtor's payment obligations, the parties to the dispute would be allowed to resolve the dispute by settlement agreement, instead of having to wait for the account debtor's payment obligations to be established by final order or judgment as required under current law.

Further, the bill changes the phrase "may not be primed as to" in s. 55.208(1), F.S., to "may not take priority over." This is a non-substantive change conforming the terminology used in this section, relating to the effect of prior liens on payment intangibles and accounts, to the terminology used elsewhere in Florida law and the UCC.

Effective Date

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 55.202, F.S., relating to judgments, orders, and decrees; lien on personal property.
Section 2: Amends s. 55.205, F.S., relating to effect of judgment lien.
Section 3: Amends s. 55.208, F.S., relating to effect of prior liens on payment intangibles and accounts; effect of filed judgment lien on writs of execution previously delivered to a sheriff.
Section 4: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may reduce state government expenditures to the extent that disputes involving an account debtor's payment obligations as to payment intangibles or accounts are resolved by settlement agreement, thereby reducing the burden on the state court system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive financial impact on the private sector to the extent that:

- Certain jurisdictional and due process disputes are forestalled due to clarifications made by the bill.
- Disputes involving an account debtor's payment obligations as to payment intangibles or accounts are resolved by settlement agreement, thereby reducing litigation costs for the parties to the dispute.
- The rights of a secured party are further protected by the clarifications made in the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 11, 2024, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that, for a judgment lien to attach to payment intangibles or accounts, the judgment debtor must be located in the state, as established by s. 679.3071, F.S.
- Clarified that the filing of a non-compliant judgment lien certificate does not preclude the subsequent filing of a compliant judgment lien certificate.

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

A bill to be entitled

An act relating to judgment liens; amending s. 55.202, F.S.; authorizing a judgment lien to attach to specified personal property and all payment intangibles and accounts of a judgment debtor located in this state; providing definitions; specifying that the filing of a noncompliant judgment lien certificate does not preclude the subsequent filing of a compliant judgment lien certificate; specifying the provisions to be used in resolving the priority of conflicting rights between a judgment lienholder and a secured party; amending s. 55.205, F.S.; specifying that the rights of certain judgment debtors to proceed against the judgment debtor's property are subject to certain provisions; providing that an account debtor may discharge certain obligations through a settlement agreement; amending s. 55.208, F.S.; revising provisions concerning the priority of certain judgment liens; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 55.202, Florida Statutes, are amended to read:

55.202 Judgments, orders, and decrees; lien on personal

property.—

(2) A judgment lien may be acquired on a judgment debtor's interest in all personal property in this state subject to execution under s. 56.061 and in all~~, including~~ payment intangibles and accounts of a judgment debtor whose location is in this state as established by s. 679.3071, ~~as those terms are defined in s. 679.1021(1),~~ and the proceeds thereof, but excluding fixtures, money, negotiable instruments, and mortgages. As used in this subsection, the terms "account," "payment intangible," and "proceeds" have the same meanings as in s. 679.1021(1).

(a) For payment intangibles and accounts and the proceeds thereof:

1. The rights of a judgment lienholder under this section are subject to the rights under chapter 679 of a secured party, as defined in s. 679.1021(1), who has a prior filed financing statement encumbering such payment intangibles or accounts and the proceeds thereof.

2. This section does not affect the obligation under s. 679.607(1) of an account debtor, as defined in s. 679.1021(1), except as the rights and obligations under this paragraph are otherwise adjudicated under applicable law in a legal proceeding to which the secured party and account debtor are joined as parties.

(b) A judgment lien is acquired by filing a judgment lien

certificate in accordance with s. 55.203 with the Department of State after the judgment has become final and if the time to move for rehearing has lapsed, no motion for rehearing is pending, and no stay of the judgment or its enforcement is then in effect. A court may authorize, for cause shown, the filing of a judgment lien certificate before a judgment has become final when the court has authorized the issuance of a writ of execution in the same matter. A judgment lien certificate not filed in compliance with this subsection is permanently void and of no effect but does not preclude the filing of a judgment lien certificate that complies with this subsection.

(c) For any lien, warrant, assessment, or judgment collected by the Department of Revenue, a judgment lien may be acquired by filing the judgment lien certificate information or warrant with the Department of State in accordance with subsection (5).

(d) Except as provided in s. 55.208, the effective date of a judgment lien is the date, including the time of day, of filing. Although no lien attaches to property, and a creditor does not become a lien creditor as to liens under chapter 679, until the debtor acquires an interest in the property, priority among competing judgment liens is determined in order of filing date and time.

(e) Except as provided in s. 55.204(3), a judgment creditor may file only one effective judgment lien certificate

based upon a particular judgment.

(3) Except as otherwise provided in s. 55.208, the priority of a judgment lien acquired in accordance with this section or s. 55.204(3) is established at the date and time the judgment lien certificate is filed. The priority of conflicting rights between a judgment lienholder under this section and a secured party, as defined in s. 679.1021(1)(ttt), must be determined as provided under chapter 679.

Section 2. Subsection (1), paragraph (a) of subsection (5), and subsection (7) of section 55.205, Florida Statutes, are amended to read:

55.205 Effect of judgment lien.—

(1) A judgment creditor who has not acquired a judgment lien as provided in s. 55.202 or whose lien has lapsed may nevertheless proceed against the judgment debtor's property through any appropriate judicial process, subject to the priority of conflicting rights under chapter 679 of a secured party, as defined in s. 679.1021(1)(ttt). Such judgment creditor proceeding by writ of execution acquires a lien as of the time of levy and only on the property levied upon.

(5)(a) If the judgment debtor's personal property, to the extent not exempt from execution, includes a motor vehicle or a vessel for which a Florida certificate of title has been issued, a judgment lien acquired under this section on such property not yet noted on the certificate of title is valid and enforceable

against the judgment debtor. However, enforceability under this chapter of such judgment lien against creditors or subsequent purchasers is determined as provided under s. 319.27(2), ~~or~~ s. 328.14, or chapter 679, as applicable.

(7) Notwithstanding the attachment of a judgment lien acquired under s. 55.202 to payment intangibles or accounts and the proceeds thereof, the account debtor may, absent receipt of notice under s. 679.607(1)(a) from a secured party, discharge the account debtor's obligation to pay payment intangibles or accounts or the proceeds thereof by paying the judgment debtor until, but not after, the account debtor is served by process with a complaint or petition by the judgment creditor seeking judicial relief with respect to the payment intangibles or accounts. Thereafter, the account debtor may discharge the account debtor's obligation to pay payment intangibles or accounts or the proceeds thereof under this section only in accordance with a settlement agreement, final order, or judgment issued in such judicial process that complies with this section.

Section 3. Subsection (1) of section 55.208, Florida Statutes, is amended to read:

55.208 Effect of prior liens on payment intangibles and accounts; effect of filed judgment lien on writs of execution previously delivered to a sheriff.—

(1) A judgment lien under s. 55.202 existing before October 1, 2023, becomes enforceable and perfected as of October

1, 2023, as to payment intangibles and accounts and the proceeds thereof of a judgment debtor under s. 55.202(2). Any security interest or lien on payment intangibles or accounts and the proceeds thereof of a judgment debtor which is enforceable and perfected before October 1, 2023, continues to have the same rights and priority as existed before October 1, 2023, and may not take priority over ~~be primed as to~~ payment intangibles or accounts by a judgment lien certificate filed before October 1, 2023.

Section 4. This act shall take effect upon becoming a law.

CS/HB 311

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 311 Securities
SPONSOR(S): Insurance & Banking Subcommittee, Barnaby
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 532

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

SUMMARY ANALYSIS

In Florida, the Securities and Investor Protection Act (the Act) regulates securities issued, offered, and sold in the state of Florida. The Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms.

The Act currently prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted. Additionally, all securities in Florida must be registered with the OFR unless they meet a statutory exemption or are federally covered (i.e., under the exclusive jurisdiction of the United States Securities Exchange Commission).

Revisions to the Act include:

- Amending the limited offering exemption and crowdfunding exemption;
- Adding an accredited investor exemption and a micro-offering exemption;
- Allowing for demo-day presentations in the pre-offering stage;
- Adding control person liability provisions;
- Expanding the current civil liability for aiders and abettors of a securities law violation;
- Eliminating the requirement for 5 years of annual reports and audited financial statements applicable to simplified securities offerings that use the Small Company Offering Registration;
- Reducing the number of clients of an investment adviser that triggers registration from 15 to 6 clients;
- Increasing the maximum civil and administrative penalties that can be assessed against a natural person in an action by the Attorney General from $10,000 to $20,000;
- Doubling maximum fines assessed in civil and administrative actions by the Attorney General for securities violations targeting seniors and vulnerable adults;
- Eliminating the requirement that an investor make searches and inquiries to ascertain the assets of a judgement debtor before the investor recovers from the Securities Guaranty Fund (Fund), and changes the requirement that the date of the act for which recovery is sought occurred on or after January 1, 1979, to October 1, 2024;
- Increasing the amount an eligible person may recover from the Fund from $10,000 to $15,000, adding an exception allowing recovery of up to $25,000 if the person is a specified adult, and increasing the aggregate limit on claims from $100,000 to $250,000;
- Rewriting certain portions of the Act for clarification purposes; and
- Generally modernizing Florida's securities laws in accordance with recent developments in federal securities laws and securities laws in other states.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

FLORIDA BAR BUSINESS LAW SECTION TASK FORCE

The Executive Council of the Business Law Section of The Florida Bar appointed a Task Force (BLS Task Force) in September of 2022 to consider amendments to ch. 517, F.S., the Florida Securities and Investor Protection Act (Act), which codifies Florida's securities laws.[1] The BLS Task Force has worked closely with the Office of Financial Regulation (OFR), the agency which regulates Florida's securities industry and determines compliance with the Act,[2] to reform the Act.[3]

OFR, with the BLS Task Force's assistance, presented to the 2023 legislative session proposed amendments[4] to the Act that were limited to administrative and clarification changes, as OFR was aware that the BLS Task Force was working on more substantive changes to the Act.[5] The 2023 bill was enacted,[6] and the BLS Task Force and OFR are now presenting their recommendations for substantive amendments to the Act with this bill.[7] In summary, this bill is a joint effort of the BLS Task Force and OFR to bring Florida's securities laws up to date with changes in federal securities laws and other states' securities laws.[8]

Securities Regulation

Background

FEDERAL SECURITIES REGULATION

The federal Securities Exchange Act of 1934 (1934 Act) requires registration of securities market participants like broker-dealers and exchanges.[9] Generally, any person acting as "broker" or "dealer" as defined in the 1934 Act must be registered with the United States Securities and Exchange Commission (SEC) and join a self-regulatory organization (SRO), like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange.[10]

The 1934 Act broadly defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," which the SEC has interpreted to include involvement in any of the key aspects of a securities transaction, including solicitation, negotiation, and execution.[11] A

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[1] The Florida Bar Business Law Section, *Report of the Chapter 517 Task Force: Recommendations and Analysis of Proposed Amendments to the Florida Securities and Investor Protection Act*, p. 2 (Nov. 2023).
[2] Office of Financial Regulation, *Division of Securities*, https://flofr.gov/sitePages/DivisionOfSecurities.htm (last visited Jan. 3, 2024).
[3] The Florida Bar Business Law Section, *supra* note 1.
[4] *See* 2023 Senate Bill 180, and 2023 House Bill 253.
[5] The Florida Bar Business Law Section, *supra* note 1.
[6] Ch. 2023-205, Laws of Fla.
[7] The Florida Bar Business Law Section, *supra* note 1.
[8] *Id.*
[9] 15 U.S.C. §§ 78c(a)(4) and 78o. U.S. Securities and Exchange Commission, *Guide to Broker-Dealer Registration*, http://www.sec.gov/divisions/marketreg/bdguide.htm#II (last visited Jan. 3, 2024).
[10] A "national securities exchange" is a securities exchange that has registered with the SEC under Section 6 of the 1934 Act. Examples of national securities exchanges registered with the SEC include the Nasdaq Stock Market, NYSE National Inc., and the New York Stock Exchange LLC. *See* U.S. Securities and Exchange Commission, *National Securities Exchanges*, https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml (last visited Jan. 8, 2024).
[11] *Id.*

"dealer" is "any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise.[12]

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

STATE SECURITIES REGULATION

State laws that protect the investing public from fraudulent sales practices and activities are known as "Blue Sky Laws."[13] Florida's laws relating to the regulation of securities issued, offered, and sold in the State of Florida are codified under the Act.

OFR's Division of Securities (Division) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the Act and Rule Chapter 69W, Florida Administrative Code.[14] The Financial Services Commission, comprised of the Governor and Cabinet (the Commission), serves as OFR's agency head for purposes of rulemaking and appoints OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within OFR's regulatory authority.[15]

As of September 30, 2023, the Division had total registrants in the following areas:

- Dealers: 2,427
- Investment advisers: 8,359
- Branch offices: 11,702
- Associated Persons: 378,435[16]

Additionally, as of September 2023, OFR has five registered offerings and zero crowdfunding offerings.[17]

The Act prohibits dealers and associated persons from offering or selling securities in Florida unless registered with OFR or specifically exempted.[18] Additionally, all securities in Florida must be registered with OFR unless they meet one of the exemptions under the Act,[19] or are federally covered (i.e., under the exclusive jurisdiction of the SEC).[20]

Failure to meet the precise requirements of these exemptions can subject the violator to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony.[21] Civil remedies under the Act include rescission and damages.[22]

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[12] 15 U.S.C. § 78c(a)(5).
[13] U.S. Securities and Exchange Commission, *Blue Sky Laws*, http://www.sec.gov/answers/bluesky.htm (last visited Jan. 3, 2024).
[14] Office of Financial Regulation, *Division of Securities*, https://flofr.gov/sitePages/DivisionOfSecurities.htm (last visited Jan. 3, 2024).
[15] S. 20.121(3), F.S.
[16] Office of Financial Regulation, Agency Analysis of 2024 House Bill 311, p. 2 (Nov. 1, 2023).
[17] *Id.*
[18] S. 517.12, F.S.
[19] *See* ss. 517.051 or 517.061, F.S.
[20] S. 517.07, F.S. If a security is registered with the SEC, s. 517.082, F.S., requires the broker or issuer to notify OFR that the security is registered with the SEC.
[21] S. 517.302(1), F.S.
[22] S. 517.211, F.S.

Party Registration Requirements

The Act requires the following individuals or businesses to be registered with OFR before selling or offering to sell any securities in or from offices in this state, or selling securities to persons in this state from offices outside this state:[23]

- Dealers, which is defined as any person, other than an associated person of a dealer, that engages, for all or part of the person's time, directly or indirectly, as agent or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
    - The term does not include a licensed practicing attorney, bank authorized to do business in Florida, wholesaler selling exclusively to dealers, person buying and selling for the person's own account exclusively through a registered dealer or stock exchange, issuer, or natural person representing an issuer under certain conditions[24]
- Investment advisers, which is defined as any person that receives compensation, directly or indirectly, and engages for all or part of the person's time, directly or indirectly, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities.
    - The term contains similar exclusions as the exclusions for "dealers" in addition to a federal covered adviser, a person that does not hold itself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state, and a few other exclusions.[25]
- Associated persons, which is defined by a party's relation to a dealer or to an investment adviser:
    - With respect to a dealer, an associated person is an individual who is employed, appointed, or authorized by a dealer and who represents the dealer in effecting the purchase or sale of a security.
        - The term does not include a dealer or a partner, officer, or director of a dealer unless such person is specified in the group above. The term also does not include a dealer's employee whose function is only clerical or ministerial.
    - With respect to an investment adviser, an associated person is an individual, including, but not limited to, a partner, officer, director, or branch manager who is employed by or associated with, or is subject to the supervision or control of an investment adviser registered under the Act, and
        - Such person:
            - Makes recommendations or otherwise gives investment advice regarding securities;
            - Manages client accounts or portfolios;
            - Determines which recommendations regarding securities should be given;
            - Receives compensation to solicit, offer, or negotiate for the sale of investment advisory services; or
            - Supervises employees who perform a function outlined above.
        - The term does not include an investment adviser or an employee whose function is only clerical or ministerial.[26]

Effect of the Bill

The bill amends the following definitions:

- Accredited investor is amended to clarify the term is defined by rule of the Commission in accordance with SEC Rule 501, 17 C.F.R. s. 230.501, as amended.

[23] S. 517.12, F.S.
[24] S. 517.021(8), F.S.
[25] S. 517.021(14), F.S.
[26] S. 517.021(3), F.S.

- Boiler room is amended to mean an enterprise in which two or more persons in a common scheme or enterprise solicit potential investors through telephone calls, electronic mail, text messages, social media, chat rooms, or other electronic means.
- Dealer is restructured into subparagraphs for clarification.
- Federal covered adviser is amended to update cross-references.
- Investment adviser is amended as follows:
    - Reduces the threshold number of clients triggering registration from 15 clients to 6.
    - Deletes the exclusion applicable to a person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940.
    - Provides an exclusion for the U.S., a state, a political subdivision of a state, or an agency, authority, or instrumentality of one or more of the foregoing, or a business entity that is wholly owned by one or more of the foregoing, or an officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty.[27]

The bill adds the following definitions:

- Angel investor group[28] means a group of accredited investors[29] that holds regular meetings and has defined processes and procedures for making investment decisions, individually or among the membership of the group, and that is not an associated person, affiliate, or an agent of a dealer or investment adviser.
- Business entity[30] means a corporation, partnership, limited partnership, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

Exempt Securities

Background

It is unlawful and a violation of the Act for any person to sell or offer to sell an unregistered security within Florida unless the security is exempt under s. 517.051, F.S., or such sale or offering is otherwise exempt from the registration requirements of the Act.[31]

The exempt securities provided in the Act are self-executing and do not require any filing with OFR prior to claiming an exemption.[32] A person who claims entitlement to any of the exempt securities bears the burden of proving such entitlement in any proceeding brought under the Act.[33]

[27] An example of this type of entity is the State Board of Administration of Florida (SBA), which is an asset management organization primarily responsible for investing state and local government assets. *See* Office of Program Policy Analysis and Government Accountability, *State Board of Administration of Florida*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4040 (last visited Jan. 8, 2024).
[28] This definition has been added for purposes of the newly created s. 517.0615, F.S., relating to solicitation of interest.
[29] An accredited investor is an individual or a business entity that is allowed to trade securities that may not be registered with financial authorities. They are entitled to this privileged access by satisfying at least one requirement regarding their income, net worth, asset size, governance status, or professional experience. The term is used by the SEC under Regulation D to refer to investors who are financially sophisticated and have a reduced need for the protection provided by regulatory disclosure filings." Adam Hayes, *Accredited Investor Defined: Understand the Requirements*, https://www.investopedia.com/terms/a/accreditedinvestor.asp (last visited Jan. 8, 2024).
[30] This definition has been added to expand the scope of entities subject to the provisions of the Act.
[31] S. 517.07, F.S.
[32] S. 517.051(1), F.S.
[33] *Id.*

Effect of the Bill

Securities Issued by the U.S., a U.S. Territory, a State, etc.

Currently, a security issued or guaranteed by the U.S. or any territory or insular possession of the U.S., by the District of Columbia, or by any state of the U.S. or by any political subdivision or agency or other instrumentality thereof, is exempt from registration.[34]

The bill clarifies that a person may not directly or indirectly offer or sell securities, other than general obligation bonds if the issuer or guarantor is in default or has been in default any time after December 31, 1975, as to principal or interest (with respect to an obligation issued by the issuer or successor of the issuer; or with respect to an obligation guaranteed by the guarantor or successor of the guarantor), except by an offering circular containing a full and fair disclosure as prescribed by Commission rule.

Further, the bill provides that the foregoing does not apply to a security that is an industrial or commercial development bond, unless payments are made or unconditionally guaranteed by a person whose securities are exempt from registration under s. 18(b)(1) of the Securities Act of 1933, as amended (1933 Act).

Securities Issued by and Representative of an Interest in Certain Institutions

Currently, a security that is issued or guaranteed by a national bank, a federally chartered savings and loan association, or a federally chartered savings bank; any federal land bank, joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July 17, 1916; an international bank of which the U.S. is a member; or a corporation created and acting as an instrumentality of the U.S. government is exempt.[35]

The bill removes this exemption in its entirety. In its place, the bill provides an exemption for a security that is issued by and represents, or will represent, an interest in or a direct obligation of, or that is guaranteed by:

- An international bank of which the U.S. is a member;
- A bank organized under the laws of the U.S.;
- A member bank of the Federal Reserve System; or
- A depository institution for which a substantial portion of the business consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the FDIC or the National Credit Union Share Insurance Fund.

Securities Issued by a Business Entity Owning a Railroad, Common Carrier, Etc.

Currently, a security issued or guaranteed, as to principal, interest, or dividend, by a corporation owning or operating a railroad, other common carrier, or any other public service utility (provided certain circumstances are met) is exempt from registration.[36] The bill replaces the term "corporation" with the term "business entity" to expand the scope of entities subject to the exemption.

Shares of a Residential Cooperative

The bill clarifies that shares or other equity interests of a business entity which represent ownership, or entitle the holders of such shares or other equity interests to possession and occupancy, of specific apartment units in property owned by such business entity and organized and operated on a cooperative basis, solely for residential purposes, is exempt from registration requirements.[37]

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[34] S. 517.051(1), F.S.
[35] S. 517.051(3), F.S.
[36] S. 517.051(4), F.S.
[37] The residential cooperative exemption is currently a transaction exemption in s. 517.061(14), F.S. The bill moves the exemption to the section of the Act relating to exempt securities, rather than exempt transactions, for clarification purposes. *See* The Florida Bar Business Law Section, *supra* note 1, at p. 12-13.

Interest in a Not-for-Profit Membership Entity Operated as a Cooperative

The bill also establishes a new exemption for a member's or owner's interest in a not-for-profit membership entity operated either as a cooperative under the cooperative laws of a state or in accordance with the applicable provisions of the IRC. However, the exemption only applies to a member's or owner's interest or like security sold or transferred to a bona fide member of the not-for-profit membership entity or a person who becomes a bona fide member of the not-for-profit membership entity at the time of or in connection with the sale or transfer.

Note, Draft, Bill of Exchange, or Banker's Acceptance Meeting Certain Requirements

Currently, a note, draft, bill of exchange, or banker's acceptance having a unit amount of $25,000 or more which arises out of a transaction, or the proceeds of which have been used for current transactions, and which has a maturity period at the time of issuance not exceeding 9 months exclusive of days of grace, or any renewal thereof which has a maturity period likewise limited, is exempt.[38] This applies only to prime quality negotiable commercial paper of a type not ordinarily purchased by the general public (i.e., paper issued to facilitate well-recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve banks).[39]

The bill removes this exemption in its entirety, subjecting the type of security described therein to registration, unless exempted otherwise.

Securities Issued by an Entity Organized for Religious, Educational or Similar Purpose

Currently, a security issued by a corporation organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940, is exempt from registration.[40]

The bill replaces the term "corporation" with "business entity" to expand the scope of entities subject to the exemption. Additionally, the bill amends the reference to the Investment Company Act of 1940 to include the phrase "as amended" to incorporate by reference any amendments to the Act as of the effective date of the bill.

Exempt Transactions

Background

It is unlawful and a violation of the Act for any person to sell or offer to sell a security within Florida unless the security is exempt under the Act, or such sale or offering is otherwise exempt from the registration requirements of s. 517.061, F.S.[41]

[38] S. 517.051(8), F.S.
[39] *Id.*
[40] S. 517.051(9), F.S.
[41] S. 517.071, F.S.

Current law provides over twenty transactions that are exempt from the registration requirements of the Act.[42] Examples include:

- Securities issued in exchange for one or more outstanding securities, claims, or property interests at any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy;[43]
- Certain isolated sales or offers for sale of securities when made by or on behalf of a vendor not the issuer or underwriter of the securities who, being the bona fide owner of such securities, disposes of his or her own property for his or her own account;[44]
- The distribution by a corporation, trust, or partnership, actively engaged in the business authorized by its charter, or other organizational articles or agreement, of securities to its stockholders or other equity security holders, partners, or beneficiaries as a stock dividend or other distribution out of earnings or surplus;[45]
- The distribution of the securities of an issuer exclusively among its own security holders, when no commission or other remuneration is paid or given in connection with the sale or distribution of such additional securities;[46]
- The offer or sale of securities from one corporation to another corporation provided that the sale price of the securities is $500,000 or more and the buyer and seller corporations each have assets of $500,000 or more;[47] and
- The offer or sale of securities under a bona fide employer-sponsored stock option, stock purchase, pension, profit-sharing, savings, or other benefit plan when offered only to employees of the sponsoring organization or to employees of its controlled subsidiaries.[48]

These exemptions are self-executing and do not require any filing with OFR prior to claiming an exemption.[49] A person who claims entitlement to such an exemption bears the burden of proving such entitlement in any proceeding brought under the Act.[50]

NASAA ACCREDITED INVESTOR EXEMPTION

The North American Securities Administrators Association (NASAA) is a voluntary, international, association whose membership consists of 67 state, provincial, and territorial securities administrators.[51] Formed in 1919, NASAA is the "oldest international organization devoted to investor protection."[52] NASAA advocates on behalf of state securities agencies in the United States that are responsible for capital formation and investor protection.[53] NASAA also coordinates training and education seminars for securities agency staff[54] and creates model rules for implementation amongst its members.[55]

On April 27, 1997, NASAA members voted to approve a "Model Accredited Investor Exemption," which exempts the offer or sale of a security by an issuer from the security registration process in a transaction meeting certain requirements.[56] Specifically, the exemption limits the sale of securities to

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[42] S. 517.061, F.S.
[43] S. 517.061(1), F.S.
[44] S. 517.061(3), F.S.
[45] S. 517.061(4), F.S.
[46] S. 517.061(6), F.S.
[47] S. 517.061(7), F.S.
[48] S. 517.061(15), F.S.
[49] S. 517.061(1), F.S.
[50] *Id.*
[51] NASAA, *Welcome to NASAA*, https://www.nasaa.org/about-us/ (last visited Jan. 2, 2024).
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *See* NASAA, *NASAA Model Rule on Investment Adviser Representative Continuing Education (Model Rule 2002-411(h) or 1956-204(B)(6)-CE)*, https://www.nasaa.org/wp-content/uploads/2020/10/NASAA-IAR-CE-Model-Rule.pdf (last visited Jan. 2, 2024).
[56] Office of Financial Regulation, *supra* note 16, at p. 17.

accredited investors and the issuer must not be subject to disqualification.[57] The exemption also requires that an issuer file a notice of transaction, a consent to service of process, and a copy of the general announcement with the regulatory authority within 15 days after the first sale in the state.[58] The majority of states have adopted this accredited investor exemption.[59]

UNIFORM SECURITIES ACT

The Uniform Securities Act (USA) is a model act developed by the Uniform Law Commissioners.[60] The USA was first created in 1956 and was later amended in 1985 and again in 2002.[61] Most states' securities laws are based, to some degree, on the three variations of the USA (i.e., most states have either adopted one of these variations or used one variation as the basis for their statutes).[62]

Effect of the Bill

The bill reorganizes the portion of the Act relating to exempt transactions to group like transactions together and to generally modernize the type of transactions exempt thereunder in accordance with developments in federal securities laws and other states' securities laws.

Specifically, the bill adds an exemption for sales of securities effected through assignments for the benefit of creditors. The bill also creates a new exemption for a transaction involving a security issued in exchange, except in a case under Title 11 of the United States Code, for one or more bona fide outstanding securities, or property interests, or partly in such exchange and partly for cash, if the terms and conditions are approved by certain governmental entities after a hearing upon the fairness of such terms and conditions and at which all parties to the exchange have a right to appear.

The bill also:

- Expands the current exemption[63] related to a transaction involving the distribution of securities among an issuer's own security holders to include persons that at the date of the transaction are holders of options and all types of warrants;
- Replaces the terms "corporation, trust, or partnership" with the more expansive term "business entity" throughout for consistency;
- Requires, under the current exemption related to the offer or sale of securities from one corporation to another pursuant to a vote,[64] that the issuer is parties to the reorganization, and eliminates the requirement that the security holders consent to the sale of such securities;[65]
- Expands the current exemption relating to employer-sponsored stock option plans[66] to include any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, and requires that the employee benefit plan be contained in a record established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees;
- Eliminates the requirement, under the exemption relating to the offer or sale of securities to a financial institution,[67] that the Commission define "institutional buyer," and makes the current caveat on the exemption that the offers or sales of securities cannot be for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading the Act generally applicable to all exemptions, not just this one; and

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[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] NASAA, *Uniform Securities Acts*, https://www.nasaa.org/industry-resources/uniform-securities-acts/ (last visited Jan. 8, 2024).
[61] *Id.*
[62] *Id.*
[63] S. 517.061(6), F.S.
[64] S. 517.061(9), F.S.
[65] This requirement is not eliminated entirely. The requirement for security holders' consent is a matter of corporate law and already covered under Florida's corporate laws, and therefore unnecessary to include it in the Act.
[66] S. 517.061(15), F.S.
[67] S. 517.061(11)(a), F.S.

- Removes the provision prohibiting the payment of a commission or compensation for the sale of the securities in certain circumstances relating to the offer or sale, by or on behalf of an issuer, of its own securities, where there are no more than 35 purchasers, as the Act already prohibits any commission payment except to a registered dealer.

The bill also incorporates NASAA's model accredited investor exemption. Sales of securities may only be made to persons who are, or the issuer reasonably believes are, accredited investors. The exemption is not available to an issuer that is in the development stage and that has no specific business plan or purpose, or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or other entity or person.[68]

Additionally, the bill:

- Adds a secured party[69] to those eligible to participate in exempt transactions related to liquidation of a debt secured by a security;
- Creates an exemption for nonissuer transactions with a covered adviser, managing investments in excess of $100 million, acting in the exercise of discretionary authority in a signed record for the accounts of others; and
- Allows the Commission to recognize by rule clearinghouses able to clear option transactions for purposes of the exemption described above; requires that the underlying security is purchased or sold on a recognized security exchange registered under the 1934 Act and to eliminate the possibility that the underlying security instead be quoted on the National Association of Securities Dealers Automated Quotation System.[70]

The bill also creates an exemption for certain transactions based on the USA. Nonissuer transactions in an outstanding security by or through a dealer registered or exempt from registration are exempt if two conditions are met. First, the issuer must be a reporting issuer in Canada or in a foreign jurisdiction designated by Commission rule and the issuer has been subject to continuous reporting requirements for not less than 180 days before the transaction; and second, the security is listed on The Toronto Stock Exchange, Inc. or on a foreign jurisdiction's securities exchange that has been designated by Commission rule, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. The bill provides that OFR may revoke any designation of a securities exchange if OFR finds that revocation is necessary or appropriate in the public interest and for the protection of investors.[71]

Intrastate Crowdfunding

Background

Florida's intrastate crowdfunding exemption currently provides that an offer or sale of a security that is conducted in accordance with certain statutory requirements is an exempt transaction under the Act.[72] However, this exemption may not be used in conjunction with any other exemption under the Act.[73]

[68] *Id.* at 20.
[69] S. 517.061(2), F.S.
[70] *Id.* at 20-21.
[71] *Id.* at 21.
[72] S. 517.0611(2), F.S.
[73] *Id.*

The exemption requires that the offer or sale of securities be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the 1933 Act and SEC Rule 147.[74] Further, the exemption requires that an issuer:

- Be a for-profit business entity formed under the laws of the state, be registered with the Secretary of State, maintain its principal place of business in the state, and derive its revenues primarily from operations in the state;
- Conduct transactions for the offering through a dealer or intermediary registered with OFR;
- Not be, either before or as a result of the offering, an investment company or subject to the reporting requirements of s. 13 or s. 15(d) of the 1934 Act;
- Not be a company with an undefined business operation, a company that lacks a business plan, a company that lacks a stated investment goal for the funds being raised, or a company that plans to engage in a merger or acquisition with an unspecified business entity;
- Not be subject to a disqualification established by the Commission or OFR or a disqualification described in s. 517.1611, F.S., or SEC Rule 506(d). Each director, officer, person occupying a similar status or performing a similar function, or person holding more than 20% of the shares of the issuer, is subject to this requirement;
- Execute an escrow agreement with a federally insured financial institution authorized to do business in the state for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount; and
- Allow investors to cancel a commitment to invest within 3 business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the target offering amount is not reached by the offering deadline.[75]

Under this exemption, an issuer must provide investors and the dealer or intermediary, along with a copy to OFR at the time that the notice is filed, and make available to potential investors through the dealer or intermediary, a disclosure statement containing material information about the issuer and the offering, which must include certain specified information.[76]

The issuer must also provide OFR with a copy of the escrow agreement with a financial institution authorized to conduct business in this state.[77] All investor funds must be deposited in the escrow account.[78] The escrow agreement must require that all offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan, and that all investors will receive a full return of their investment commitment if that target offering amount is not raised by the date stated in the disclosure statement.[79]

Currently, offerings are limited to $1 million, and offers or sales to a person owning 20% or more of the outstanding shares of any class or classes of securities or to an officer, director, partner, or trustee, or a person occupying a similar status, do not count toward this limitation.[80] Moreover, sales of securities to non-accredited investors in a 12-month period may not exceed:

- The greater of $2,000 or 5% of the annual income or net worth of such investor, if the annual income or the net worth of the investor is less than $100,000; or
- 10% of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or exceeds $100,000.[81]

OFR may summarily suspend a notice filing if the payment for the filing is dishonored by the financial institution upon with which the funds are drawn or if the issuer made a material false statement in the

[74] S. 517.0611(3), F.S.
[75] S. 517.0611(4), F.S.
[76] S. 517.0611(7), F.S.
[77] S. 517.0611(8), F.S.
[78] *Id.*
[79] *Id.*
[80] S. 517.0611(9), F.S.
[81] S. 517.0611(10), F.S.

issuer's notice-filing.[82] A material false statement made in the issuer's notice-filing results in a final order by OFR revoking the notice-filing, issuing a fine and permanent bar to the issuer and all owners, officers, directors, and control persons, or any person occupying a similar status or performing a similar function of the issuer.[83]

The Act also provides certain requirements for intermediaries,[84] as well as prohibited activities for intermediaries.[85]

INVEST GEORGIA EXEMPTION

The Invest Georgia Exemption (IGE) was created in 2011 by the Georgia's Commissioner of Securities.[86] IGE allows for-profit businesses formed under Georgia law or properly registered to transact business in Georgia to raise up to $5 million in a single offering.[87] IGE filers can sell up to $10,000 in securities to non-accredited Georgia investors, and can sell up to the offering limit to accredited Georgia investors.[88]

Businesses qualify for the IGE program if 80% of gross revenues are derived from Georgia; 80% of assets are held in Georgia; 80% of the offering's proceeds are used in Georgia; or a majority of the issuer's employees are based in Georgia.[89]

Qualifying businesses are able to send out general solicitations to potential investors but can only offer and sell to Georgia residents.[90] Further, IGE does not set limitations on the securities offered; rather, IGE gives the issuer the freedom to set their own valuation for issuing equity or convertible notes, loans, etc.[91]

According to Georgia's Division of Securities, IGE has been successfully used by breweries, medical technology firms, real estate firms, manufacturers, restaurants, entertainment, and other businesses.[92] Over 100 companies have used IGE since its inception in 2011.[93]

Effect of the Bill

The bill renames the "Florida Intrastate Crowdfunding Exemption" to "The Florida Limited Offering Exemption," allows the exemption to be used in conjunction another exemption, and allows any for-profit business entity that is principally located in and gets its primary revenue within Florida, rather than only Florida corporations so located and funded, to use the exemption.

[82] S. 517.0611(12)(a), F.S.
[83] S. 517.0611(12)(b), F.S.
[84] *See* S. 517.0611(13), F.S.
[85] *See* S. 517.0611(14), F.S.
[86] Georgia Secretary of State Securities Division, *Invest Georgia Exemption*, https://sos.ga.gov/sites/default/files/2023-05/IGE%20pamplet-web.pdf (last visited Jan. 10, 2024).
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Id.*

The bill:

- Allows issuers conducting an offering of $2.5 million or less to conduct transactions without a dealer or intermediary registered with OFR, and requires that issuers conducting an offering of $2.5 million or more use a dealer or intermediary;
- Increases the offering limit under this exemption from $1 million to $5 million;
- Adds managers, managing members, or general partners to the list of those persons that do not count toward the offering limitation; and
- Replaces the term "shares" with "equity interests."

The bill eliminates the requirement to execute a third-party escrow agreement. It also requires that investor funds be deposited in an account in a federally insured financial institution and maintained in the account until the target offering amount has been reached, the offering has been terminated, or the offering has expired, and requires the issuer to refund all funds to investors within 10 business days if the target offering amount is not reached or the offering is terminated or expires.

The bill also:

- Eliminates a required attestation that the issuer and certain other related persons are not currently and have not been within the past 10 years the subject of regulatory or criminal actions involving fraud or deceit;
- Reduces the number of days in which an issuer must amend the notice it submitted to OFR from 30 days after any information becomes inaccurate to 10 business days after any material information becomes inaccurate;
- Allows the issuer to engage in general advertising and general solicitation of the offer to prospective investors, provided certain conditions are met; and
- Requires that the issuer provide the names of managers, managing members, and general partners and the ownership percentage of each person holding more than 20% of the issuer's equity interests.

It limits the amount of securities that can be sold by an issuer to an unaccredited investor to $10,000, rather than an amount that is a computation based on personal income or net worth. This bill also eliminates a required annual report to investors and OFR.

The bill retains the current substantive disclosure obligations of issuers to prospective investors. However, because of the change in maximum offering amounts and universal revisions to include control persons of certain entities, the financial disclosure obligations have been revised for differing offering amounts, clarified as to the required types of financial statements, and updated to conform with technical changes in federal securities laws.

Further, it allows a purchaser to void any sale made pursuant to this section by notifying the issuer that the purchaser expressly voids the purchase within 3 days after the first tender of consideration is made by such purchaser to the issuer. The purchaser's notice must be sent by email, certified mail, or overnight delivery service with proof of delivery.

Florida Invest Local Exemption

Effect of the Bill

The bill creates a new intrastate offering exemption, based in part on Georgia's IGE program. The offering is limited to $500,000 and any one investor may not invest more than $10,000 unless the investor is accredited, a specified employee, or a 10% or more shareholder. Under this exemption, an offer or sale of security by an issuer is exempt from the Act if the following conditions are met:

- An issuer must be a for-profit business entity registered with the Department of State with its principal place of business in this state.
- The issuer may not be, before or as a result of the offering:
    - An investment company;
    - Subject to the reporting requirements of the 1934 Act;

    - A business entity with an undefined business plan, that lacks a business plan, that lacks a stated investment goal for the funds being raised, or that plans to engage in a merger or acquisition with an unspecified business entity; or
    - Disqualified pursuant to s. 517.0616, F.S.[94]
- Further, the transaction must meet the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the 1933 Act and SEC Rule 147 or SEC Rule 147A.

An issuer may engage in general advertising and general solicitation. However, any general advertising or general announcement must state that the offer is limited and open only to residents of this state and is subject to the enforcement provisions of the Act.

A purchaser must receive, at least 3 business days before any binding commitment to purchase or consideration paid, a disclosure document that provides material information of the issuer, which includes, but is not limited to, certain specified information under the exemption. All funds received from investors must be deposited into a bank or depository institution authorized to do business in this state and funds may not be withdrawn until the target offering amount has been received.[95]

The issuer must file a notice of the offering and the disclosure document with OFR on a form prescribed by Commission rule no less than 5 business days before the offering commences. A purchaser may void any sale made pursuant to this section by notifying the issuer that the purchaser expressly voids the purchase within 3 days after the first tender of consideration is made by such purchaser to the issuer. The purchaser's notice must be sent by email, hand delivery, courier service, or other method with proof of delivery.

Demo Day Presentations and "Testing the Waters"

Background

On November 2, 2020, the SEC adopted amendments to facilitate capital formation and increase opportunities for investors by expanding access to capital for small and medium-sized businesses and entrepreneurs across the United States.[96] The amendments affected various rules and requirements, including adding SEC Rule 148, relating to "demo day" communications and SEC Rule 241, relating to an issuer's ability to "test the waters" to determine whether there is any interest in a contemplated offering.[97]

SEC RULE 148

New SEC Rule 148[98] provides that certain "demo day" communications[99] will not be deemed a general solicitation or general advertising.[100] Under this rule, an issuer will not be deemed to have engaged in general solicitation if the communications are made in connection with an event sponsored by a college, university, or other institution of higher education, a state or local government or instrumentality thereof, a nonprofit organization, or an angel investor group. However, certain conditions must be satisfied, such as limits on the sponsor's activities, a requirement that the advertising for the event not

[94] Created by the bill, proposed s. 517.0616, F.S., provides that certain registration exemptions are not available to an issuer that would be disqualified under SEC Rule 506(d) at the time the issuer makes an offer for the sale of a security.
[95] *Id.* at p. 25.
[96] U.S. Securities and Exchange Commission, *Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets*, https://www.sec.gov/corpfin/facilitating-capital-formation-secg (last visited Jan. 8, 2024).
[97] *Id.*
[98] 17 C.F.R. 230.148.
[99] For purposes of SEC Rule 148, "communications" mean communications made in connection with an event sponsored by a group or entity that invites issuers to present their businesses to potential investors with the aim of securing investment. *See* U.S. Securities and Exchange Commission, *supra* note 96.
[100] *Id.*

reference any specific offering of securities by the issuer, and limits on the information conveyed at the event regarding the offering of securities by or on behalf of the issuer.[101]

SEC RULE 241

SEC Rule 241[102] permits an issuer, or any person authorized to act on behalf of an issuer, to communicate orally or in writing to determine whether there is any interest in a contemplated exempt offering prior to deciding on the exemption it plans to use.[103] The new rule requires such generic "testing the waters" materials, also known as solicitations of interest, to state that:

- The issuer is considering an offering of securities exempt from registration under the 1933 Act, but has not determined a specific exemption from registration the issuer intends to rely on for the subsequent offer and sale of the securities;
- No money or other consideration is being solicited, and if sent in response, will not be accepted;
- No offer to buy the securities can be accepted and no part of the purchase price can be received until the issuer determines the exemption under which the offering is intended to be conducted and, where applicable, the filing, disclosure, or qualification requirements of such exemption are met; and
- A person's indication of interest involves no obligation or commitment of any kind.[104]

The communication may include a means for a person to indicate interest in a potential offering and an issuer may require such indication to include the person's name, address, telephone number, and email address.[105] SEC Rule 241 also requires that the generic solicitation materials be made publicly available as an exhibit to the offering materials filed with the SEC if a Regulation A[106] or Regulation Crowdfunding[107] offering is commenced within 30 days of the generic solicitation, and that an issuer provide purchasers with the materials if the issuer sells securities under Rule 506(b) within 30 days of the generic solicitation of interest to any purchaser that is not an accredited investor.[108]

Effect of the Bill

The bill allows issuers to engage in solicitation of potential investors under specified limited conditions. In doing so, the bill adopts SEC Rule 148 that provides for issuer presentation at a specified form of a "demo day" meeting that is sponsored by one of the specified organizations. The bill also adopts SEC Rule 241, allowing issuers to "test the waters" before making any offering to determine whether the time, energy, and expense of a possible offering would be worthwhile. Both provisions allow a potential issuer to evaluate the viability of an offering and accordingly avoid unnecessary time and expense. All communications made under these provisions are subject to the anti-fraud provisions of the Act.[109]

Registration Procedures

Background

All securities required by the Act to be registered before being sold in Florida and not entitled to registration by notification must be registered in the manner provided by Act.[110] OFR receives and reviews the applications for securities to be registered, and the Commission may prescribe forms on

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[101] *Id.*
[102] 17 C.F.R. 230.241.
[103] U.S. Securities and Exchange Commission, supra note 96.
[104] *Id.*
[105] *Id.*
[106] SEC Regulation A establishes two tiers of offerings that are exempt from registration under the 1933 Act. *See* U.S. Securities and Exchange Commission, *supra* note 96.
[107] The SEC Regulation Crowdfunding provides an exemption from registration for certain securities offerings that solicit relatively small individual investments or contributions from a large number of investors. *Id.*
[108] U.S. Securities and Exchange Commission, *supra* note 96.
[109] The Florida Bar Business Law Section, *supra* note 1, at p. 56.
[110] S. 517.081(1), F.S.

which such applications are to be submitted.[111] Applications must be signed by the applicant, sworn to by any person having knowledge of the facts, and filed with OFR.[112]

OFR may require the applicant to submit to the following information concerning the issuer and such other relevant information as OFR may need to ascertain whether such securities shall be registered under the Act:

- The names and addresses of:
  - All the directors, trustees, and officers, if the issuer is a corporation, association, or trust.
  - All the managers or managing members, if the issuer is a limited liability company.
  - All the partners, if the issuer is a partnership.
  - The issuer, if the issuer is a sole proprietorship or natural person.
- The location of the issuer's principal business office and of its principal office in this state, if any.
- The general character of the business actually to be transacted by the issuer and the purposes of the proposed issue.
- A statement of the capitalization of the issuer.
- A balance sheet showing the amount and general character of its assets and liabilities on a day not more than 90 days prior to the date of filing such balance sheet or such longer period of time, not exceeding 6 months, as OFR may permit at the written request of the issuer on a showing of good cause therefor.
- A detailed statement of the plan upon which the issuer proposes to transact business.
- A statement of the amount of the issuer's income, expenses, and fixed charges during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.
- A statement of the issuer's cash sources and application during the last fiscal year or, if in actual business less than 1 year, then for such time as the issuer has been in actual business.
- A statement showing the maximum price at which such security is proposed to be sold, together with the maximum amount of commission, including expenses, or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.
- A copy of the opinion or opinions of counsel concerning the legality of the issue or other matters which OFR may determine to be relevant to the issue.
- A detailed statement showing the items of cash, property, services, patents, good will, and any other consideration in payment for which such securities have been or are to be issued.
- The amount of securities to be set aside and disposed of and a statement of all securities issued from time to time for promotional purposes.[113]

OFR may also require the applicant to submit a copy of the securities certificate, if applicable, and a copy of any circular, prospectus, advertisement, or other description of such securities.[114] The Commission shall adopt a form for a simplified offering circular to register securities that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed $5 million.[115] This is synonymous with a Small Company Offering Registration (SCOR) under the 1933 Act.[116] To qualify for use of the simplified offering circular, the issuer must:

- Agree to provide OFR with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year (and if the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited); and
- Annual financial reports must be filed with OFR within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.[117]

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[111] S. 517.081(2), F.S.
[112] S. 517.081(2), F.S.
[113] S. 517.081(3), F.S.
[114] S. 517.081(3)(g)1., F.S.
[115] S. 517.081(3)(g)2., F.S.
[116] The Florida Bar Business Law Section, *supra* note 1, at p. 59.
[117] S. 517.081(3)(g)2., F.S.

Further, if the issuer is a corporation, a copy of its articles of incorporation with all amendments and of its existing bylaws, if not already on file, must be filed with OFR. If the issuer is a limited liability company, a copy of the articles of organization with all the amendments and a copy of the company's operating agreement as may be amended, if not already on file, must be filed with OFR. If the issuer is a trustee, a copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged must be filed with OFR. If the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization whatsoever, a copy of its articles of partnership or association and all other papers pertaining to its organization, if not already on file, must be filed with OFR.[118]

An issuer filing an application must, at the time of filing, pay OFR a nonreturnable fee of $1,000 per application for each offering that exceeds $5 million, or $200 per application for each offering that does not exceed $5 million.[119]

If upon examination of an application OFR finds that the sale of the security would not be fraudulent, that the terms of the sale of such securities would be fair, just, and equitable, and that the enterprise or business of the issuer is not based upon unsound business principles, OFR must record the registration of such security in the register of securities.[120] Thereafter, such registered security may be sold by any registered dealer, subject, however, to the further order of OFR.[121]
The OFR must consider a filed application abandoned if the issuer or any person acting on behalf of the issuer has failed to timely complete an application specified by Commission rule.[122]

Effect of the Bill

The bill:

- Consolidates the provisions of the Act relating to the Commission's rule-making authority for registration procedures;
- Eliminates the requirement for 5 years of annual reports and audited financial statements applicable to simplified securities offerings that use the SCOR registration method; and
- Eliminates the prohibition against a person using the SCOR registration method for the resale of securities, which will allow non-control persons to resell securities through a Florida-based registration process.[123]

Consent to Service

Background

The Act requires an issuer, upon any initial application for registration under the Act or upon request of OFR, to file with such application the irrevocable written consent to service.[124] The written consent must be authenticated by the seal of said issuer (if it has a seal), and by the acknowledged signature of a member of the co-partnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, and such consent to service must be duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association (and such resolutions must be filed as a certified copy with the written consent to service).[125]

Effect of the Bill

The bill expands the type of persons who are eligible to sign the written consent on behalf of a business entity to include directors, managers, managing members, general partners, trustees, or officers of the

[118] S. 517.081(3)(n), F.S.
[119] S. 517.081(6), F.S.
[120] S. 517.081(7), F.S.
[121] S. 517.081(7), F.S.
[122] S. 517.081(8), F.S.
[123]
[124] S. 517.101, F.S.
[125] S. 517.101(1), F.S.

issuer. The bill also expands the persons who can authorize the signer to execute the written consent to include the issuer's general partners and managing members.

Securities Guaranty Fund

Background

The Act establishes Florida's Securities Guaranty Fund (SGF).[126] The SGF provides financial assistance to persons who are adjudged by a court to have suffered monetary damages as a result of a violation of ss. 517.07 or 517.301, F.S., committed by a dealer, investment adviser, or associated person who was licensed under the Act at the time the violation occurred.[127] The SGF is funded by a percentage of revenues received as assessment fees by OFR.[128]

For a person to be eligible to receive payment from the SGF, the following requirements must be met:

- The act for which recovery is sought occurred on or after January 1, 1979;
- The person has received final judgement from a court that a violation of ss. 517.07 or 517.301, F.S., occurred for which monetary damages are awarded;
- The person has made all reasonable searches and inquiries to ascertain whether the violator possesses assets that can be sold in satisfaction of the damages awarded, and in such search has discovered no or insufficient assets; and
- The person has applied any amounts recovered from the violator, or from any other source, to the damages awarded by the court.[129]

PAYMENT FROM THE FUND

Any person who meets all the requirements outlined above may apply to OFR for payment to be made to such person from the SGF in the amount equal to the unsatisfied portion of such person's judgement or $10,000, whichever is less, but only to the extent and amount reflected in the judgement as being actual or compensatory damages, excluding post-judgement interest, costs, and attorney's fees.[130]

Among other things, the Act also establishes that:[131]

- Regardless of the number of claims involved, payments for claims shall be limited in the aggregate to $100,000 against any one dealer, investment adviser, or associated person.
    - If the total claims exceed the aggregate limit of $100,000, OFR shall prorate the payment to each claimant based upon the ration that the person's claim bears to the total claims filed.
- If the final judgement that gave rise to the claim is overturned in any appeal or any collateral proceeding, the claimant must reimburse the SGF all amounts paid from the SGF.
    - The claimant shall reimburse the SGF all amounts paid from the SGF following any satisfaction of the final judgement.
    - Such reimbursement must be paid to OFR within 60 days after the final resolution of the appellate or collateral proceedings or the satisfaction of judgement, with the 60-day period commencing on the date the final order or decision is entered in such proceedings.
- OFR may institute legal proceedings to enforce compliance with the section and with s. 517.131, F.S., to recover money owed to the SGF, and is entitled to recover interest, costs, and fees in any action brought pursuant to the section in which OFR prevails.

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[126] S. 517.101, F.S.
[127] S. 517.131(1)(a), F.S. See also, Office of Financial Regulation, *Statute Review: Biennial Report December 2022* (https://flofr.gov/sitePages/documents/OFR-Statute-Review-Report-2022.pdf), p. 21-22 (last visited Jan 4, 2024).
[128] S. 517.131(1)(a), F.S. Specifically, a maximum of 20% of all revenues received as assessment fees pursuant to ss. 517.12(9) and (10), F.S., for dealers and investment advisers (or s. 517.1201 for federal covered advisers), and a maximum of 10% of all revenues received as assessment fees pursuant to ss. 517.12(9) and (10), F.S., for associated persons must be part of the regular registration fee and must be transferred to the SGF.
[129] S. 517.131(2), F.S.
[130] S. 517.131, F.S.
[131] S. 517.141, F.S.

Moreover, the Act requires a claimant to wait a minimum of two years after filing a claim with OFR before a payment determination can be made.[132]

Effect of the Bill

These sections are substantially reorganized and amended to improve usability and clarity. Additionally, the term "license" is replaced with "registration" for accuracy and the term "Fund" is replaced with "Securities Guaranty Fund" for consistency throughout ss. 517.131 and 517.141, F.S.

SECURITIES GUARANTY FUND

The bill:

- Specifies that the purpose of the SGF is to provide monetary relief to victims of securities violations under the Act who are entitled to monetary damages or restitution and cannot recover the full amount of such monetary damages or restitution from the violator.
- Defines the term "final judgment" as also including an arbitration award confirmed by a court of competent jurisdiction.
- Requires that a person meet the following conditions to be eligible for payment from the SGF for acts that occur on or after October 1, 2024:
    - The person holds an unsatisfied final judgment in which a violator was found to have violated s. 517.07, F.S. or s. 517.301, F.S.
    - The person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court or arbitrator.
    - The person is a natural person who was a resident of this state or is a business entity that was domiciled in this state at the time of the violation giving rise to the claim.
    - In making the above changes, the bill eliminates the ability of OFR to waive certain requirements under the section, and the requirement that the claimant make all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment.
- Prohibits a person from being eligible for payment from the Fund if the person has:
    - Participated or assisted in a violation of the Act;
    - Attempted to commit or committed a violation of the Act; or
    - Profited from a violation of the Act

[132] S. 517.141(3), F.S.

The bill requires that an eligible person, or a receiver on behalf of an eligible person, seeking payment from the SGF to file a written application. The application must be filed with OFR within 1 year after the date of the final judgment, the date on which restitution order has been ripe for execution, or the date of any appellate decision thereon, and the application must contain such information as OFR may require.

Each eligible person or receiver, within 90 days after OFR's receipt of a complete application, must be given written notice, personally or by mail, that OFR intends to approve or deny, or has approved or denied, the application for payment from the SGF. In making this change, the bill eliminates the current two-year waiting period.

The bill requires an eligible person or receiver to assign all right, title, and interest in the final judgment or order of restitution, to the extent of such payment to OFR upon receipt of the notice indicating OFR's intent to approve an application for payment from the SGF and before any disbursement, rather than upon receipt of payment. Further, the bill requires OFR to deem an application abandoned if the eligible person fails to timely complete the application as prescribed by Commission rule.[133]

PAYMENT FROM THE FUND

The bill increases the amount that an eligible person may recover from the SGF from $10,000 to $15,000, adds an exception allowing recovery of up to $25,000 if the person is a specified adult.[134] The aggregate limit on claims is also increased from $100,000 to $250,000.

Further, the bill requires:

- OFR to submit authorization for payment to the Chief Financial Officer within 30 days after the approval of an eligible person for payment from the SGF, and allow the Chief Financial Officer's designee, to make payments or disbursements from the SGF;
- Reimbursements to the SGF be paid to the Department of Financial Services (DFS), rather than OFR; and
- A claimant who knowingly and willfully files (or causes to be filed) an application or any supporting documentation that contains false, incomplete, or misleading information in any material aspect forfeits all payments from the SGF. (The bill also specifies that filing such false documentation is unlawful and a violation of the Act and punishable as provided therein.)

In connection with the above referenced changes, the bill allows DFS, instead of OFR, to institute legal proceedings to enforce compliance with s. 517.131, F.S., and to recover money owed to the SGF, and to recover interest, costs, and attorney's fees in any action brought pursuant to this section in which DFS prevails. The bill also eliminates the two-year waiting period.

Enforcement by OFR and the Attorney General; Civil Penalties for Violations

Background

When it appears to OFR, whether upon complaint or otherwise, that a person has engaged in any act constituting a violation of the Act or a rule or order thereunder, OFR may investigate and, if the evidence is sufficient, may bring an action on behalf of the state against such person.[135]

Additionally, OFR may also apply to the court for an order directing the defendant to make restitution of those sums shown by OFR to have been obtained in violation of the Act.[136] OFR may also petition the court to impose a civil penalty against the defendant in an amount not to exceed:

[133] Office of Financial Regulation, *supra* note 16, at p. 29.
[134] The Act defines "specified adult" as a natural person 65 years of age or older, or a natural person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. *See* s. 517.34(1)(b), and s. 415.102(28), F.S.
[135] S. 517.191, F.S.
[136] S. 517.191(3), F.S.

- $10,000 for a natural person or $25,000 for any other person, or the gross amount of pecuniary gain to such defendant for each such violation, other than a violation of s. 517.301, F.S.;
- Plus $50,000 for a natural person or $250,000 for any other person, or the gross amount of pecuniary gain to such defendant for each violation of s. 517.301, F.S.[137]

All civil penalties collected pursuant to the above-referenced statutory guidelines must be deposited into the Anti-Fraud Trust Fund.[138]

In addition to the authority granted to OFR, the section also provides that when the Attorney General, whether upon complaint or otherwise, has reason to believe that a person has engaged or is about to engage in a practice constituting a violation of ss. 517.275, 517.301, 517.311, or s. 517.312, F.S., the Attorney General may investigate and bring an action to enforce certain provisions of the Act after receiving written approval from OFR.[139]

The Act does not limit the authority of OFR to bring an administrative action against any person that is the subject of a civil action brought pursuant to the Act or limit the authority of OFR to engage in investigations or enforcement actions with the Attorney General.[140] However, a person may not be subject to both a civil penalty described above and an administrative fine under s. 517.221(3), F.S., as a result of the same facts.[141]

An enforcement action must be brought within 6 years after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 8 years after the date such violation occurred.[142]

Effect of the Bill

The bill:

- Increases the civil penalty imposable upon a natural person from $10,000 to $20,000;
- Allows OFR to recover any costs and attorney fees related to its investigation or enforcement of the section, which must also be deposited into the Anti-Fraud Trust Fund;
- Provides that in the event a specified adult[143] is a victim of a violation of the section, twice the amount of the civil penalty that would otherwise be imposed, which is $50,000 for a natural person or $250,000 for a business entity;
- Establishes joint and several liability for any control person who is found to have violated any provision of the Act;
- Provides that a person who knowingly and recklessly provides substantial assistance to another person in violation of a provision of the Act is deemed to violate the provision to the same extent as the person to whom such assistance was provided;
- Allows OFR to issue and serve upon a person a cease and desist order if OFR has reason to believe the person violates any provision of the Act, as well as an emergency cease and desist order under certain circumstances; and
- Grants OFR the authority to impose and collect an administrative fine against any person found to have violated any provision of the Act, which must also be deposited into the Anti-Fraud Trust Fund.

Remedies Available in Cases of Unlawful Sale

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[137] S. 517.191(4), F.S.
[138] *Id.*
[139] S. 517.191(5), F.S.
[140] S. 517.191(6), F.S.
[141] *Id.*
[142] S. 517.191(7), F.S.
[143] The Act defines "specified adult" as a natural person 65 years of age or older, or a natural person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. *See* s. 517.34(1)(b), and s. 415.102(28), F.S.

Background

The Act provides that every sale made in violation of either ss. 517.07[144] or 517.12(1),[145] (3),[146] (4),[147] (8),[148] (10),[149] (12),[150] (15),[151] or (17),[152] F.S., may be rescinded at the election of the purchaser, except a sale made in violation of the provisions relating to a renewal of a branch office notification and a sale made in violation of the provisions relating to filing a change of address amendment is not subject to rescission.

Moreover, each person making the sale and every agent of the seller, if the agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security.[153] Additionally, any person purchasing or selling a security in violation of s. 517.301, F.S.,[154] and every agent of such person, if the agent has personally participated or aided in making the sale or purchase, is jointly and severally liable to the person selling the security to or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.[155]

The Act further provides that:

- In an action for rescission:
  - A purchaser may recover the consideration paid for the security, plus interest thereon at the legal rate, less the amount of any income received by the purchaser on the security upon tender of the security.
  - A seller may recover the security upon tender of the consideration paid for the security, plus interest at the legal rate, less the amount of any income received by the defendant on the security.[156]
- In an action for damages brought by a purchaser of a security or investment, the plaintiff shall recover an amount equal to the difference between:
  - The consideration paid for the security, plus interest thereon at the legal rate from the date of purchase; and
  - The value of the security at the time it was disposed of by the plaintiff, plus the amount of any income received on the security by the plaintiff.[157]

[144] S. 517.07, F.S., relates to viatical settlement investments.
[145] S. 517.12(1), F.S., relates to a general prohibition against dealers and associated persons from selling or offering to sale any securities in or from offices in Florida to persons in Florida unless the person is registered with OFR.
[146] S. 517.12(3), F.S., relates to the registration and notice-filings of investment advisers, associated persons of investment advisers, and federal covered advisers with OFR.
[147] S. 517.12(4), F.S., relates to a general prohibition against dealers and investment advisers conducting business from a branch office in Florida unless the branch office is registered has notice-filed with OFR pursuant to the Act.
[148] S. 517.12(8), F.S., relates to a requirement that all dealers comply with the net capital and ratio requirements imposed pursuant to the 1934 Act.
[149] S. 517.12(10), F.S., relates to a general requirement that OFR register an applicant upon a finding that the applicant has complied with the applicable registration provisions of the Act.
[150] S. 517.12(12), F.S., relates to registration procedures when changes in personnel of a partnership or in the principals, copartners, officers, or directors of a dealer or investment adviser occurs.
[151] S. 517.12(15), F.S., relates to a general requirement that every applicant for initial or renewal registration as a securities dealer and every person so registered must be registered as a broker or dealer with the SEC.
[152] S. 517.12(17), F.S., relates to a requirement that every dealer and associated person registered or required to be registered with OFR must satisfy any continuing education requirements established by rule.
[153] S. 517.211(1), F.S.
[154] S. 517.301, F.S., relates to fraudulent transactions and the falsification or concealment of facts.
[155] S. 517.211(2), F.S.
[156] S. 517.211(3), F.S.
[157] S. 517.211(4), F.S.

- In an action for damages brought by a seller of a security, the plaintiff shall recover an amount equal to the difference between:
    - The value of the security at the time of the complaint, plus the amount of any income received by the defendant on the security; and
    - The consideration received for the security, plus interest at the legal rate from the date of sale.[158]

In any such action, including an appeal, the court shall award reasonable attorneys' fees to the prevailing party unless the court finds that doing so would be unjust.[159]

Effect of the Bill

The bill establishes that, for purposes of any action brought regarding an unlawful sale, a control person who controls any person found to have violated any provision specified in s. 517.211(1), F.S., is also jointly and severally liable with such controlled person, unless the control person can establish by a preponderance of the evidence that they acted in good faith and did not induce the act that constituted the violation.[160]

Fraudulent Transactions; Falsification or Concealment of Facts; Boiler Rooms

Background

The Act defines the term "investment" for purposes of ss. 517.311[161] and 517.312, F.S.,[162] as any commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term does not include a commitment of money or property for:

- The purchase of a business opportunity, business enterprise, or real property through a person licensed under ch. 475, F.S.,[163] or registered under former ch. 498, F.S.;[164] or
- The purchase of tangible personal property through a person not engaged in telephone solicitation, where said property is offered and sold in accordance with the following conditions:
    - There are no specific representations or guarantees made by the offeror or seller as to the economic benefit to be derived from the purchase;
    - The tangible property is delivered to the purchaser within 30 days after sale, except that such 30-day period may be extended by the office if market conditions so warrant; and
    - The seller has offered the purchaser a full refund policy in writing, exercisable by the purchaser within 10 days of the date of delivery of such tangible personal property, except that the amount of such refund may not exceed the bid price in effect at the time the property is returned to the seller.

It is unlawful and a violation of the Act for a person, in connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any security, including any security exempted under the provisions of the Act and including any security sold in a transaction exempted under the Act, directly or indirectly:

- To employ any device, scheme, or artifice to defraud;
- To obtain money or property by means of any untrue statement of a material fact or any omission to of a material fact necessary to make the statements made not misleading; or
- To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

[158] S. 517.211(5), F.S.
[159] S. 517.211(6), F.S.
[160] Office of Financial Regulation, *supra* note 16, at p. 31.
[161] S. 517.311, F.S., relates to false representations, deceptive words, and enforcement.
[162] S. 517.312, F.S., relates to securities, investments, boiler rooms; prohibited practices; and remedies.
[163] Chapter 475, F.S., relates to, among other things, the licensure and regulation of real estate brokers.
[164] The former chapter 498, F.S., related to, among other things, the licensure and regulation of land sales practices.

- To publish or circulate any communication which describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of such individual, without fully disclosing the receipt of such consideration and the amount of the consideration.
- To knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false or fraudulent statement or representation, or make or use any false document, knowing the same to contain any false or fraudulent statement.[165]

Further, it is also unlawful and a violation of the Act for any person to directly or indirectly manage, supervise, control, or own, either alone or in association with others, any boiler room[166] in Florida which sells or offers for sale any security or investment in violation of the above described prohibitions. [167]

Effect of the Bill

The bill amends the definition of "investment" for purposes of this provision of the Act to read as follows: any commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term does not include a commitment of money or property for the purchase of a business opportunity, business enterprise, or real property through a person licensed under ch. 475, F.S.,[168] or registered under former ch. 498, F.S.[169]

The bill also consolidates the current provisions of the Act relating to false representations, boiler rooms, and prohibited practices into a single provision. The consolidated version of these provisions does not eliminate any of the liability provisions existing in current law.

Miscellaneous

Pursuant to the changes made by the bill, the bill relocates the following sections of the Act and, where applicable, consolidates the provisions elsewhere:

- S. 517.221, F.S., relating to cease and desist orders.
- S. 517.241, F.S., relating to remedies.
- S. 517.311, F.S., relating to false representations; deceptive words; enforcement.
- S. 517.312, F.S., relating to securities, investments, boiler rooms; prohibited practices; remedies.

Overall, the bill modifies various provisions of the Act to incorporate recent amendments to federal securities laws since their passage and up to the effective date of the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 517.021, F.S., relating to definitions.
Section 2. Amends s. 517.051, F.S., relating to exempt securities.
Section 3. Amends s. 517.061, F.S., relating to exempt transactions.
Section 4. Amends s. 617.0611, F.S., relating to intrastate crowdfunding.
Section 5. Creates s. 517.0612, F.S., relating to Florida Invest Local Exemption.
Section 6. Creates s. 517.0613, F.S., relating to failure to comply with a securities registration exemption.
Section 7. Creates s. 517.0614, F.S., relating to integration of offerings.
Section 8. Creates s. 517.0615, F.S., relating to solicitations of interest.

[165] S. 517.301, F.S.
[166] The Financial Industry Regulatory Authority describes "boiler rooms" as follows: "Typically run as outbound call centers, boiler rooms are characterized by high pressure sales pitches from promoters targeting retail investors with highly speculative—oftentimes fraudulent—investments." *See* FINRA, *Boiler Rooms: An Old Stock Scam Gets a Technology Makeover*, https://www.finra.org/investors/insights/boiler-rooms-an-old-stock-gets-a-technology-makeover (last visited Jan. 8, 2024).
[167] S. 517.312, F.S.
[168] Chapter 475, F.S., relates to, among other things, the licensure and regulation of real estate brokers.
[169] The former chapter 498, F.S., related to, among other things, the licensure and regulation of land sales practices.

Section 9. Creates s. 517.0616, F.S., relating to disqualification.
Section 10. Amends s. 517.081, F.S., relating to registration procedure.
Section 11. Amends s. 517.101, F.S., relating to consent to service.
Section 12. Amends s. 517.131, F.S., relating to Securities Guaranty Fund.
Section 13. Amends s. 517.141, F.S., relating to payment from the fund.
Section 14. Amends s. 517.191, F.S., relating to injunction to restrain violations; civil penalties; enforcement by Attorney General.
Section 15. Amends s. 517.211, F.S., relating to remedies available in cases of unlawful sale.
Section 16. Repeals s. 517.221, F.S., relating to cease and desist orders.
Section 17. Repeals s. 517.241, F.S., relating to remedies.
Section 18. Amends s. 517.301, F.S., relating to fraudulent transactions; falsification or concealment of facts.
Section 19. Repeals s. 517.311, F.S., relating to false representations; deceptive words; enforcement.
Section 20. Repeals s. 517.312, F.S., relating to securities, investments, boiler rooms; prohibited practices; remedies.
Section 21. Amends s. 517.072, F.S., relating to viatical settlement investments.
Section 22. Amends s. 517.12, F.S., relating to registration of dealers, associated persons, intermediaries, and investment advisers.
Section 23. Amends s. 517.1202, F.S., relating to notice-filing requirements for branch offices.
Section 24. Amends s. 517.302, F.S., relating to criminal penalties; alternative fine; Anti-Fraud Trust Fund; time limitation for criminal prosecution.
Section 25. Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has an indeterminable positive impact on state government revenues because the bill increases penalties that can be assessed against certain violators of the Act.

2. Expenditures:

The bill requires issuers conducting an offering under the accredited investor exemption to file a notice of transaction, a consent to service of process, and a copy of the general announcement with OFR. OFR will then review the materials filed. The bill does not provide additional funds for OFR personnel to conduct such review. Although it is unknown how many filings OFR will receive, OFR does not anticipate needing additional personnel in fiscal year 2024/2025 to conduct such reviews.[170]

The bill also requires issuers conducting an offering under the Florida Invest Local Exemption to file a notice of the offering and a copy of the disclosure document with OFR. OFR will then review the materials filed. The bill does not provide additional funds for OFR personnel to conduct such review. Although it is unknown how many filings OFR will receive, OFR does not anticipate needing additional personnel in fiscal year 2024/2025 to conduct such reviews.[171]

[170] Office of Financial Regulation, *supra* note 16, at p. 35.
[171] Office of Financial Regulation, *supra* note 16, at p. 33.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill likely has a minimal positive impact on the private sector, as the bill modernizes Florida's securities laws to align with recent development in federal securities laws and securities laws in other states.

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:

Not applicable.

B. RULE-MAKING AUTHORITY:

The table below illustrates the proposed sections of the bill that create rule-making authority.[172]

Section	Rule-Making Authority
S. 517.061(11)	Allows the Commission to prescribe a notice of transaction form and procedures for filing it for purposes of the accredited investor exemption.
S. 517.061(16)(b)1.	Allows the Commission to recognize a clearinghouse by rule.
S. 517.061(20)	Allows the Commission to designate foreign jurisdictions and foreign securities exchanges.
S. 517.0612(2)(h)	Allows the Commission to prescribe a notice of offering form and procedures for filing it for purposes of the Florida Invest Local Exemption
S. 517.131(5)	Allows the Commission to prescribe an application form and procedures for filing it for purposes of the Securities Guaranty Fund
S. 517.131(7)	Allows the Commission to prescribe an assignment form and procedures for filing it for purposes of the Securities Guaranty Fund
S. 517.131(8)	Allows the Commission to specify a time period for completing an application for purposes of the Securities Guaranty Fund

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[172] Office of Financial Regulation, *supra* note 16, at p. 33.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 11, 2024, the Insurance & Banking Subcommittee considered the bill, adopted one amendment that conformed to the Senate bill, which is substantively identical to the bill, except it:

- Made the proposed revisions to the Securities Guaranty Fund prospective to October 1, 2024; and
- Provided clarification for the proposed revision to the exemption for transactions conducted through alternative trading systems.

Since the amendment also changed the short title of the bill, it was temporarily postponed, pursuant to rule.

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

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

A bill to be entitled

An act relating to securities; amending s. 517.021, F.S.; revising definitions; defining the terms "angel investor group" and "business entity"; amending s. 517.051, F.S.; revising the list of securities that are exempt from registration requirements under certain provisions; amending s. 517.061, F.S.; revising the list of transactions that are exempt from registration requirements under certain provisions; amending s. 517.0611, F.S.; revising a short title; revising provisions relating to a certain registration exemption for certain securities transactions; updating the federal laws or regulations with which the offer or sale of securities must be in compliance; revising requirements for issuers relating to the registration exemption; revising requirements for the notice of offering that must be filed by the issuer under certain circumstances; specifying the timeframe within which issuers may amend such notice after any material information contained in the notice becomes inaccurate; authorizing the issuer to engage in general advertising and general solicitation under certain circumstances; specifying requirements for such advertising and solicitation; requiring the issuer to provide a disclosure statement to certain

entities and persons within a specified timeframe; revising requirements for such statement; deleting requirements for the escrow agreement; conforming provisions to changes made by the act; revising the amount that may be received for sales of certain securities; providing a limit on securities that may be sold by an issuer to an investor; deleting the requirement that an issuer file and provide a certain annual report; conforming cross-references; revising the duties of intermediaries under certain circumstances; providing obligations of issuers under certain circumstances; providing that certain sales are voidable within a specified timeframe; providing requirements for purchasers' notices to issuers to void purchases; deleting provisions relating to funds received from investors; creating s. 517.0612, F.S.; providing a short title; providing applicability; requiring that offers and sales of securities be in accordance with certain federal laws and rules; specifying certain requirements for issuers relating to the registration exemption; specifying a limitation on the amount of cash and other consideration that may be received from sales of certain securities made within a specified timeframe; prohibiting an issuer from accepting more than a specified amount from a

single purchaser under certain circumstances; authorizing the issuer to engage in general advertising and general solicitation of the offering under certain circumstances; specifying that a certain prohibition is enforceable under ch. 517, F.S.; requiring that the purchaser receive a disclosure statement within a specified timeframe; specifying the requirements for such statement; requiring certain funds to be deposited into certain bank and depository institutions; prohibiting the issuer from withdrawing any amount of the offering proceeds until the target offering amount has been received; requiring the issuer to file a notice of the offering in a certain format within a specified timeframe; requiring the issuer to file an amended notice within a specified timeframe under certain circumstances; prohibiting agents of issuers from engaging in certain acts under certain circumstances; providing that sales made under the exemption are voidable within a specified timeframe; providing requirements for purchasers' notices to issuers to void purchases; creating s. 517.0613, F.S.; providing construction; providing that registration exemptions under certain provisions are not available to issuers for certain transactions under specified circumstances; providing registration

requirements; creating s. 517.0614, F.S.; specifying criteria for determining integration of offerings for the purpose of registration or qualifying for a registration exemption; specifying certain requirements for the integration of offerings for an exempt offering for which general solicitation is prohibited; specifying certain requirements for the integration of offerings for two or more exempt offerings that allow general solicitation; specifying the circumstances under which integration analysis is not required; creating s. 517.0615, F.S.; specifying that certain communications are not deemed to constitute general solicitation or general advertising under specified circumstances; creating s. 517.0616, F.S.; providing that registration exemptions under certain provisions are not available to certain issuers under a specified circumstance; amending s. 517.081, F.S.; revising the duties and authority of the Financial Services Commission; authorizing the commission to establish certain criteria relating to the issuance of certain securities, trusts, and investments; authorizing the commission to prescribe certain forms and establish procedures for depositing fees and filing documents and requirements and standards relating to prospectuses, advertisements,

and other sales literature; revising the list of issuers that are ineligible to submit simplified offering circulars; deleting provisions that require issuers to provide certain documents to the Office of Financial Regulation under certain circumstances; revising the requirements that must be met before the office must record the registration of a security; amending s. 517.101, F.S.; revising requirements for written consent to service in certain suits, proceedings, and actions; amending s. 517.131, F.S.; defining the term "final judgment"; specifying the purpose of the Securities Guaranty Fund; making technical changes; revising eligibility for payment from the fund; requiring eligible persons or receivers seeking payment from the fund to file a certain application with the office on a certain form; authorizing the commission to adopt rules regarding electronic filing of such application; specifying the timeframe within which certain eligible persons or receivers must file such application; providing requirements for such applications; requiring the office to approve applications for payment under certain circumstances and to provide applicants with certain notices within a specified timeframe; requiring eligible persons or receivers to assign to

the office all rights, titles, and interests in final judgments and orders of restitution equal to a specified amount under certain circumstances; requiring the office to deem an application for payment abandoned under certain circumstances; requiring that the time period to complete applications be tolled under certain circumstances; deleting provisions relating to specified notices to the office and to rulemaking authority; amending s. 517.141, F.S.; defining terms; revising the Securities Guaranty Fund disbursement amounts to which eligible persons are entitled; revising provisions regarding payment of aggregate claims; providing for the satisfaction of claims in the event of an insufficient balance in the fund; requiring payments and disbursements from the Securities Guaranty Fund to be made by the Chief Financial Officer or his or her authorized designee, upon authorization by the office; requiring such authorization to be submitted within a certain timeframe; deleting provisions regarding requirements for payment of claims; conforming provisions to changes made by the act; specifying the circumstances under which a claimant must reimburse the fund for payments received from the fund; providing penalties; authorizing the Department of

Financial Services, rather than the office, to institute legal proceedings for certain compliance enforcement and to recover certain interests, costs, and fees; amending s. 517.191, F.S.; deleting an obsolete term; revising the civil penalty amounts for certain violations; authorizing the office to recover certain costs and attorney fees; requiring that moneys recovered be deposited in a specified trust fund; specifying the liability of control persons; providing an exception; specifying circumstances under which certain persons are deemed to have violated ch. 517, F.S.; authorizing the office to issue and serve cease and desist orders and emergency cease and desist orders under certain circumstances; authorizing the office to impose and collect administrative fines for certain violations; specifying the disposition of such fines; authorizing the office to bar applications or notifications for licenses and registrations under certain circumstances; conforming cross-references; providing construction; specifying jurisdiction of the courts relating to the sale or offer of certain securities; making technical changes; amending s. 517.211, F.S.; providing for joint and several liability of control persons in certain circumstances for the purposes of specified actions; specifying the

date on which certain interest begins accruing in an action for rescission; providing construction; specifying that certain civil remedies extend to purchasers or sellers of securities; making technical changes; repealing s. 517.221, F.S., relating to cease and desist orders; repealing s. 517.241, F.S., relating to remedies; amending s. 517.301, F.S.; revising the circumstances under which certain activities are considered unlawful and violations of law; conforming provisions to changes made by the act; revising the definition of the term "investment"; specifying that certain misrepresentations by persons issuing or selling securities are unlawful; specifying that certain misrepresentations by persons registered or required to be registered under certain provisions or subject to certain requirements are unlawful; specifying that obtaining money or property in connection with the offer or sale of an investment is unlawful under certain conditions; providing construction; requiring disclaimers for certain statements; making technical changes; repealing s. 517.311, F.S., relating to false representations, deceptive words, and enforcement; repealing s. 517.312, F.S., relating to securities, investments, and boiler rooms, prohibited practices, and remedies;

amending ss. 517.072 and 517.12, F.S.; conforming cross-references and making technical changes; amending ss. 517.1201 and 517.1202, F.S.; conforming cross-references; amending s. 517.302, F.S.; conforming a provision to changes made by the act and making a technical change; providing an effective date.

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

Section 1. Present subsections (3), (4), and (5) and subsections (6) through (25) of section 517.021, Florida Statutes, are redesignated as subsections (4), (5), and (6) and subsections (8) through (27), respectively, new subsections (3) and (7) are added to that section, and subsection (1) and present subsections (4), (8), (9), and (14) of that section are amended, to read:

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

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

(3) "Angel investor group" means a group of accredited investors who hold regular meetings and have defined processes

and procedures for making investment decisions, individually or among the membership of the group, and who are not associated persons, affiliates, or agents of a dealer or investment adviser.

(5) ~~(4)~~ "Boiler room" means an enterprise in which two or more persons in a common scheme or enterprise solicit potential investors through telephone calls, e-mail, text messages, social media, chat rooms, or other electronic means ~~engage in telephone communications with members of the public using two or more telephones at one location, or at more than one location in a common scheme or enterprise~~.

(7) "Business entity" means any corporation, partnership, limited partnership, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, which may or may not be fictitiously named, doing business in this state.

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

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

1. ~~(a)~~ A licensed practicing attorney who renders or

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

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

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

4.~~(d)~~ A wholesaler selling exclusively to dealers.

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

6.~~(f)~~ An issuer.

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

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

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

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

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

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

(11)~~(9)~~ "Federal covered adviser" means a person that is registered or required to be registered under s. 203 of the Investment Advisers Act of 1940, as amended. The term does not include any person that is excluded from the definition of investment adviser under subparagraphs (16)(b)1.-7. and 9~~(14)(b)1.-8~~.

(16)(a)~~(14)(a)~~ "Investment adviser" means a person, other than an associated person of an investment adviser or a federal covered adviser, that receives compensation, directly or indirectly, and engages for all or part of the person's time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities.

(b) The term does not include any of the following:

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

services.

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

3. A bank authorized to do business in this state.

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

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

6. A person that renders investment advice exclusively to insurance or investment companies.

7. A person that, during the preceding 12 months, has fewer than six clients who are residents of this state. As used in this subparagraph, the term "client" has the same meaning as provided in Securities and Exchange Commission Rule 275.222-2, 17 C.F.R. s. 275.222-2, as amended ~~does not hold itself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state~~.

8. ~~A person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment~~

~~Advisers Act of 1940, as amended. Those clients listed in subparagraph 6. may not be included when determining the number of clients of an investment adviser for purposes of s. 222(d) of the Investment Advisers Act of 1940, as amended.~~

~~9.~~ A federal covered adviser.

9. The United States, a state, or any political subdivision of a state, or any agency, authority, or instrumentality of any such entity; a business entity that is wholly owned directly or indirectly by such a governmental entity; or any officer, agent, or employee of any such governmental or business entity who is acting within the scope of his or her official duties.

Section 2. Present subsections (9) and (10) of section 517.051, Florida Statutes, are redesignated as subsections (10) and (11), respectively, and amended, a new subsection (9) is added to that section, and subsections (1), (3), (4), and (8) of that section are amended, to read:

517.051 Exempt securities.—The exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the office prior to claiming such exemption. Any person who claims entitlement to any of these exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following securities:

(1) A security issued or guaranteed by the United States or any territory or insular possession of the United States, by the District of Columbia, or by any state of the United States or by any political subdivision or agency or other instrumentality thereof.~~; provided that~~

(a) A ~~no~~ person may not ~~shall~~ directly or indirectly offer or sell securities, other than general obligation bonds, under this subsection if the issuer or guarantor is in default or has been in default any time after December 31, 1975, as to principal or interest:

1.~~(a)~~ With respect to an obligation issued by the issuer or successor of the issuer; or

2.~~(b)~~ With respect to an obligation guaranteed by the guarantor or successor of the guarantor,

except by an offering circular containing a full and fair disclosure as prescribed by rule of the commission.

(b) Paragraph (a) applies to a security that is an industrial or commercial development bond if payments are made or unconditionally guaranteed by a person whose securities are exempt from registration under s. 18(b)(1) of the Securities Act of 1933, as amended.

(3) A security issued by and which represents or will represent an interest in or a direct obligation of or be guaranteed by any of the following:

(a) An international bank of which the United States is a member.

(b) A bank organized under the laws of the United States.

(c) A member bank of the Federal Reserve System.

(d) A depository institution, when a substantial portion of its business consists of or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund ~~or guaranteed by:~~

~~(a) A national bank, a federally chartered savings and loan association, or a federally chartered savings bank, or the initial subscription for equity securities in such national bank, federally chartered savings and loan association, or federally chartered savings bank;~~

~~(b) Any federal land bank, joint-stock land bank, or national farm loan association under the provisions of the Federal Farm Loan Act of July 17, 1916;~~

~~(c) An international bank of which the United States is a member; or~~

~~(d) A corporation created and acting as an instrumentality of the government of the United States~~.

(4) A security issued or guaranteed, as to principal, interest, or dividend, by a business entity ~~corporation~~ owning or operating a railroad, another common carrier, or any other

public service utility; provided that such business entity ~~corporation~~ is subject to regulation or supervision whether as to its rates and charges or as to the issue of its own securities by a public commission, board, or officer of the government of the United States, of any state, territory, or insular possession of the United States, of any municipality located therein, of the District of Columbia, or of the Dominion of Canada or of any province thereof; also equipment securities based on chattel mortgages, leases, or agreements for conditional sale of cars, motive power, or other rolling stock mortgaged, leased, or sold to or furnished for the use of or upon such railroad or other public service utility corporation or where the ownership or title of such equipment is pledged or retained in accordance with ~~the provisions of~~ the laws of the United States or of any state or of the Dominion of Canada to secure the payment of such equipment securities; and also bonds, notes, or other evidences of indebtedness issued by a holding corporation and secured by collateral consisting of any securities hereinabove described; provided, further, that the collateral securities equal in fair value at least 125 percent of the par value of the bonds, notes, or other evidences of indebtedness so secured.

(8) Shares or other equity interests of a business entity which represent ownership or entitle the holders of such shares or other equity interests to possession and occupancy of

specific apartment units in property owned by such business entity and organized and operated on a cooperative basis, solely for residential purposes ~~A note, draft, bill of exchange, or banker's acceptance having a unit amount of $25,000 or more which arises out of a current transaction, or the proceeds of which have been or are to be used for current transactions, and which has a maturity period at the time of issuance not exceeding 9 months exclusive of days of grace, or any renewal thereof which has a maturity period likewise limited. This subsection applies only to prime quality negotiable commercial paper of a type not ordinarily purchased by the general public; that is, paper issued to facilitate well-recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve banks~~.

(9) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a not-for-profit membership entity operated either as a cooperative under the cooperative laws of a state or in accordance with the cooperative provisions of subchapter T of chapter 1 of subtitle A of the United States Internal Revenue Code, as amended, but not a member's or owner's interest, retention certificate, or like security sold or transferred to a person other than:

(a) A bona fide member of the not-for-profit membership entity; or

(b) A person who becomes a bona fide member of the not-for-profit membership entity at the time of or in connection with the sale or transfer.

(10) ~~(9)~~ A security issued by a business entity ~~corporation~~ organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which ~~corporation~~ inures to the benefit of any private stockholder or individual, or any security of a fund that is excluded from the definition of an investment company under s. 3(c)(10)(B) of the Investment Company Act of 1940, as amended; provided that a ~~no~~ person may not ~~shall~~ directly or indirectly offer or sell securities under this subsection except by an offering circular containing full and fair disclosure, as prescribed by the rules of the commission, of all material information, including, but not limited to, a description of the securities offered and terms of the offering, a description of the nature of the issuer's business, a statement of the purpose of the offering and the intended application by the issuer of the proceeds thereof, and financial statements of the issuer prepared in conformance with United States generally accepted accounting principles. Section 6(c) of the Philanthropy Protection Act of 1995, Pub. L. No. 104-62, does ~~shall~~ not preempt any provision of this chapter.

(11) ~~(10)~~ Any insurance or endowment policy or annuity

contract or optional annuity contract or self-insurance agreement issued by a business entity ~~corporation~~, insurance company, reciprocal insurer, or risk retention group subject to the supervision of the insurance regulator or bank regulator, or any agency or officer performing like functions, of any state or territory of the United States or the District of Columbia.

Section 3. Section 517.061, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 517.061, F.S., for present text.)

517.061 Exempt transactions.—Except as otherwise provided in subsection (11), the exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the office before being claimed. Any person who claims entitlement to an exemption under this section bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to s. 517.301:

(1)(a) Any judicial sale or any sale by an executor, an administrator, a guardian, or a conservator; any sale by a receiver or trustee in insolvency or bankruptcy; any sale by an assignee as defined in s. 727.103 with respect to an assignment as defined in that section; or any transaction incident to a judicially approved reorganization in which a security is issued

in exchange for one or more outstanding securities, claims, or property interests.

(b) Except for a security exchanged in a case brought under Title 11 of the United States Code, a security that is issued in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of such issuance and exchange are approved:

1. By a court, an official or agency of the United States, a banking or insurance commission of a state or territory of the United States, or another governmental authority expressly authorized by law to grant such approval.

2. After a hearing upon the fairness of such terms and conditions and at which all persons to whom issuance of securities in such exchange is proposed have the right to appear.

(2) The issuance of notes or bonds in connection with the acquisition of real property or renewals thereof, if such notes or bonds are issued to the sellers of, and are secured by all or part of, the real property so acquired.

(3) A transaction involving a stock dividend or equivalent equity distribution, regardless of whether the business entity distributing the dividend or equivalent equity distribution is the issuer, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity

distribution other than the surrender of a right to a cash or property dividend in the event that each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock.

(4) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration is not paid or given, directly or indirectly, for soliciting a security holder in this state.

(5) The issuance of securities to such equity security holders or creditors of a business entity in the process of a reorganization of such business entity, made in good faith and not for the purpose of evading this chapter, either in exchange for the securities of such equity security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such equity security holders or creditors.

(6) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or the issuer's parent or subsidiary, and the other person, or the person's parent or subsidiary, are parties.

(7) The offer or sale of securities, solely in connection

with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(21).

(8) The offer or sale of securities under a bona fide employee stock purchase, savings, option, profit-sharing, pension, or similar employee benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees. This includes offers or sales of such securities to all of the following persons:

(a) Directors, managers, managing members, general partners, officers, consultants, and advisors.

(b) If the issuer is a business trust, trustees and former trustees.

(c) Family members who acquire such securities from persons described in this section through gifts or domestic relations orders.

(d) Former employees, directors, managers, managing members, general partners, officers, consultants, and advisors, if those individuals were employed by or providing services to the issuer when the securities were offered.

(e) Insurance agents who are exclusive insurance agents of

the issuer, or of the issuer's parents or subsidiaries, or who derive more than 50 percent of their annual income from such persons.

(9) The offer or sale of securities to a bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, as amended, pension or profit-sharing trust, or qualified institutional buyer, whether any of such entities is acting in its individual or fiduciary capacity.

(10)(a) The offer or sale, by or on behalf of an issuer, of its own securities if the offer or sale is part of an offering made in accordance with all of the following conditions:

1. There are no more than 35 purchasers, or the issuer reasonably believes that there are no more than 35 purchasers, of the securities of the issuer in this state during an offering made in reliance upon this subsection or, if such offering continues for a period in excess of 12 months, in any consecutive 12-month period.

2. Neither the issuer nor any person acting on behalf of the issuer offers or sells securities pursuant to this subsection by means of any form of general solicitation or general advertising in this state.

3. Before the sale, each purchaser or the purchaser's representative, if any, is provided with, or given reasonable

access to, full and fair disclosure of all material information, which must include written notification of a purchaser's right to void the sale under subparagraph 4.

4. Any sale made pursuant to this subsection is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by notifying the issuer that the purchaser expressly voids the purchase. The purchaser's notice to the issuer must be sent by e-mail to the issuer's e-mail address set forth in the disclosure document provided to the purchaser or purchaser's representative or by hand delivery, courier service, or other method by which written proof of delivery to the issuer of the purchaser's election to rescind the purchase is evidenced.

(b) The following purchasers are excluded from the calculation of the number of purchasers under subparagraph (a)1.:

1. Any spouse or child of the purchaser or any related family member who has the same principal residence as such purchaser.

2. A trust or estate in which a purchaser, any of the persons related to such purchaser specified in subparagraph 1., and any business entity specified in subparagraph 3. collectively have more than 50 percent of the beneficial interest, excluding any contingent interest.

3. A business entity in which a purchaser, any of the

persons related to such purchaser specified in subparagraph 1., and any trust or estate specified in subparagraph 2. collectively are beneficial owners of more than 50 percent of the equity securities or equity interest.

4. An accredited investor.

A business entity must be counted as one purchaser. However, if the business entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor, each beneficial owner of equity securities or equity interests in the business entity must be counted as a separate purchaser. A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 must be counted as one purchaser if the trustee makes all investment decisions for the plan.

(11) Offers or sales of securities by an issuer in a transaction that meets all of the following conditions:

(a) The offers or sales of securities are made only to persons who are, or who the issuer reasonably believes are, accredited investors.

(b) The issuer is not a business entity that has an undefined business operation, lacks a business plan, lacks a stated investment goal for the funds being raised, or plans to engage in a merger or acquisition with an unspecified business entity.

(c) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months after sale is presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under this chapter or pursuant to an exemption available under this chapter, the Securities Act of 1933, as amended, or the rules and regulations adopted thereunder.

(d)1. A general announcement of the proposed offering, made by any means, includes only the following information:

a. The name, address, and telephone number of the issuer of the securities.

b. The name, a brief description, and price, if known, of any security to be issued.

c. A brief description of the business.

d. The type, number, and aggregate amount of securities being offered.

e. The name, address, and telephone number of the person to contact for additional information.

f. A statement that:

(I) Sales will be made only to accredited investors;

(II) Money or other consideration is not being solicited and will not be accepted by way of this general announcement;

and

(III) The securities have not been registered with or approved by any state securities agency or the Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

2. The issuer, in connection with an offer, may provide information in addition to the information provided in the general announcement as specified in subparagraph 1. if such information is delivered:

a. Through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

b. After the issuer reasonably believes that the prospective purchaser is an accredited investor.

(e) The issuer does not use telephone solicitation unless, before placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(f) The issuer files with the office a notice of transaction, a consent to service of process, and a copy of the general announcement within 15 days after the first sale is made in this state. The commission may adopt by rule procedures for filing documents by electronic means.

(g) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption under this subsection.

(12) The isolated sale or offer for sale of securities when made by or on behalf of a bona fide owner, not the issuer or underwriter, of the securities, who disposes of such securities for the owner's own account, and such sale is not made directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading this chapter. For purposes of this subsection, isolated offers or sales include, but are not limited to, an isolated offer or sale made by or on behalf of a bona fide owner, rather than the issuer or underwriter, of the securities if:

(a) The offer or sale of securities is in a transaction satisfying all of the conditions specified in subparagraphs (10)(a)1., 2., and 3. and paragraph (10)(b); or

(b) The offer or sale of securities is in a transaction exempt under s. 4(a)(1) of the Securities Act of 1933, as amended, or under Securities and Exchange Commission rules or regulations.

(13) By or for the account of a pledgeholder, a secured party as defined in s. 679.1021(1)(ttt), or a mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purposes of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(14) An unsolicited purchase or sale of securities on order of, and as the agent for, another solely and exclusively by a dealer registered pursuant to s. 517.12; provided that this exemption applies solely and exclusively to such registered dealers and does not authorize or permit the purchase or sale of securities at the direction of, and as agent for, another by any person other than a dealer so registered; and provided further that such purchase or sale may not be directly or indirectly for the benefit of the issuer or an underwriter of such securities or for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading this chapter.

(15) A nonissuer transaction with a federal covered adviser with investments under management in excess of $100 million acting in the exercise of discretionary authority in a signed record for the account of others.

(16) The sale by or through a registered dealer of any securities option if, at the time of the sale of the option:

(a) The performance of the terms of the option is guaranteed by any dealer registered under the Securities Exchange Act of 1934, as amended, which guaranty and dealer are in compliance with such requirements or rules as may be approved or adopted by the commission; or

(b)1. Such options transactions are cleared by the Options Clearing Corporation or any other clearinghouse recognized by commission rule;

2. The option is not sold by or for the benefit of the issuer of the underlying security; and

3. The underlying security may be purchased or sold on a recognized securities exchange registered under the Securities Exchange Act of 1934, as amended.

(17)(a) The offer or sale of securities, as agent or principal, by a dealer registered pursuant to s. 517.12, when such securities are offered or sold at a price reasonably related to the current market price of such securities, provided that such securities are:

1. Securities of an issuer for which reports are required to be filed by s. 13 or s. 15(d) of the Securities Exchange Act of 1934, as amended;

2. Securities of a company registered under the Investment Company Act of 1940, as amended;

3. Securities of an insurance company, as that term is defined in s. 2(a)(17) of the Investment Company Act of 1940, as amended; or

4. Securities, other than any security that is a federal covered security and is not subject to any registration or filing requirements under this chapter, that have been listed or approved for listing upon notice of issuance by a securities exchange registered under the Securities Exchange Act of 1934, as amended; and all securities senior to any securities so listed or approved for listing upon notice of issuance, or

represented by subscription rights which have been so listed or approved for listing upon notice of issuance, or evidences of indebtedness guaranteed by an issuer with a class of securities listed or approved for listing upon notice of issuance by such securities exchange, such securities to be exempt only so long as such listings or approvals remain in effect. The exemption provided in this subparagraph does not apply when the securities are suspended from listing approval for listing or trading.

(b) The exemption provided in this subsection does not apply if the sale is made for the direct or indirect benefit of an issuer or a control person of such issuer or if such securities constitute the whole or part of an unsold allotment to, or subscription or participation by, a dealer as an underwriter of such securities.

(c) The exemption provided in this subsection is not available for any securities that have been denied registration pursuant to s. 517.111. Additionally, the office may deny this exemption with reference to any particular security, other than a federal covered security, by order published in such manner as the office finds proper.

(18) Any nonissuer transaction by a registered dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, as amended, in a security of a class that has been outstanding in the hands of the public for at least 90 days; provided that, at the time

of the transaction, the following conditions are met:

(a)1. The issuer of the security is actually engaged in business and is not in the organizational stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

2. The security is sold at a price reasonably related to the current market price of the security; and

3. The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the dealer as an underwriter of the security; and

(b)1. The security is listed in a nationally recognized securities manual designated by rule of the commission or a document filed with and publicly viewable through the Securities and Exchange Commission electronic data gathering and retrieval system and contains:

a. A description of the business and operations of the issuer;

b. The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

c. An audited balance sheet of the issuer as of a date within 18 months before such transaction or, in the case of a

reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

d. An audited income statement for each of the issuer's immediately preceding 2 fiscal years, or for the period of existence of the issuer, if in existence for less than 2 years or, in the case of a reorganization or merger in which the parties to the reorganization or merger had such audited income statement, a pro forma income statement; or

2.a. The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, as amended;

b. The class of security is quoted, offered, purchased, or sold through an alternative trading system registered under Securities and Exchange Commission Regulation ATS, 17 C.F.R. s. 242.301, as amended, and the issuer of the security has made current information publicly available in accordance with Securities and Exchange Commission Rule 15c2-11, 17 C.F.R. s. 240.15c2-11, as amended;

c. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, as amended;

d. The issuer of the security has been engaged in continuous business, including predecessors, for at least 3 years; or

e. The issuer of the security has total assets of at least

$2 million based on an audited balance sheet as of a date within 18 months before such transaction or, in the case of a reorganization or merger in which parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet.

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

(20) A nonissuer transaction in an outstanding security by or through a dealer registered or exempt from registration under this chapter, if all of the following are true:

(a) The issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by commission rule, and the issuer has been subject to continuous reporting requirements in such foreign jurisdiction for not less than 180 days before the transaction.

(b) The security is listed on the securities exchange designated by this subsection or by commission rule, is a security of the same issuer which is of senior or substantially equal rank to the listed security, or is a warrant or right to purchase or subscribe to any such security.

For purposes of this subsection, Canada, together with its provinces and territories, is designated as a foreign jurisdiction, and The Toronto Stock Exchange, Inc., is designated as a securities exchange. If, after an administrative

hearing in compliance with ss. 120.569 and 120.57, the office finds that revocation is necessary or appropriate in furtherance of the public interest and for the protection of investors, it may revoke the designation of a securities exchange under this subsection.

(21) Other transactions exempted by commission rule upon a finding by the office that the application of s. 517.07 to a particular transaction is not necessary or appropriate in furtherance of the public interest and for the protection of investors due to the small dollar amount of the securities involved or the limited character of the offering. In conjunction with its adoption by rule of such exemptions, the commission may exempt persons selling or offering for sale securities in such a transaction from the registration requirements of s. 517.12. A rule adopted by the commission under this subsection may not have the effect of narrowing or limiting any exemption specified in this section.

Section 4. Section 517.0611, Florida Statutes, is amended to read:

517.0611 The Florida Limited Offering Exemption ~~Intrastate crowdfunding~~.—

(1) This section may be cited as the "Florida Limited Offering ~~Intrastate Crowdfunding~~ Exemption."

(2) The registration provisions of s. 517.07 do not apply to a securities transaction conducted in accordance with this

section; however, such transaction is subject to s. 517.301 ~~Notwithstanding any other provision of this chapter, an offer or sale of a security by an issuer is an exempt transaction under s. 517.061 if the offer or sale is conducted in accordance with this section. The exemption provided in this section may not be used in conjunction with any other exemption under s. 517.051 or s. 517.061~~.

(3) The offer or sale of securities under this section must be conducted in accordance with the requirements of the federal exemption for intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), as amended, ~~and United States~~ Securities and Exchange Commission Rule 147, 17 C.F.R. s. 230.147, as amended, or Securities and Exchange Commission Rule 147A, 17. C.F.R. s. 230.147A, as amended ~~adopted pursuant to the Securities Act of 1933~~.

(4) An issuer ~~must~~:

(a) Must be a for-profit business entity that maintains ~~formed under the laws of the state, be registered with the Secretary of State, maintain~~ its principal place of business ~~in the state,~~ and derives ~~derive~~ its revenues primarily from operations in this ~~the~~ state.

(b) Must conduct transactions for an ~~the~~ offering of $2.5 million or more through a dealer registered with the office or an intermediary registered under s. 517.12 ~~s. 517.12(19)~~. For an offering of less than $2.5 million, the issuer may, but is not

required to, use such a dealer or intermediary.

(c) May not be, ~~either~~ before or as a result of the offering, an investment company as defined in s. 3 of the Investment Company Act of 1940, 15 U.S.C. s. 80a-3, as amended, or subject to the reporting requirements of s. 13 or s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d), as amended.

(d) May not be a business entity that has ~~company with~~ an undefined business operation, ~~a company that~~ lacks a business plan, ~~a company that~~ lacks a stated investment goal for the funds being raised, or ~~a company that~~ plans to engage in a merger or acquisition with an unspecified business entity.

(e) May not be subject to a disqualification established by the commission ~~or office~~ or a disqualification described in s. 517.0616 or s. 517.1611 ~~or United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the Securities Act of 1933~~. Each director, officer, manager, managing member, or general partner, or person occupying a similar status or performing a similar function, or person holding more than 20 percent of the equity interest ~~shares~~ of the issuer, is subject to this paragraph ~~requirement~~.

(f) Must deposit all funds received from investors in an account in ~~Execute an escrow agreement with~~ a federally insured financial institution authorized to do business in this ~~the~~ state, and maintain all such funds in the account until the

target offering amount has been reached or the offering has been terminated or has expired. If the target offering amount has not been reached within the period specified by the issuer in the disclosure statement provided to investors, or if the offering is terminated or expires, the issuer must refund invested funds to all investors within 10 business days after such occurrence ~~for the deposit of investor funds, and ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than the target offering amount~~.

(g) Must use all funds in accordance with the use of proceeds as disclosed to prospective investors ~~Allow investors to cancel a commitment to invest within 3 business days before the offering deadline, as stated in the disclosure statement, and issue refunds to all investors if the target offering amount is not reached by the offering deadline~~.

(5) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, together with a nonrefundable filing fee of $200. The filing fee must ~~shall~~ be deposited into the Regulatory Trust Fund of the office. The commission may adopt rules establishing procedures for the deposit of fees and the filing of documents by electronic means if the procedures provide the office with the information and data required by this section. A notice is effective upon receipt, by the office, of the

completed form, filing fee, and an irrevocable written consent to service of civil process, similar to that provided for in s. 517.101. The notice may be terminated by filing with the office a notice of termination. The notice and offering expire 12 months after filing the notice with the office and are not eligible for renewal. The notice must:

(a) Be filed with the office at least 10 days before the issuer commences an offering of securities or the offering is displayed on a website of an intermediary in reliance upon the exemption provided by this section.

(b) Indicate that the issuer is conducting an offering in reliance upon the exemption provided by this section.

(c) Contain the name and contact information, including an e-mail address, of the issuer.

(d) Identify any predecessors, owners, officers, directors, general partners, managers, managing members, ~~and control persons~~ or any person occupying a similar status or performing a similar function of the issuer, including that person's title, ~~his or her~~ status as a partner, trustee, or sole proprietor or a similar role, and ~~his or her~~ ownership percentage.

(e) Identify the federally insured financial institution into~~, authorized to do business in the state, in~~ which investor funds will be deposited~~, in accordance with the escrow agreement~~.

~~(f) Require an attestation under oath that the issuer, its predecessors, affiliated issuers, directors, officers, and control persons, or any other person occupying a similar status or performing a similar function, are not currently and have not been within the past 10 years the subject of regulatory or criminal actions involving fraud or deceit.~~

~~(g) Include documentation verifying that the issuer is organized under the laws of the state and authorized to do business in the state.~~

~~(h)~~ If applicable, include the intermediary's website address where the issuer's securities will be offered.

(g)~~(i)~~ State ~~Include~~ the target offering amount and the date, not to exceed 365 days, by which the target amount must be reached in order to avoid termination of the offering.

(6) The issuer must amend the notice form within 10 business ~~30~~ days after any material information contained in the notice becomes inaccurate ~~for any reason~~. The commission may require, by rule, an issuer who has filed a notice under this section to file amendments with the office.

(7) The issuer may engage in general advertising and general solicitation of the offering to prospective investors. Any oral or written statements in advertising or solicitation of the offering which contain a material misstatement, or which fail to disclose material information, are subject to enforcement under this chapter. Any general advertising or other

general announcement must state that the offering is limited and open only to residents of this state.

(8) The issuer must provide a disclosure statement to ~~investors and the dealer or intermediary, along with a copy to the office at the time that the notice is filed, and make available to potential investors through~~ the dealer or intermediary, as applicable; to the office at the time that the notice is filed; and to each prospective investor at least 3 days before the investor's commitment to purchase or payment of any consideration. The~~, a~~ disclosure statement must contain ~~containing~~ material information about the issuer and the offering, including all of the following:

(a) The name, legal status, physical address, e-mail address, and website address of the issuer.

(b) The names of the directors, officers, managers, managing members, and general partners and any person occupying a similar status or performing a similar function, and the name and ownership percentage of each person holding more than 20 percent of the issuer's equity interests ~~shares of the issuer~~.

(c) A description of the current business ~~of the issuer~~ and ~~the~~ anticipated business plan of the issuer.

(d) A description of the stated purpose and intended use of the proceeds of the offering.

(e) The target offering amount and~~,~~ the deadline to reach the target offering amount~~, and regular updates regarding the~~

~~progress of the issuer in meeting the target offering amount~~.

(f) The price to the public of the securities ~~or the method for determining the price. However, before the sale, each investor must receive in writing the final price and all required disclosures and have an opportunity to rescind the commitment to purchase the securities~~.

(g) A description of the ownership and capital structure of the issuer, including:

1. Terms of the securities being offered and each class of security of the issuer, including how those terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by rights of any other class of security of the issuer.

2. A description of how the exercise of the rights held by the principal equity holders ~~shareholders~~ of the issuer could negatively impact the purchasers of the securities being offered.

~~3. The name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer.~~

~~4. How the securities being offered are being valued, and examples of methods of how such securities may be valued by the issuer in the future, including during subsequent corporate actions.~~

~~5. The risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate action, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties.~~

(h) A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in Securities and Exchange Commission Rule 147 or Rule 147A.

(i) Any issuer plans, formal or informal, to offer additional securities in the future.

(j) The risks to purchasers of the securities relating to minority ownership in the issuer.

(k)~~(h)~~ A description of the financial condition of the issuer.

1. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have ~~target~~ offering amounts of $500,000 ~~$100,000~~ or less, the financial statements of the issuer may be, but are not required to be, included ~~description must include the most recent income tax return filed by the issuer, if any, and a financial statement that must be certified by the principal executive officer of the issuer as true and complete in all material respects~~.

2. For offerings that, in combination with all other

offerings of the issuer within the preceding 12-month period, have ~~target~~ offering amounts of more than $500,000 ~~$100,000~~, but not more than $2.5 million ~~$500,000~~, the description must include financial statements prepared in accordance with generally accepted accounting principles and reviewed by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, using professional standards and procedures ~~for such review~~ or standards and procedures established by commission ~~the office, by~~ rule~~,~~ for such purpose.

3. For offerings that, in combination with all other offerings of the issuer within the preceding 12-month period, have ~~target~~ offering amounts of more than $2.5 million ~~$500,000~~, the description must include audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant, as defined in s. 473.302, who is independent of the issuer, and other requirements as the commission may establish by rule.

(l)~~(i)~~ The following statement in boldface, conspicuous type on the front page of the disclosure statement:

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this disclosure statement is truthful or complete. Any representation to the contrary is a criminal offense.

These securities are offered under, and will be sold in reliance upon, an exemption from the registration requirements of federal and Florida securities laws. ~~Consequently,~~ Neither the Federal Government nor the State of Florida has reviewed the accuracy or completeness of any offering materials. In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as specifically authorized by applicable federal and state securities laws. Investing in these securities involves a speculative risk, and investors should be able to bear the loss of their entire investment.

~~(8) The issuer shall provide to the office a copy of the escrow agreement with a financial institution authorized to conduct business in this state. All investor funds must be deposited in the escrow account. The escrow agreement must require that all offering proceeds be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement~~

~~the business plan, and that all investors will receive a full return of their investment commitment if that target offering amount is not raised by the date stated in the disclosure statement.~~

(9) The sum of all cash and other consideration received for sales of a security under this section may not exceed $5 ~~$1~~ million, less the aggregate amount received for all sales of securities by the issuer within the 12 months preceding the first offer or sale made in reliance upon this exemption. Offers or sales to a person owning 20 percent or more of the outstanding equity interests ~~shares~~ of any class or classes of securities or to an officer, director, manager, managing member, general partner, or trustee, or a person occupying a similar status, do not count toward this limitation.

(10) Unless the investor is an accredited investor, or the issuer reasonably believes that the investor is an accredited investor ~~as defined by Rule 501 of Regulation D, adopted pursuant to the Securities Act of 1933~~, the aggregate amount of securities sold by an issuer to an investor ~~in transactions exempt from registration requirements under this subsection~~ in a 12-month period may not exceed $10,000~~:~~

~~(a) The greater of $2,000 or 5 percent of the annual income or net worth of such investor, if the annual income or the net worth of the investor is less than $100,000.~~

~~(b) Ten percent of the annual income or net worth of such~~

~~investor, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or exceeds $100,000~~.

~~(11) The issuer shall file with the office and provide to investors free of charge an annual report of the results of operations and financial statements of the issuer within 45 days after the end of its fiscal year, until no securities under this offering are outstanding. The annual reports must meet the following requirements:~~

~~(a) Include an analysis by management of the issuer of the business operations and the financial condition of the issuer, and disclose the compensation received by each director, executive officer, and person having an ownership interest of 20 percent or more of the issuer, including cash compensation earned since the previous report and on an annual basis, and any bonuses, stock options, other rights to receive securities of the issuer, or any affiliate of the issuer, or other compensation received.~~

~~(b) Disclose any material change to information contained in the disclosure statements which was not disclosed in a previous report.~~

(11)~~(12)(a)~~ A notice-filing under this section must ~~shall~~ be summarily suspended by the office if:

(a) The payment for the filing is dishonored by the financial institution upon which the funds are drawn. For

purposes of s. 120.60(6), failure to pay the required notice filing fee constitutes an immediate and serious danger to the public health, safety, and welfare. The office shall enter a final order revoking a notice-filing in which the payment for the filing is dishonored by the financial institution upon which the funds are drawn; or~~.~~

(b) ~~A notice-filing under this section shall be summarily suspended by the office if~~ The issuer made a material false statement in the issuer's notice-filing. The summary suspension remains ~~shall remain~~ in effect until a final order is entered by the office. For purposes of s. 120.60(6), a material false statement made in the issuer's notice-filing constitutes an immediate and serious danger to the public health, safety, and welfare. If an issuer made a material false statement in the issuer's notice-filing, the office must ~~shall~~ enter a final order revoking the notice-filing, issue a fine as prescribed by s. 517.191(9) ~~s. 517.221(3)~~, and issue permanent bars under s. 517.191(10) ~~s. 517.221(4)~~ to the issuer and all owners, officers, directors, general partners, and control persons, or any person occupying a similar status or performing a similar function of the issuer, including title; status as a partner, trustee, sole proprietor, or similar role; and ownership percentage.

(12) ~~(13)~~ If the issuer employs the services of an intermediary, the ~~An~~ intermediary must:

(a) Take measures, as established by commission rule, to reduce the risk of fraud with respect to the ~~transactions, including verifying that the issuer is in compliance with the requirements of this section and, if necessary, denying an issuer access to its platform if the intermediary believes it is unable to adequately assess the risk of fraud of the issuer or its potential~~ offering.

(b) Provide ~~basic~~ information on its website regarding the high risk of investment in and limitation on the resale of exempt securities and the potential for loss of an entire investment. The ~~basic~~ information must include, but need not be limited to, all of the following:

1. A description of the financial institution into which investor funds will be deposited ~~escrow agreement that the issuer has executed~~ and the conditions for the use ~~release~~ of such funds by ~~to~~ the issuer ~~in accordance with the agreement and subsection (4)~~.

2. A description of whether financial information provided by the issuer has been audited by an independent certified public accountant, as defined in s. 473.302.

(c) Obtain from each prospective investor a zip code or residence address, a copy of a driver license, and any other proof of residency in order for the issuer or intermediary to reasonably believe that the potential investor is a resident of this state. The commission may adopt rules authorizing

additional forms of identification and prescribing the process for verifying any identification presented by the prospective investor.

(d) Obtain information sufficient for the issuer or intermediary to reasonably believe that a particular prospective investor is an accredited investor

~~(c) Obtain a zip code or residence address from each potential investor who seeks to view information regarding specific investment opportunities, in order to confirm that the potential investor is a resident of the state.~~

~~(d) Obtain and verify a valid Florida driver license number or Florida identification card number from each investor before purchase of a security to confirm that the investor is a resident of the state. The commission may adopt rules authorizing additional forms of identification and prescribing the process for verifying any identification presented by the investor.~~

~~(e) Obtain an affidavit from each investor stating that the investment being made by the investor is consistent with the income requirements of subsection (10).~~

~~(f) Direct the release of investor funds in escrow in accordance with subsection (4).~~

~~(g) Direct investors to transmit funds directly to the financial institution designated in the escrow agreement to hold the funds for the benefit of the investor~~.

(e) ~~(h)~~ Provide a monthly update for each offering, after the first full month after the date of the offering. The update must be accessible on the intermediary's website and must display the date and amount of each sale of securities, and each cancellation of commitment to invest, in the previous calendar month.

~~(i) Require each investor to certify in writing, including as part of such certification his or her signature and his or her initials next to each paragraph of the certification, as follows:~~

~~I understand and acknowledge that:~~

~~I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.~~

~~This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.~~

~~The securities I am acquiring in this offering are illiquid and are subject to possible dilution. There is no ready market for the sale of the securities. It may be difficult or impossible for me to sell or otherwise dispose of the securities, and I may be required to hold the securities indefinitely.~~

~~I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.~~

~~By entering into this transaction with the issuer, I am affirmatively representing myself as being a Florida resident at the time this contract is formed, and if this representation is subsequently shown to be false, the contract is void.~~

~~If I resell any of the securities I am acquiring in this offering to a person that is not a Florida resident within 9 months after the closing of the offering, my contract with the issuer for the purchase of these securities is void.~~

~~(j) Require each investor to answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers, and an understanding of the risk of illiquidity.~~

(f)~~(k)~~ Take reasonable steps to protect personal information collected from investors, as required by s. 501.171.

(g)~~(l)~~ Prohibit its directors, ~~and~~ officers, managers, managing members, general partners, employees, and agents from having any financial interest in the issuer using its services.

~~(m) Implement written policies and procedures that are reasonably designed to achieve compliance with federal and state securities laws; comply with the anti-money laundering requirements of 31 C.F.R. chapter X applicable to registered~~

~~brokers; and comply with the privacy requirements of 17 C.F.R. part 248 relating to brokers.~~

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

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

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

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

(d) Hold, manage, possess, or otherwise handle investor funds or securities.

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

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

(14) If the issuer does not employ a dealer or an intermediary for an offering pursuant to the exemption created under this section, the issuer must fulfill each of the obligations specified in paragraphs (12)(c)-(f).

(15) Any sale made pursuant to the exemption created under

this section is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by notifying the issuer that the purchaser expressly voids the purchase. The purchaser's notice to the issuer must be sent by e-mail to the issuer's e-mail address set forth in the disclosure statement that is provided to the purchaser or purchaser's representative or by certified mail or overnight delivery service with proof of delivery to the mailing address set forth in the disclosure statement ~~All funds received from investors must be directed to the financial institution designated in the escrow agreement to hold the funds and must be used in accordance with representations made to investors by the intermediary. If an investor cancels a commitment to invest, the intermediary must direct the financial institution designated to hold the funds to promptly refund the funds of the investor~~.

Section 5. Section 517.0612, Florida Statutes, is created to read:

517.0612 Florida Invest Local Exemption.—

(1) This section may be cited as the "Florida Invest Local Exemption."

(2) The registration provisions of s. 517.07 do not apply to a securities transaction conducted in accordance with this section; however, such transaction is subject to s. 517.301.

(3) The offer or sale of securities under this section must meet the requirements of the federal exemption for

intrastate offerings in s. 3(a)(11) of the Securities Act of 1933, Securities and Exchange Commission Rule 147, or Securities and Exchange Commission Rule 147A, as amended.

(4) The issuer must be a for-profit business entity registered with the Department of State which has its principal place of business in this state. The issuer may not be, before or as a result of the offering:

(a) An investment company as defined in the Investment Company Act of 1940, as amended;

(b) Subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended;

(c) A business entity that has an undefined business operation, lacks a business plan, lacks a stated investment goal for the funds being raised, or plans to engage in a merger or acquisition with an unspecified business entity; or

(d) Subject to a disqualification as provided in s. 517.0616.

(5) The sum of all cash and other consideration received from all sales of the securities in reliance upon the exemption under this section may not exceed $500,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption.

(6)(a) The issuer may not accept more than $10,000 from any single purchaser unless any of the following apply:

1. The issuer reasonably believes that the purchaser is an accredited investor.

2. The purchaser is an officer, director, partner, or trustee, or an individual occupying a similar status or performing similar functions, of the issuer.

3. The purchaser is an owner of 10 percent or more of the issuer's outstanding equity.

(b) For purposes of this subsection, the following persons must be treated collectively as a single purchaser:

1. Any spouse or child of the purchaser or any related family member who has the same primary residence as the purchaser.

2. Any business entity of which the purchaser and any person related to the purchaser as provided in subparagraph 1. collectively own more than 50 percent of the equity interest.

(7) The issuer may engage in general advertising and general solicitation of the offering. Any general advertising or other general announcement must state that the offer is limited and open only to residents of this state. Any oral or written statements in advertising or solicitation of the offer which contain a material misstatement, or which fail to disclose material information, are subject to enforcement under this chapter.

(8) A purchaser must receive, at least 3 business days before any binding commitment to purchase or consideration paid,

a disclosure statement that provides material information regarding the issuer, including, but not limited to, all of the following information:

(a) The issuer's name, type of entity, and contact information.

(b) The name and contact information of each director, officer, or other manager of the issuer.

(c) A description of the issuer's business.

(d) A description of the security being offered.

(e) The total amount of the offering.

(f) The intended use of proceeds from the sale of the securities.

(g) The target offering amount.

(h) A statement that if the target offering amount is not obtained in cash or in the value of other tangible consideration received on a date that is no more than 180 days after the commencement of the offering, the offering will be terminated, and any funds or other consideration received from purchasers must be promptly returned.

(i) A statement that the security being offered is not registered under federal or state securities laws and that the securities are subject to the limitation on resale contained in Securities and Exchange Commission Rule 147 or Rule 147A.

(j) The names and addresses of all persons who will be involved in the offer and sale of securities on behalf of the

issuer.

(k) The name of the bank or other depository institution into which investor funds will be deposited.

(l) The following statement in boldface, conspicuous type:

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined that this disclosure statement is truthful or complete. Any representation to the contrary is a criminal offense.

(9) All funds received from investors must be deposited into a bank or depository institution authorized to do business in this state. The issuer may not withdraw any amount of the offering proceeds unless the target offering amount has been received.

(10) The issuer must file a notice of the offering with the office, in writing or in electronic form, in a format prescribed by commission rule, no less than 5 business days before the offering commences, along with the disclosure statement described in subsection (8). If there are any material changes to the information previously submitted, the issuer, within 3 business days after such material change, must file an amended notice.

(11) An individual, entity, or entity employee who acts as

an agent for the issuer in the offer or sale of securities and is not registered as a dealer under this chapter may not do either of the following:

(a) Receive compensation based upon the solicitation of purchases, sales, or offers to purchase the securities.

(b) Take custody of investor funds or securities.

(12) Any sale made pursuant to the exemption created under this section is voidable by the purchaser within 3 days after the first tender of consideration is made by such purchaser to the issuer by notifying the issuer that the purchaser expressly voids the purchase. The purchaser's notice to the issuer must be sent by e-mail to the issuer's e-mail address set forth in the disclosure statement that is provided to a purchaser or the purchaser's representative or by hand delivery, courier service, or other method by which written proof of delivery to the issuer of the purchaser's election to rescind the purchase is evidenced.

Section 6. Section 517.0613, Florida Statutes, is created to read:

517.0613 Failure to comply with a securities registration exemption.—

(1) Failure to meet the requirements for any exemption from securities registration does not preclude the issuer from claiming the availability of any other applicable state or federal exemption.

(2) The exemptions created under ss. 517.061, 517.0611, and 517.0612 are not available to an issuer for any transaction or series of transactions that, although in technical compliance with the applicable provisions, is part of a plan or scheme to evade the registration provisions of s. 517.07, and registration under s. 517.07 is required in connection with such transactions.

Section 7. Section 517.0614, Florida Statutes, is created to read:

517.0614 Integration of offerings.—

(1) If the safe harbors in subsection (2) do not apply, in determining whether two or more offerings are to be treated as one for the purpose of registration or qualifying for an exemption from registration under this chapter, offers and sales may not be integrated if, based on the particular facts and circumstances, the issuer can establish either that each offering complies with the registration requirements of this chapter, or that an exemption from registration is available for the particular offering, provided that any transaction or series of transactions that, although in technical compliance with this chapter, is part of a plan or scheme to evade the registration requirements of this chapter will not have the effect of avoiding integration. In making this determination:

(a) For an exempt offering prohibiting general solicitation, the issuer must have a reasonable belief, based on

the facts and circumstances, with respect to each purchaser in the exempt offering prohibiting general solicitation, that the issuer or any person acting on the issuer's behalf:

1. Did not solicit such purchaser through the use of general solicitation; or

2. Established a substantive relationship with such purchaser before the commencement of the exempt offering prohibiting general solicitation, provided that a purchaser previously solicited through the use of general solicitation is not deemed to have been solicited through the use of general solicitation in the current offering if, during the 45 calendar days following such previous general solicitation:

a. No offer or sale of the same or similar class of securities has been made by or on behalf of the issuer, including to such purchaser; and

b. The issuer or any person acting on the issuer's behalf has not solicited such purchaser through the use of general solicitation for any other security.

(b) For two or more concurrent exempt offerings permitting general solicitation, in addition to satisfying the requirements of the particular exemption relied on, general solicitation offering materials for one offering that includes information about the material terms of a concurrent offering under another exemption may constitute an offer of securities in such other offering, and therefore the offer must comply with all the

requirements for, and restrictions on, offers under the exemption being relied on for such other offering, including any legend requirements and communications restrictions.

(2) The integration analysis required by subsection (1) is not required if any of the following nonexclusive safe harbors apply:

(a) An offering commenced more than 30 calendar days before the commencement of any other offering, or more than 30 calendar days after the termination or completion of any other offering, may not be integrated with such other offering, provided that for an exempt offering for which general solicitation is not permitted which follows by 30 calendar days or more an offering that allows general solicitation, paragraph (1)(a) applies.

(b) Offers and sales made in compliance with any of the following provisions are not subject to integration with other offerings:

1. Section 517.051 or s. 517.061, except s. 517.061(9), (10), or (11).

2. Section 517.0611 or s. 517.0612.

Section 8. Section 517.0615, Florida Statutes, is created to read:

517.0615 Solicitations of interest.—

(1) A communication may not be deemed to constitute general solicitation or general advertising if the communication

is made in connection with a seminar or meeting in which more than one issuer participates and which is sponsored by a college, a university, or another institution of higher education; a state or local government or an instrumentality thereof; a nonprofit chamber of commerce or other nonprofit organization; or an angel investor group, incubator, or accelerator, if all of the following apply:

(a) Advertising for the seminar or meeting does not reference a specific offering of securities by the issuer.

(b) The sponsor of the seminar or meeting does not do any of the following:

1. Make investment recommendations or provide investment advice to attendees of the seminar or meeting.

2. Engage in any investment negotiations between the issuer and investors attending the seminar or meeting.

3. Charge attendees of the seminar or meeting any fees, other than reasonable administrative fees.

4. Receive any compensation for making introductions between seminar or meeting attendees and issuers or for investment negotiations between such parties.

5. Receive any compensation with respect to the seminar or meeting, which compensation would require registration or notice-filing under this chapter, the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., as amended, or the Investment Advisers Act of 1940, 15 U.S.C. s. 80b-1 et seq., as amended.

The sponsorship of or participation in the seminar or meeting does not by itself require registration or notice-filing under this chapter.

(c) The type of information regarding an offering of securities by the issuer which is communicated or distributed by or on behalf of the issuer in connection with the seminar or meeting is limited to a notification that the issuer is in the process of offering or planning to offer securities, the type and amount of securities being offered, the intended use of proceeds of the offering, and the unsubscribed amount in an offering.

(d) If the event allows attendees to participate virtually, rather than in person, online participation in the event is limited to:

1. Individuals that are members of, or otherwise associated with, the sponsor organization;

2. Individuals that the sponsor reasonably believes are accredited investors; or

3. Individuals that have been invited to the event by the sponsor based on industry or investment-related experience reasonably selected by the sponsor in good faith and disclosed in the public communications about the event.

(2) Before any offers or sales are made in connection with an offering, communications by an issuer or any person authorized to act on behalf of the issuer are not deemed to

constitute general solicitation or general advertising if the communication is solely for the purpose of determining whether there is any interest in a contemplated securities offering. Requirements imposed under this chapter on written or oral statements made in the course of such communication may be enforced as provided in this chapter. The solicitation or acceptance of money or other consideration or of any commitment, binding or otherwise, from any person is prohibited.

(a) The communication must state all of the following:

1. Money or other consideration is not being solicited and, if sent in response, will not be accepted.

2. Any offer to buy the securities will not be accepted, and no part of the purchase price will be accepted.

3. A person's indication of interest does not involve obligation or commitment of any kind.

(b) Any written communication under this subsection may include a means by which a person may indicate to the issuer that the person is interested in a potential offering. The issuer may require the name, address, telephone number, or e-mail address in any response form included in the written communication under this paragraph.

(c) A communication in accordance with this subsection is not subject to s. 501.059, regarding telephone solicitations.

Section 9. Section 517.0616, Florida Statutes, is created to read:

517.0616 Disqualification.—A registration exemption under s. 517.061(9), (10), or (11); s. 517.0611; or s. 517.0612 is not available to an issuer that would be disqualified under Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d), as amended, at the time the issuer makes an offer for the sale of a security.

Section 10. Present subsections (4) through (8) of section 517.081, Florida Statutes, are redesignated as subsections (6) through (10), respectively, new subsections (4) and (5) are added to that section, and subsection (2), paragraph (g) of subsection (3), and present subsection (7) of that section are amended, to read:

517.081 Registration procedure.—

(2) The office shall receive and act upon applications for the registration of ~~to have~~ securities ~~registered, and the commission may prescribe forms on which it may require such applications to be submitted~~. Applications must ~~shall~~ be duly signed by the applicant, sworn to by any person having knowledge of the facts, and filed with the office. ~~The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section.~~ An application may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell such securities ~~the same~~

within the state.

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

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

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

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

~~b. An issuer that is subject to any of the disqualifications described in 17 C.F.R. s. 230.262, adopted pursuant to the Securities Act of 1933, as amended, or that has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this subparagraph, an issuer includes~~

~~an issuer's director, officer, general partner, manager or managing member, trustee, or equity owner who owns at least 10 percent of the ownership interests of the issuer, promoter, or selling agent of the securities to be offered or any officer, director, partner, or manager or managing member of such selling agent.~~

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

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

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

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

~~As a condition precedent to qualifying for use of the simplified offering circular, an issuer shall agree to provide the office with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year, prepared in accordance with United States~~

~~generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial reports must be filed with the office within 90 days after the close of the issuer's fiscal year for each of the first 5 years following the effective date of the registration.~~

(4) The commission may, by rule:

(a) Establish criteria relating to the issuance of equity securities, debt securities, insurance company securities, real estate investment trusts, oil and gas investments, and other investments. In establishing these criteria, the commission may consider the rules and regulations of the Securities and Exchange Commission and statements of policy by the North American Securities Administrators Association, Inc., relating to the registration of securities offerings. The criteria must include all of the following:

1. The promoter's equity investment ratio.

2. The financial condition of the issuer.

3. The voting rights of shareholders.

4. The grant of options or warrants to underwriters and others.

5. Loans and other transactions with affiliates of the issuer.

6. The use, escrow, or refund of proceeds of the offering.

(b) Prescribe forms requiring applications for the registration of securities to be submitted to the office, including a simplified offering circular to register, under this section, securities that are sold in offerings in which the aggregate offering price in any consecutive 12-month period does not exceed the amount provided in s. 3(b) of the Securities Act of 1933, as amended.

(c) Establish procedures for depositing fees and filing documents by electronic means, provided that such procedures provide the office with the information and data required by this section.

(d) Establish requirements and standards for the filing, content, and circulation of a preliminary, final, or amended prospectus, advertisements, and other sales literature. In establishing such requirements and standards, the commission shall consider the rules and regulations of the Securities and Exchange Commission relating to requirements for preliminary, final, or amended or supplemented prospectuses and the rules of the Financial Industry Regulatory Authority relating to advertisements and sales literature.

(5) All of the following issuers are not eligible to submit a simplified offering circular:

(a) An issuer that is subject to any of the disqualifications described in Securities and Exchange Commission Rule 262, 17 C.F.R. s. 230.262, as amended, or that

has been or is engaged or is about to engage in an activity that would be grounds for denial, revocation, or suspension under s. 517.111. For purposes of this paragraph, an issuer includes an issuer's director, officer, general partner, manager or managing member, trustee, or a person owning at least 10 percent of the ownership interests of the issuer; a promoter or selling agent of the securities to be offered; or any officer, director, partner, or manager or managing member of such selling agent.

(b) An issuer that is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified business entity or entities.

(c) An issuer of offerings in which the specific business or properties cannot be described.

(d) An issuer that the office determines is ineligible because the simplified circular does not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

(9)(a) ~~(7)~~ The office shall record the registration of a security in the register of securities if, upon examination of an ~~any~~ application, it finds that all of the following requirements are met: ~~the office~~

1. The application is complete.

2. The fee imposed in subsection (8) has been paid.

3. The sale of the security would not be fraudulent and

would not work or tend to work a fraud upon the purchaser.

4. The terms of the sale of such securities would be fair, just, and equitable.

5. The enterprise or business of the issuer is not based upon unsound business principles.

(b) Upon registration, the security may be sold by the issuer or any registered dealer, subject, however, to the further order of the office ~~shall find that the sale of the security referred to therein would not be fraudulent and would not work or tend to work a fraud upon the purchaser, that the terms of the sale of such securities would be fair, just, and equitable, and that the enterprise or business of the issuer is not based upon unsound business principles, it shall record the registration of such security in the register of securities; and thereupon such security so registered may be sold by any registered dealer, subject, however, to the further order of the office. In order to determine if an offering is fair, just, and equitable, the commission may by rule establish requirements and standards for the filing, content, and circulation of any preliminary, final, or amended prospectus and other sales literature and may by rule establish merit qualification criteria relating to the issuance of equity securities, debt securities, insurance company securities, real estate investment trusts, and other traditional and nontraditional investments, including, but not limited to, oil and gas investments. The~~

~~criteria may include such elements as the promoter's equity investment ratio, the financial condition of the issuer, the voting rights of shareholders, the grant of options or warrants to underwriters and others, loans and other affiliated transaction, the use or refund of proceeds of the offering, and such other relevant criteria as the office in its judgment may deem necessary to such determination~~.

Section 11. Subsection (2) of section 517.101, Florida Statutes, is amended to read:

517.101 Consent to service.—

(2) Any such action must ~~shall~~ be brought either in the county of the plaintiff's residence or in the county in which the office has its official headquarters. The written consent must ~~shall~~ be authenticated by the seal of the ~~said~~ issuer, if it has a seal, and by the acknowledged signature of a director, manager, managing member, general partner, trustee, or officer of the issuer ~~member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association,~~ and must ~~shall in such case~~ be accompanied by a duly certified copy of the resolution of the issuer's board of directors, trustees, managers, managing members, or general partners ~~or managers of the corporation or association,~~

authorizing the signer to execute the consent ~~officers to execute the same~~. In case any process or pleadings mentioned in this chapter are served upon the office, service must ~~it shall~~ be by duplicate copies, one of which must ~~shall~~ be filed in the office and the other ~~another~~ immediately forwarded by the office by registered mail to the principal office of the issuer against which the ~~said~~ process or pleadings are directed.

Section 12. Section 517.131, Florida Statutes, is amended to read:

517.131 Securities Guaranty Fund.—

(1) As used in this section, the term "final judgment" includes an arbitration award confirmed by a court of competent jurisdiction.

(2)(a) The Chief Financial Officer shall establish a Securities Guaranty Fund to provide monetary relief to victims of securities violations under this chapter who are entitled to monetary damages or restitution and cannot recover the full amount of such monetary damages or restitution from the wrongdoer. An amount not exceeding 20 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) for dealers and investment advisers or s. 517.1201 for federal covered advisers and an amount not exceeding 10 percent of all revenues received as assessment fees pursuant to s. 517.12(9) and (10) for associated persons must ~~shall~~ be part of the regular registration ~~license~~ fee and must ~~shall~~ be transferred

to or deposited in the Securities Guaranty Fund.

(b) If the balance in the Securities Guaranty Fund at any time exceeds $1.5 million, transfer of assessment fees to the ~~this~~ fund must ~~shall~~ be discontinued at the end of that registration ~~license~~ year, and transfer of such assessment fees may ~~shall~~ not resume ~~be resumed~~ unless the fund balance is reduced below $1 million by disbursement made in accordance with s. 517.141.

~~(2) The Securities Guaranty Fund shall be disbursed as provided in s. 517.141 to a person who is adjudged by a court of competent jurisdiction to have suffered monetary damages as a result of any of the following acts committed by a dealer, investment adviser, or associated person who was licensed under this chapter at the time the act was committed:~~

~~(a) A violation of s. 517.07.~~

~~(b) A violation of s. 517.301.~~

(3) A ~~Any~~ person is eligible for payment ~~to seek recovery~~ from the Securities Guaranty Fund if:

(a) The act for which recovery is sought occurred on or after October 1, 2024, and the person:

1. Holds an unsatisfied final judgment in which a wrongdoer was found to have violated s. 517.07 or s. 517.301;

2. Has applied any amount recovered from the judgment debtor or any other source to the damages awarded by the court or arbitrator; and

3. Is a natural person who was a resident of this state, or is a business entity that was domiciled in this state, at the time of the violation of s. 517.07 or s. 517.301; or

(b) The person is a receiver appointed pursuant to s. 517.191(2) by a court of competent jurisdiction for a wrongdoer ordered to pay restitution under s. 517.191(3) as a result of a violation of s. 517.07 or s. 517.301 which has requested payment from the Securities Guaranty Fund on behalf of a person eligible for payment under paragraph (a)

~~(a) Such person has received final judgment in a court of competent jurisdiction in any action wherein the cause of action was based on a violation of those sections referred to in subsection (2).~~

~~(b) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and by her or his search the person has discovered no property or assets; or she or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount thereby realized was insufficient to satisfy the judgment. To verify compliance with such condition, the office may require such person to have a writ of execution be issued upon such judgment, may require a showing that no personal or real property of the judgment debtor liable~~

~~to be levied upon in complete satisfaction of the judgment can be found, or may require an affidavit from the claimant setting forth the reasonable searches and inquiries undertaken and the result of those searches and inquiries.~~

~~(c) Such person has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court.~~

~~(d) The act for which recovery is sought occurred on or after January 1, 1979.~~

~~(e) The office waives compliance with the requirements of paragraph (a) or paragraph (b). The office may waive such compliance if the dealer, investment adviser, or associated person which is the subject of the claim filed with the office is the subject of any proceeding in which a receiver has been appointed by a court of competent jurisdiction. If the office waives such compliance, the office may, upon petition by the debtor or the court-appointed trustee, examiner, or receiver, distribute funds from the Securities Guaranty Fund up to the amount allowed under s. 517.141. Any waiver granted pursuant to this section shall be considered a judgment for purposes of complying with the requirements of this section and of s. 517.141~~.

(4) A person who has done any of the following is not eligible for payment from the Securities Guaranty Fund:

(a) Participated or assisted in a violation of this

chapter.

(b) Attempted to commit or committed a violation of this chapter.

(c) Profited from a violation of this chapter.

(5) An eligible person, or a receiver on behalf of the eligible person, seeking payment from the Securities Guaranty Fund must file with the office a written application on a form that the commission may prescribe by rule. The commission may adopt by rule procedures for filing documents by electronic means, provided that such procedures provide the office with the information and data required by this section. The application must be filed with the office within 1 year after the date of the final judgment, the date on which a restitution order has been ripe for execution, or the date of any appellate decision thereon, and, at minimum, must contain all of the following information:

(a) The eligible person's and, if applicable, the receiver's full name, address, and contact information.

(b) The person ordered to pay restitution.

(c) If the eligible person is a business entity, the eligible person's type and place of organization and, as applicable, a copy, as amended, of its articles of incorporation, articles of organization, trust agreement, or partnership agreement.

(d) Any final judgment and a copy thereof.

(e) Any restitution order pursuant to s. 517.191(3), and a copy thereof.

(f) An affidavit from the eligible person stating either one of the following:

1. That the eligible person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the final judgment and, by the eligible person's search, that the eligible person has not discovered any property or assets.

2. That the eligible person has taken necessary action on the property and assets of the wrongdoers but the final judgment remains unsatisfied.

(g) If the application is filed by the receiver, an affidavit from the receiver stating the amount of restitution owed to the eligible person on whose behalf the claim is filed; the amount of any money, property, or assets paid to the eligible person on whose behalf the claim is filed by the person over whom the receiver is appointed; and the amount of any unsatisfied portion of any eligible person's order of restitution.

(h) The eligible person's residence or domicile at the time of the violation of s. 517.07 or s. 517.301 which resulted in the eligible person's monetary damages.

(i) The amount of any unsatisfied portion of the eligible

person's final judgment.

(j) Whether an appeal or motion to vacate an arbitration award has been filed.

(6) If the office finds that a person is eligible for payment from the Securities Guaranty Fund and if the person has complied with this section and the rules adopted under this section, the office must approve payment to such person from the fund. Within 90 days after the office's receipt of a complete application, each eligible person or receiver must be given written notice, personally or by mail, that the office intends to approve or deny, or has approved or denied, the application for payment from the Securities Guaranty Fund.

(7) Upon receipt by the eligible person or receiver of notice of the office's decision that the eligible person's or receiver's application for payment from the Securities Guaranty Fund is approved, and before any disbursement, the eligible person shall assign to the office on a form prescribed by commission rule all right, title, and interest in the final judgment or order of restitution equal to the amount of such payment.

(8) The office shall deem an application for payment from the Securities Guaranty Fund abandoned if the eligible person or receiver, or any person acting on behalf of the eligible person or receiver, fails to timely complete the application as prescribed by commission rule. The time period to complete an

application must be tolled during the pendency of an appeal or motion to vacate an arbitration award.

~~(4) Any person who files an action that may result in the disbursement of funds from the Securities Guaranty Fund pursuant to the provisions of s. 517.141 shall give written notice by certified mail to the office as soon as practicable after such action has been filed. The failure to give such notice shall not bar a payment from the Securities Guaranty Fund if all of the conditions specified in subsection (3) are satisfied.~~

~~(5) The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 specifying the procedures for complying with subsections (2), (3), and (4), including rules for the form of submission and guidelines for the sufficiency and content of submissions of notices and claims.~~

Section 13. Section 517.141, Florida Statutes, is amended to read:

517.141 Payment from the fund.—

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

(a) "Claimant" means a person determined eligible for payment under s. 517.131 that is approved by the office for payment from the Securities Guaranty Fund.

(b) "Final judgment" includes an arbitration award confirmed by a court of competent jurisdiction.

(c) "Specified adult" has the same meaning as in s. 517.34(1).

(2) A claimant is entitled to disbursement from the Securities Guaranty Fund in the amount equal to the lesser of:

(a) The unsatisfied portion of the claimant's final judgment or final order of restitution, but only to the extent that the final judgment or final order of restitution reflects actual or compensatory damages, excluding postjudgment interest, costs, and attorney fees; or

(b)1. The sum of $15,000; or

2. If the claimant is a specified adult or if a specified adult is a beneficial owner or beneficiary of the claimant, the sum of $25,000 ~~Any person who meets all of the conditions prescribed in s. 517.131 may apply to the office for payment to be made to such person from the Securities Guaranty Fund in the amount equal to the unsatisfied portion of such person's judgment or $10,000, whichever is less, but only to the extent and amount reflected in the judgment as being actual or compensatory damages, excluding postjudgment interest, costs, and attorney's fees~~.

(3)~~(2)~~ Regardless of the number of claims or claimants involved, payments for claims are ~~shall be~~ limited in the aggregate to $250,000 ~~$100,000~~ against any one ~~dealer, investment adviser, or associated~~ person. If the total claim filed by a receiver on behalf of multiple claimants exceeds ~~claims exceed~~ the aggregate limit of $250,000 ~~$100,000~~, the office must ~~shall~~ prorate the payment to each claimant based

upon the ratio that each claimant's individual ~~the person's~~ claim bears to the total claim ~~claims~~ filed.

(4) If at any time the balance in the Securities Guaranty Fund is insufficient to satisfy a valid claim or portion of a valid claim approved by the office, the office must satisfy the unpaid claim or portion of the valid claim as soon as a sufficient amount of money has been deposited into or transferred to the Securities Guaranty Fund. If more than one unsatisfied claim is outstanding, the claims must be paid in the sequence in which the claims were approved by final order of the office, which final order is not subject to an appeal or other pending proceeding.

(5) All payments and disbursements made from the Securities Guaranty Fund must be made by the Chief Financial Officer, or his or her designee, upon authorization by the office. The office shall submit such authorization within 30 days after the approval of an eligible person for payment from the Securities Guaranty Fund

~~(3) No payment shall be made on any claim against any one dealer, investment adviser, or associated person before the expiration of 2 years from the date any claimant is found by the office to be eligible for recovery pursuant to this section. If during this 2-year period more than one claim is filed against the same dealer, investment adviser, or associated person, or if the office receives notice pursuant to s. 517.131(4) that an~~

~~action against the same dealer, investment adviser, or associated person is pending, all such claims and notices of pending claims received during this period against the same dealer, investment adviser, or associated person may be handled by the office as provided in this section. Two years after the first claimant against that same dealer, investment adviser, or associated person applies for payment pursuant to this section:~~

~~(a) The office shall determine those persons eligible for payment or for potential payment in the event of a pending action. All such persons may be entitled to receive their pro rata shares of the fund as provided in this section.~~

~~(b) Those persons who meet all the conditions prescribed in s. 517.131 and who have applied for payment pursuant to this section will be entitled to receive their pro rata shares of the total disbursement.~~

~~(c) Those persons who have filed notice with the office of a pending claim pursuant to s. 517.131(4) but who are not yet eligible for payment from the fund will be entitled to receive their pro rata shares of the total disbursement once they have complied with subsection (1). However, in the event that the amounts they are eligible to receive pursuant to subsection (1) are less than their pro rata shares as determined under this section, any excess shall be distributed pro rata to those persons entitled to disbursement under this subsection whose pro rata shares of the total disbursement were less than the amounts~~

~~of their claims~~.

(6)~~(4)~~ Individual claims filed by persons owning the same joint account, or claims arising ~~stemming~~ from any other type of account ~~maintained by a particular licensee~~ on which more than one name appears, must ~~shall~~ be treated as the claims of one eligible claimant with respect to payment from the Securities Guaranty Fund. If a claimant who has obtained a final judgment or final order of restitution that ~~which~~ qualifies for disbursement under s. 517.131 has maintained more than one account with the ~~dealer, investment adviser, or associated~~ person who is the subject of the claims, for purposes of disbursement of the Securities Guaranty Fund, all such accounts, whether joint or individual, must ~~shall~~ be considered as one account and ~~shall~~ entitle such claimant to only one distribution from the fund ~~not to exceed the lesser of $10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection (1)~~. To the extent that a claimant obtains more than one final judgment or final order of restitution against a person ~~dealer, investment adviser, or one or more associated persons~~ arising out of the same transactions, occurrences, or conduct or out of such ~~the dealer's, investment adviser's, or associated~~ person's handling of the claimant's account, the final ~~such~~ judgments or final orders of restitution must ~~shall~~ be consolidated for purposes of this section and ~~shall~~ entitle the claimant to only one disbursement from the fund ~~not to~~

~~exceed the lesser of $10,000 or the unsatisfied portion of such claimant's judgment as provided in subsection (1)~~.

(7)~~(5)~~ If the final judgment or final order of restitution that gave rise to the claim is overturned in any appeal or in any collateral proceeding, the claimant must ~~shall~~ reimburse the Securities Guaranty Fund all amounts paid from the fund to the claimant on the claim. If the claimant satisfies the final judgment or final order of restitution ~~specified in s. 517.131(3)(a)~~, the claimant must ~~shall~~ reimburse the Securities Guaranty Fund all amounts paid from the fund to the claimant on the claim. Such reimbursement must ~~shall~~ be paid to the Department of Financial Services ~~office~~ within 60 days after the final resolution of the appellate or collateral proceedings or the satisfaction of the final judgment or order of restitution, with the 60-day period commencing on the date the final order or decision is entered in such proceedings.

(8)~~(6)~~ If a claimant receives payments in excess of that which is permitted under this chapter, the claimant must ~~shall~~ reimburse the Securities Guaranty Fund such excess within 60 days after the claimant receives such excess payment or after the payment is determined to be in excess of that permitted by law, whichever is later.

(9) A claimant who knowingly and willfully files or causes to be filed an application under s. 517.131 or documents supporting the application, any of which contain false,

incomplete, or misleading information in any material aspect, forfeits all payments from the Securities Guaranty Fund and commits a violation of s. 517.301(1)(c).

(10) ~~(7)~~ The Department of Financial Services ~~office~~ may institute legal proceedings to enforce compliance with this section and with s. 517.131 to recover moneys owed to the Securities Guaranty Fund, and is ~~shall be~~ entitled to recover interest, costs, and attorney ~~attorney's~~ fees in any action brought pursuant to this section in which the department ~~office~~ prevails.

~~(8) If at any time the money in the Securities Guaranty Fund is insufficient to satisfy any valid claim or portion of a valid claim approved by the office, the office shall satisfy such unpaid claim or portion of such valid claim as soon as a sufficient amount of money has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were approved by final order of the office, which order is not subject to an appeal or other pending proceeding.~~

~~(9) Upon receipt by the claimant of the payment from the Securities Guaranty Fund, the claimant shall assign any additional right, title, and interest in the judgment, to the extent of such payment, to the office. If the provisions of s. 517.131(3)(c) apply, the claimant must assign to the office any right, title, and interest in the debt to the extent of any~~

~~payment by the office from the Securities Guaranty Fund.~~

~~(10) All payments and disbursements made from the Securities Guaranty Fund shall be made by the Chief Financial Officer upon authorization signed by the director of the office, or such agent as she or he may designate.~~

Section 14. Section 517.191, Florida Statutes, is amended to read:

517.191 Enforcement by the Office of Financial Regulation ~~Injunction to restrain violations; civil penalties~~; enforcement by Attorney General.—

(1) When it appears to the office, either upon complaint or otherwise, that a person has engaged or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may investigate; and whenever it shall believe from evidence satisfactory to it that any such person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order hereunder, the office may, in addition to any other remedies, bring action in the name and on behalf of the state against such person and any other person concerned in or in any way participating in or about to participate in such practices or engaging therein or doing any act or acts in furtherance thereof or in violation of this chapter to enjoin such person or persons from continuing such fraudulent practices or engaging therein or doing any act or acts in furtherance

thereof or in violation of this chapter. In any such court proceedings, the office may apply for, and on due showing be entitled to have issued, the court's subpoena requiring forthwith the appearance of any defendant and her or his employees, associated persons, or agents and the production of documents, books, and records that may appear necessary for the hearing of such petition, to testify or give evidence concerning the acts or conduct or things complained of in such application for injunction. In such action, the ~~equity~~ courts shall have jurisdiction of the subject matter, and a judgment may be entered awarding such injunction as may be proper.

(2) In addition to all other means provided by law for the enforcement of any temporary restraining order, temporary injunction, or permanent injunction issued in any such court proceedings, the court shall have the power and jurisdiction, upon application of the office, to impound and to appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, the books, records, documents, and papers appertaining thereto. Such receiver or administrator, when appointed and qualified, shall have all powers and duties as to custody, collection, administration, winding up, and liquidation of <u>such</u> ~~said~~ property and business as <u>may</u> ~~shall from time to time~~ be conferred upon her or him by the court. In any such action, the court may issue orders and decrees staying all pending suits and

enjoining any further suits affecting the receiver's or administrator's custody or possession of such ~~the said~~ property, assets, and business or, in its discretion, may with the consent of the presiding judge of the circuit require that all such suits be assigned to the circuit court judge appointing such ~~the said~~ receiver or administrator.

(3) In addition to, or in lieu of, any other remedies provided by this chapter, the office may apply to the court hearing the ~~this~~ matter for an order directing the defendant to make restitution of those sums shown by the office to have been obtained in violation of ~~any of the provisions of~~ this chapter. The office has standing to request such restitution on behalf of victims in cases brought by the office under this chapter, regardless of the appointment of an administrator or receiver under subsection (2) or an injunction under subsection (1). Further, such restitution must ~~shall~~, at the option of the court, be payable to the administrator or receiver appointed pursuant to this section or directly to the persons whose assets were obtained in violation of this chapter.

(4) In addition to any other remedies provided by this chapter, the office may apply to the court hearing the matter for, and the court has ~~shall have~~ jurisdiction to impose, a civil penalty against any person found to have violated ~~any provision of~~ this chapter, any rule or order adopted by the commission or the office, or any written agreement entered into

with the office in an amount not to exceed any of the following:

(a) The greater of $20,000 ~~$10,000~~ for a natural person or $25,000 for a business entity ~~any other person~~, or the gross amount of any pecuniary loss to investors or pecuniary gain to a natural person or business entity ~~such defendant~~ for each such violation, other than a violation of s. 517.301, plus the greater of $50,000 for a natural person or $250,000 for a business entity ~~any other person~~, or the gross amount of any pecuniary loss to investors or pecuniary gain to a natural person or business entity ~~such defendant~~ for each violation of s. 517.301.

(b) Twice the amount of the civil penalty that would otherwise be imposed under this subsection if a specified adult, as defined in s. 517.34(1), is the victim of a violation of this chapter.

All civil penalties collected pursuant to this subsection must ~~shall~~ be deposited into the Anti-Fraud Trust Fund. The office may recover any costs and attorney fees related to its investigation or enforcement of this section. Notwithstanding any other law, such moneys recovered by the office must be deposited into the Anti-Fraud Trust Fund.

(5) For purposes of any action brought by the office under this section, a control person who controls any person found to have violated this chapter or any rule adopted thereunder is

jointly and severally liable with, and to the same extent as, the controlled person in any action brought by the office under this section unless the control person can establish by a preponderance of the evidence that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action.

(6) For purposes of any action brought by the office under this section, a person who knowingly or recklessly provides substantial assistance to another person in violation of this chapter or any rule adopted thereunder is deemed to violate this chapter or the rule to the same extent as the person to whom such assistance is provided.

(7) The office may issue and serve upon a person a cease and desist order if the office has reason to believe that the person violates, has violated, or is about to violate this chapter, any commission or office rule or order, or any written agreement entered into with the office.

(8) If the office finds that any conduct described in subsection (7) presents an immediate danger to the public, requiring an immediate final order, the office may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent named in the order and remains effective for 90 days after issuance. If the office begins nonemergency

cease and desist proceedings under subsection (7), the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

(9) The office may impose and collect an administrative fine against any person found to have violated any provision of this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office in an amount not to exceed the penalties provided in subsection (4). All fines collected under this subsection must be deposited into the Anti-Fraud Trust Fund.

(10) The office may bar, permanently or for a specific period of time, any person found to have violated this chapter, any rule or order adopted by the commission or office, or any written agreement entered into with the office from submitting an application or notification for a license or registration with the office.

(11) In addition to all other means provided by law for enforcing ~~any of the provisions of~~ this chapter, when the Attorney General, upon complaint or otherwise, has reason to believe that a person has engaged or is engaged in any act or practice constituting a violation of s. 517.275 or~~,~~ s. 517.301, ~~s. 517.311, or s. 517.312,~~ or any rule or order issued under such sections, the Attorney General may investigate and bring an action to enforce these provisions as provided in ss. 517.171, 517.201, and 517.2015 after receiving written approval from the

office. Such an action may be brought against such person and any other person in any way participating in such act or practice or engaging in such act or practice or doing any act in furtherance of such act or practice, to obtain injunctive relief, restitution, civil penalties, and any remedies provided for in this section. The Attorney General may recover any costs and attorney fees related to the Attorney General's investigation or enforcement of this section. Notwithstanding any other provision of law, moneys recovered by the Attorney General for costs, attorney fees, and civil penalties for a violation of s. 517.275 or~~,~~ s. 517.301, ~~s. 517.311, or s. 517.312,~~ or any rule or order issued pursuant to such sections, must ~~shall~~ be deposited in the Legal Affairs Revolving Trust Fund. The Legal Affairs Revolving Trust Fund may be used to investigate and enforce this section.

(12)~~(6)~~ This section does not limit the authority of the office to bring an administrative action against any person that is the subject of a civil action brought pursuant to this section or limit the authority of the office to engage in investigations or enforcement actions with the Attorney General. However, a person may not be subject to both a civil penalty under subsection (4) and an administrative fine under subsection (9) ~~s. 517.221(3)~~ as the result of the same facts.

(13)~~(7)~~ Notwithstanding s. 95.11(4)(f), an enforcement action brought under this section based on a violation of ~~any~~

~~provision of~~ this chapter or any rule or order issued under this chapter shall be brought within 6 years after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 8 years after the date such violation occurred.

(14) This chapter does not limit any statutory right of the state to punish a person for a violation of a law.

(15) When not in conflict with the Constitution or laws of the United States, the courts of this state have the same jurisdiction over civil suits instituted in connection with the sale or offer of sale of securities under any laws of the United States as the courts of this state may have with regard to similar cases instituted under the laws of this state.

Section 15. Section 517.211, Florida Statutes, is amended to read:

517.211 Private remedies available in cases of unlawful sale.—

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (3), (4), (8), (10), (12), (15), or (17) may be rescinded at the election of the purchaser; however, ~~except~~ a sale made in violation of the provisions of s. 517.1202(3) relating to a renewal of a branch office notification or ~~shall not be subject to this section, and a sale made~~ in violation of the provisions of s. 517.12(12) relating to filing a change of address amendment is ~~shall~~ not ~~be~~ subject to this section. Each

person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days after ~~of~~ receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

(2) Any person purchasing or selling a security in violation of s. 517.301, and every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase, is jointly and severally liable

to the person selling the security to or purchasing the security from such person in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.

(3) For purposes of any action brought under this section, a control person who controls any person found to have violated any provision specified in subsection (1) is jointly and severally liable with, and to the same extent as, such controlled person in any action brought under this section unless the control person can establish by a preponderance of the evidence that he or she acted in good faith and did not directly or indirectly induce the act that constitutes the violation or cause of action.

(4) In an action for rescission:

(a) A purchaser may recover the consideration paid for the security or investment, plus interest thereon at the legal rate from the date of purchase, less the amount of any income received by the purchaser on the security or investment upon tender of the security or investment.

(b) A seller may recover the security upon tender of the consideration paid for the security, plus interest at the legal rate from the date of purchase, less the amount of any income received by the defendant on the security.

(5) ~~(4)~~ In an action for damages brought by a purchaser of a security or investment, the plaintiff must ~~shall~~ recover an

amount equal to the difference between:

(a) The consideration paid for the security or investment, plus interest thereon at the legal rate from the date of purchase; and

(b) The value of the security or investment at the time it was disposed of by the plaintiff, plus the amount of any income received on the security or investment by the plaintiff.

(6) ~~(5)~~ In an action for damages brought by a seller of a security, the plaintiff shall recover an amount equal to the difference between:

(a) The value of the security at the time of the complaint, plus the amount of any income received by the defendant on the security; and

(b) The consideration received for the security, plus interest at the legal rate from the date of sale.

(7) ~~(6)~~ In any action brought under this section, including an appeal, the court shall award reasonable attorney ~~attorneys'~~ fees to the prevailing party unless the court finds that the award of such fees would be unjust.

(8) This chapter does not limit any statutory or common-law right of a person to bring an action in a court for an act involved in the sale of securities or investments.

(9) The same civil remedies provided by the laws of the United States for the purchasers or sellers of securities in interstate commerce also extend to purchasers or sellers of

securities under this chapter.

Section 16. Section 517.221, Florida Statutes, is repealed.

Section 17. Section 517.241, Florida Statutes, is repealed.

Section 18. Section 517.301, Florida Statutes, is amended to read:

517.301 Fraudulent transactions; falsification or concealment of facts.—

(1) It is unlawful and a violation of ~~the provisions of~~ this chapter for a person:

(a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security, including any security exempted under ~~the provisions of~~ s. 517.051 and including any security sold in a transaction exempted under ~~the provisions of~~ s. 517.061, s. 517.0611, or s. 517.0612, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;

2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit

upon a person.

(b) By use of any means, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, communication, or broadcast that, although ~~which, though~~ not purporting to offer a security for sale, describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount of the consideration.

(c) In any matter within the jurisdiction of the office, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.

(2) For purposes of ~~ss. 517.311 and 517.312 and~~ this section, the term "investment" means any commitment of money or property principally induced by a representation that an economic benefit may be derived from such commitment, except that the term does not include a commitment of money or property for:

(a) The purchase of a business opportunity, business enterprise, or real property through a person licensed under

chapter 475 or registered under former chapter 498; or

(b) The purchase of tangible personal property through a person not engaged in telephone solicitation, electronic mail, text messages, social media, or other electronic means where ~~said property is offered and sold in accordance with the following conditions:~~

~~1.~~ there are no specific representations or guarantees made by the offeror or seller as to the economic benefit to be derived from the purchase.~~;~~

~~2. The tangible property is delivered to the purchaser within 30 days after sale, except that such 30-day period may be extended by the office if market conditions so warrant; and~~

~~3. The seller has offered the purchaser a full refund policy in writing, exercisable by the purchaser within 10 days of the date of delivery of such tangible personal property, except that the amount of such refund may not exceed the bid price in effect at the time the property is returned to the seller. If the applicable sellers' market is closed at the time the property is returned to the seller for a refund, the amount of such refund shall be based on the bid price for such property at the next opening of such market.~~

(3) It is unlawful for a person in issuing or selling a security within this state, including a security exempted under s. 517.051 and including a transaction exempted under s. 517.061, s. 517.0611, or s. 517.0612, to misrepresent that such

security or business entity has been guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(4) It is unlawful for a person registered or required to be registered, or subject to the notice requirements, under this chapter, including such persons and issuers who are subject to s. 517.051, s. 517.061, s. 517.0611, s. 517.0612, or s. 517.081, to misrepresent that such person has been sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been approved, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(5) It is unlawful and a violation of this chapter for a person in connection with the offer or sale of an investment to obtain money or property by means of:

(a) A misrepresentation that the investment offered or sold is guaranteed, sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States; or

(b) A misrepresentation that such person is sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been examined, by the state or an agency or officer of the state or by the United States or an agency or officer of the United States.

(6)(a) Subsection (3) or subsection (4) may not be construed to prohibit a statement that a person or security is registered or has made a notice filing under this chapter if such statement is required by this chapter or rules promulgated thereunder and is true in fact and if the effect of such statement is not a misrepresentation.

(b) A statement that a person is registered made in connection with the offer or sale of a security under this chapter must include the following disclaimer: "Registration does not imply that such person has been sponsored, recommended, or approved by the state or an agency or officer of the state or by the United States or an agency or officer of the United States."

1. If the statement of registration is made in writing, the disclaimer must immediately follow such statement and must be in the same size and style of print as the statement of registration.

2. If the statement of registration is made orally, the disclaimer must be made or broadcast with the same force and effect as the statement of registration.

(7) It is unlawful and a violation of this chapter for a person to directly or indirectly manage, supervise, control, or own, either alone or in association with others, a boiler room in this state which sells or offers for sale a security or investment in violation of subsection (1), subsection (3),

subsection (4), subsection (5), or subsection (6).

Section 19. Section 517.311, Florida Statutes, is repealed.

Section 20. Section 517.312, Florida Statutes, is repealed.

Section 21. Subsections (1), (2), and (3) of section 517.072, Florida Statutes, are amended to read:

517.072 Viatical settlement investments.—

(1) The exemptions provided for by s. 517.051(6) and (11) ~~ss. 517.051(6), (8), and (10)~~ do not apply to a viatical settlement investment.

(2) The offering of a viatical settlement investment is not an exempt transaction under s. 517.061(10), (12), (13), and (18) ~~s. 517.061(2), (3), (8), (11), and (18)~~, regardless of whether the offering otherwise complies with the conditions of that section, unless such offering is to a qualified institutional buyer.

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

(a) The transfer or assignment of an interest in a previously viaticated policy from a natural person who transfers or assigns no more than one such interest in a single calendar

year.

(b) The provision of stop-loss coverage to a viatical settlement provider, financing entity, or related provider trust, as those terms are defined in s. 626.9911, by an authorized or eligible insurer.

(c) The transfer or assignment of a viaticated policy from a licensed viatical settlement provider to another licensed viatical settlement provider, a related provider trust, a financing entity, or a special purpose entity, as those terms are defined in s. 626.9911, or to a contingency insurer, provided that such transfer or assignment is not the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading ~~any provision of~~ this chapter.

(d) The transfer or assignment of a viaticated policy to a bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trust, qualified institutional buyer, or an accredited investor, provided such transfer or assignment is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

(e) The transfer or assignment of a viaticated policy by a conservator of a viatical settlement provider appointed by a court of competent jurisdiction who transfers or assigns ownership of viaticated policies pursuant to that court's order.

Section 22. Subsection (2), paragraph (a) of subsection (9), paragraph (j) of subsection (16), subsection (20), and paragraphs (b) and (c) of subsection (21) of section 517.12, Florida Statutes, are amended to read:

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

(2) The registration requirements of this section do not apply in a transaction exempted by s. 517.061(1)-(6), (8), (9), (12), and (13) ~~s. 517.061(1)-(10), (12), (14), and (15)~~.

(9)(a) An applicant for registration shall pay an assessment fee of $200, in the case of a dealer or investment adviser, or $50, in the case of an associated person. An associated person may be assessed an additional fee to cover the cost for the fingerprints to be processed by the office. Such fee shall be determined by rule of the commission. Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(2) ~~s. 517.131(1)~~ until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(16)

(j) All fees collected under this subsection become the revenue of the state, except those assessments provided for under s. 517.131(2) ~~s. 517.131(1)~~, until the Securities Guaranty Fund has satisfied the statutory limits. Such fees are not

returnable if a notice-filing is withdrawn.

(20) The registration requirements of this section do not apply to any general lines insurance agent or life insurance agent licensed under chapter 626, with regard to ~~for~~ the sale of a security as defined in s. 517.021(25)(g) ~~s. 517.021(23)(g)~~, if the individual is directly authorized by the issuer to offer or sell the security on behalf of the issuer and the issuer is a federally chartered savings bank subject to regulation by the Federal Deposit Insurance Corporation. Actions under this subsection ~~shall~~ constitute activity under the insurance agent's license for purposes of ss. 626.611 and 626.621.

(21)

(b) Prior to the completion of any securities transaction described in s. 517.061(7) ~~s. 517.061(22)~~, a merger and acquisition broker must receive written assurances from the control person with the largest percentage of ownership for both the buyer and seller engaged in the transaction that:

1. After the transaction is completed, any person who acquires securities or assets of the eligible privately held company, acting alone or in concert, will be a control person of the eligible privately held company or will be a control person for the business conducted with the assets of the eligible privately held company; and

2. If any person is offered securities in exchange for securities or assets of the eligible privately held company,

such person will, before becoming legally bound to complete the transaction, receive or be given reasonable access to the most recent year-end financial statements of the issuer of the securities offered in exchange. The most recent year-end financial statements shall be customarily prepared by the issuer's management in the normal course of operations. If the financial statements of the issuer are audited, reviewed, or compiled, the most recent year-end financial statements must include any related statement by the independent certified public accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

(c) A merger and acquisition broker engaged in a transaction exempt under s. 517.061(7) ~~s. 517.061(22)~~ is exempt from registration under this section unless the merger and acquisition broker:

1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;

2. Engages on behalf of an issuer in a public offering of any class of securities which is registered, or which is required to be registered, with the United States Securities and

Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07; or for which the issuer files, or is required to file, periodic information, documents, and reports under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

3. Engages on behalf of any party in a transaction involving a public shell company;

4. Is subject to a suspension or revocation of registration under s. 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(b)(4);

5. Is subject to a statutory disqualification described in s. 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(39);

6. Is subject to a disqualification under the United States Securities and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d); or

7. Is subject to a final order described in s. 15(b)(4)(H) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(b)(4)(H).

Section 23. Subsection (6) of section 517.1201, Florida Statutes, is amended to read:

517.1201 Notice filing requirements for federal covered advisers.—

(6) All fees collected under this section become the revenue of the state, except for those assessments provided for

under s. 517.131(2) ~~s. 517.131(1)~~ until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that a notice filing is withdrawn.

Section 24. Subsections (4) and (8) of section 517.1202, Florida Statutes, are amended to read:

517.1202 Notice-filing requirements for branch offices.—

(4) A branch office notice-filing under this section shall be summarily suspended by the office if the notice-filer fails to provide to the office, within 30 days after a written request by the office, all of the information required by this section and the rules adopted under this section. The summary suspension shall be in effect for the branch office until such time as the notice-filer submits the requested information to the office, pays a fine as prescribed by s. 517.191(9) ~~s. 517.221(3)~~, and a final order is entered. At such time, the suspension shall be lifted. For purposes of s. 120.60(6), failure to provide all information required by this section and the underlying rules constitutes immediate and serious danger to the public health, safety, and welfare. If the notice-filer fails to provide all of the requested information within a period of 90 days, the notice-filing shall be revoked by the office.

(8) All fees collected under this section become the revenue of the state, except for those assessments provided for under s. 517.131(2) ~~s. 517.131(1)~~ until such time as the Securities Guaranty Fund satisfies the statutory limits, and are

not returnable in the event that a branch office notice-filing is withdrawn.

Section 25. Subsection (2) of section 517.302, Florida Statutes, is amended to read:

517.302 Criminal penalties; alternative fine; Anti-Fraud Trust Fund; time limitation for criminal prosecution.—

(2) Any person who violates s. 517.301 ~~the provisions of s. 517.312(1)~~ by obtaining money or property of an aggregate value exceeding $50,000 from five or more persons is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 26. This act shall take effect October 1, 2024.

COMMERCE COMMITTEE

CS/HB 311 by Rep. Barnaby
Relating to Securities

AMENDMENT SUMMARY
January 30, 2024

Amendment 1 by Rep. Barnaby (Line 561): The amendment clarifies the registration exemption for transactions involving the offer or sale of securities under an employee benefit plan.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 561-575 and insert:

issuer's parent for the participation of its employees, directors, managers, managing members, general partners, trustees, officers, or consultants and advisors, and their family members who acquire such securities from such persons through gifts or domestic relations orders. This includes offers or sales of such securities to all of the following persons:

(a) Former employees, directors, managers, managing members, general partners, trustees, officers, or consultants and advisors, provided that the securities are issued to such persons in connection with their prior employment by or services to the issuer.

(b) Insurance agents who are exclusive insurance agents of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 479 Alternative Mobility Funding Systems
SPONSOR(S): Robinson, W.
TIED BILLS: **IDEN./SIM. BILLS:** SB 688

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N	Mwakyanjala	Darden
2) Ways & Means Committee	21 Y, 0 N	Rexford	Aldridge
3) Commerce Committee		Larkin	Anstead

SUMMARY ANALYSIS

Each county and municipality is required to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan. All elements of a plan or plan amendment must be based on relevant, appropriate data and an analysis by the local government. Each comprehensive plan must include a transportation element addressing traffic circulation, including the types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways.

Certain public facilities and services must be in place and available to serve new development no later than the issuance of a certificate of occupancy or its functional equivalent by a local government. Local governments may extend this concurrency requirement to additional public facilities such as transportation. Local governments electing to repeal transportation concurrency are encouraged to adopt an alternative mobility funding system. One method of funding local government transportation concurrency requirements is through the adoption and imposition of impact fees to fund the infrastructure needed to expand local services to meet the demands of population growth caused by new growth. Local governments may increase impact fees only under limited circumstances, including upon a showing of extraordinary circumstances.

In 2013, the concept of a mobility fee-based funding system was added to the comprehensive planning statutes as an encouraged alternative to transportation concurrency.

The bill revises provisions concerning impact fees and concurrency and provides additional guidance concerning mobility fees. The bill provides definitions for “mobility fee” and “mobility plan” to be used within the Community Planning Act. The bill provides that local governments adopting and collecting impact fees by ordinance or resolution must use localized data available within the previous 12 months of adoption for the local government’s calculation of impact fees.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Every local government, defined as any county and municipality,[1] is required to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan.[2] All elements of a plan or plan amendment must be based on relevant, appropriate data[3] and an analysis by the local government that may include surveys, studies, aspirational goals, and other data available at the time of adopting the plan or amendment.[4] The data supporting a plan or amendment must be taken from professionally accepted sources[5] and must be based on permanent and seasonal population estimates and projections.[6]

Each comprehensive plan must include a transportation element, the purpose of which is to plan for a multimodal transportation system emphasizing feasible public transportation, addressing mobility issues pertinent to the size and character of the local government, and designed to support all other elements of the comprehensive plan.[7] The transportation element must address traffic circulation, including the types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways.[8] The plan of a local government with a population exceeding 50,000 that is not within the planning area of a metropolitan planning organization (MPO)[9] also must address mass transit, ports, and aviation[10] and related facilities.[11] The transportation planning element for a local government with a population exceeding 50,000 located within the area of a MPO specifically must address the following:

- All alternative modes of travel, including public transportation, pedestrian, and bicycle;
- Aviation, rail, and seaport facilities, access to those facilities, and intermodal transportation;
- Capability to evacuate coastal population prior to a natural disaster;
- Airports, projected airport and aviation development, and land use around airports; and
- Identification of land use densities, building intensities, and transportation management programs to promote public transportation.[12]

The transportation planning element for a municipality with a population exceeding 50,000, or a county with a population exceeding 75,000, must provide for moving people by mass transit, including:

- Providing efficient, safe, and convenient public transit, including accommodation for the transportation disadvantaged;
- Plans for port, aviation, and related facilities; and

[1] S. 163.3164(29), F.S. For the purpose of the act, the Central Florida Tourism Oversight District may exercise the powers of a municipality for the area under its jurisdiction. S. 163.3167(6), F.S. *See also* ch. 2023-5, Laws of Fla. (renaming the Reedy Creek Improvement District to the Central Florida Tourism Oversight District).
[2] Ss. 163.3167(2), 163.3177(2), F.S.
[3] "To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." S. 163.3177(1)(f), F.S.
[4] S. 163.3177(1)(f), F.S.
[5] S. 163.3177(1)(f)2., F.S. The statute does not further define "professionally accepted sources."
[6] S. 163.3177(1)(f)3., F.S. Population estimates may be those published by the Office of Economic and Demographic Research or may be generated by the local government based upon a professionally acceptable methodology. *Id.*
[7] S. 163.3177(6)(b), F.S.
[8] S. 163.3177(6)(b)1., F.S.
[9] An MPO must be designated as provided in 23 U.S.C. s. 450.310(a) for each urbanized area with a population of more than 50,000. S. 339.175(2), F.S. Florida MPOs are intended specifically to develop plans and programs in metropolitan areas for the development and management of transportation systems and facilities, including pedestrian walkways and bicycle transportation facilities to function as an intermodal transportation system. S. 339.175(1), F.S.
[10] All local governments have the option to include within the transportation element an airport master plan, incorporated into the plan through the comprehensive plan amendment process. S. 163.3177(6)(b)4., F.S.
[11] S. 163.3177(6)(b), F.S.
[12] S. 163.3177(6)(b)2., F.S.

- Plans for circulation of recreational traffic, including bicycle and riding facilities and exercise trails.[13]

In addition to the general requirements for data supporting a comprehensive plan or amendment, the transportation planning element must include one or more maps showing the general location of existing and proposed transportation system features and data, analyses, and associated principles pertaining to:

- Existing transportation system levels of service and system needs and availability of transportation facilities and services;
- Growth trends and travel patterns, as well as interactions between land use and transportation;
- Current and projected intermodal[14] deficiencies and needs;
- Projected transportation system levels of service and system needs; and
- How the local government will correct existing facility deficiencies, meet the needs of the projected transportation system, and advance the transportation purposes of the plan.[15]

Generally, local government transportation and mobility planning should address providing mobility options, such as automobile, bicycle, pedestrian, or mass transit, that minimize environmental impacts, expand transportation options, and increase connectivity between destinations.[16]

Transportation Concurrency

Certain public facilities and services must be in place and available to serve new development no later than the issuance of a certificate of occupancy or its functional equivalent by a local government.[17] Local governments may extend this concurrency requirement to additional public facilities such as transportation.[18] Where concurrency is applied to transportation, the local government comprehensive plan must provide the principles, guidelines, standards, and strategies, including adopted levels of service, to guide its application.[19] The plan must show that the included levels of service may reasonably be met.[20] Local governments utilizing transportation concurrency must use professionally accepted studies to evaluate levels of service and techniques to measure such levels of service when evaluating potential impacts of proposed developments.[21] While local governments implementing a transportation concurrency system are encouraged to develop and use certain tools and guidelines, such as addressing potential negative impacts on urban infill and redevelopment[22] and adopting long-term multimodal strategies,[23] such local governments must follow specific concurrency requirements including consulting with the Florida Department of Transportation if proposed amendments to the plan affect the Strategic Intermodal System, exempting public transit facilities from concurrency requirements, and allowing a developer to contribute a proportionate share to mitigate transportation impacts for a specific development.[24]

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[13] S. 163.3177(6)(b)3., F.S.
[14] "Intermodal transportation" is not defined in the statute but generally means the transportation by or involving more than one form of carrier in a single journey, particularly for moving cargo. *See* "intermodal," available at https://www.merriam-webster.com/dictionary/intermodal (last visited Jan. 14, 2024); "intermodal transport," available at https://www.ups.com/us/en/supplychain/insights/knowledge/glossary-term/intermodal-transport.page (last visited Jan. 14, 2024). Part of the intent in creating the Florida Strategic Intermodal System is to address the increased demands placed on the entire statewide transportation system by economic and population growth and projected increases in freight movement, international trade, and tourism designing and operating a strategic intermodal system to meet the mobility needs of the state. *See* s. 339.61(2), F.S.
[15] S. 163.3177(6)(b)1., F.S.
[16] Dept. of Commerce, "Transportation Planning," available at https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/transportation-planning (last visited Jan. 14, 2024), herein Commerce Transportation Planning.
[17] S. 163.1380(2), F.S. The only such services for which concurrency is mandatory are sanitary sewer, solid waste, drainage, and potable water supplies.
[18] S. 163.3180(1), F.S.
[19] Ss. 163.3180(1)(a), 163.3180(5)(a), F.S. *See* Commerce Transportation Planning, *supra* n. 16.
[20] S. 163.3180(1)(b), F.S.
[21] S. 163.3180(5)(b)-(c), F.S.
[22] S. 163.3180(5)(e), F.S.
[23] S. 163.3180(f), F.S.
[24] S. 163.3180(5)(h), F.S. *See* Commerce Transportation Planning, *supra* n. 16.

An applicant for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit satisfies the requirements for transportation concurrency if the applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate share of transportation improvements required to mitigate the impact of the proposed development and the proffered proportionate share contribution or construction is sufficient to accomplish one or more mobility improvements benefitting a regionally significant transportation facility.[25] The plan for transportation concurrency must provide the basis on which landowners will be assessed a proportionate share,[26] which must include a compliant formula for calculating the proportionate share.[27] The proportionate share may not include additional costs to reduce or eliminate existing transportation deficiencies.[28]

Local governments electing to repeal transportation concurrency are encouraged to adopt an alternative mobility funding system. Such an alternative system may not be used to restrict or deny certain development approval applications provided the developer agrees to pay for the development's transportation impacts using the funding mechanism implemented by the local government. Local government mobility fee systems must comply with all requirements for adopting and implementing impact fees. An alternative funding system that is not mobility fee based may not impose on new development any responsibility for funding existing transportation deficiencies.[29]

Impact Fees

One method of funding local government transportation concurrency requirements is through the adoption and imposition of impact fees on new development. Local governments impose impact fees to fund infrastructure[30] needed to expand local services to meet the demands of population growth caused by new growth.[31] Impact fees must meet the following minimum criteria when adopted:

- The fee must be calculated using the most recent and localized data.[32]
- The local government adopting the impact fee must account for and report impact fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.[33]
- Charges imposed for the collection of impact fees must be limited to the actual costs.[34]
- All local governments must give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect, but need not wait 90 days before decreasing, suspending, or eliminating an impact fee. Unless the result reduces total mitigation costs or impact fees on an applicant, new or increased impact fees may not apply to current or pending applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.[35]
- A local government may not require payment of the impact fee before the date of issuing a building permit for the property that is subject to the fee.[36]

[25] S. 163.3180(5)(h)1.c., F.S.
[26] S. 163.3180(5)(h)1.d., F.S.
[27] S. 163.3180(5(h)2.a.-d., F.S.
[28] S. 163.3180(5)(h)2., F.S. For purposes of s. 163.3180(5), F.S., "transportation deficiency" means a facility or facilities on which the level of service standard adopted in the comprehensive plan is exceeded by the number of existing, projected, or vested trips together with additional trips originating from any source other than the development project under review, and trips forecast by established traffic standards. S. 163.3180(5)(h)4., F.S. Local governments may resolve existing transportation deficiencies within an identified transportation deficiency area by creating a transportation development authority with specific powers to implement a transportation sufficiency plan funded through a formula of tax increment funding. Adopting a transportation sufficiency plan is deemed as meeting transportation level of service standards, and proportionate fair-share mitigation is limited to ensure developments within the transportation deficiency area are not responsible for additional costs to eliminate deficiencies. S. 163.3182, F.S.
[29] S. 163.3180(5)(i), F.S.
[30] "Infrastructure" means the fixed capital expenditure or outlay for the construction, reconstruction, or improvement of public facilities with a life expectancy of five or more years, together with specific other costs required to bring the public facility into service but excluding the costs of repairs or maintenance. The term also includes specific equipment. S. 163.31801(3), F.S.
[31] S. 163.31801(2), F.S. Water and sewer connection fees are not impact fees. S. 163.31801(12), F.S.
[32] S. 163.31801(4)(a), F.S.
[33] S. 163.31801(4)(b), F.S.
[34] S. 163.31801(4)(c), F.S.
[35] S. 163.31801(4)(d), F.S.
[36] S. 163.31801(4)(e), F.S.

- The impact fee must be reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.[37]
- The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.[38]
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.[39]
- The local government may not use revenues generated by the impact fee to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.[40]

The types of impact fees charged and the timing of their collection after issuing a building permit are within the discretion of the local government or special district authorities choosing to impose the fees.[41] In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.[42] A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[43] Local governments providing an exception or waiver of impact fees for the development or construction of affordable housing are not required to use any revenues to offset the impact of such development.[44]

Local governments must credit against impact fee collections any contribution related to public facilities or infrastructure on a dollar-for-dollar basis at fair market value for the general category or class of public facilities or infrastructure for which the contribution was made. If no impact fee is collected for that category of public facility or infrastructure for which the contribution is made, no credit may be applied.[45] Credits for impact fees may be assigned or transferred at any time once established, from one development or parcel to another within the same impact fee zone or district or within an adjoining impact fee zone or district within the same local government jurisdiction.[46]

Local governments may increase impact fees only under limited circumstances. A fee may be increased no more than once every four years, may not be increased retroactively, the increase may not exceed 50 percent of the current impact fee amount, and any increase must be consistent with a statutorily-compliant plan for the imposition, collection, and use of the fees. An increase not exceeding 25 percent of the current fee amount must be implemented in two equal annual increments, while an increase greater than 25 percent but not exceeding 50 percent of the current amount must be implemented in four equal annual installments. However, a local government may increase a fee more than once in four years or for more than 50 percent of a current impact fee amount if it has:

- Prepared a demonstrated-need study within 12 months before adopting the increase showing extraordinary circumstances necessitating the need for the increase;
- Conducted at least two publicly noticed workshops on the extraordinary circumstances justifying the increase; and
- Approved the increase by at least a two-thirds vote of the governing body.[47]

[37] S. 163.31801(4)(f), F.S.
[38] S. 163.31801(4)(g), F.S.
[39] S. 163.31801(4)(h), F.S.
[40] S. 163.31801(4)(i), F.S.
[41] *See* s. 163.31801(2), F.S.
[42] S. 553.79, F.S.
[43] S. 163.3164(16), F.S.
[44] S. 163.31801(11), F.S.
[45] S. 163.31801(5), F.S.
[46] S. 163.31801(10), F.S. In an action challenging an impact fee or a failure to provide proper credits, the local government has the burden of proof to establish the imposition of the fee or the credit complies with the statute, and the court may not defer to the decision or expertise of the government. S. 163.31801(9), F.S.
[47] S. 163.31801(6), F.S.

A local government that increases an impact fee must still provide the holder of any impact fee credit the full benefit of the density and intensity prepaid by the credit balance.[48]

With each annual financial report or audit filed[49] a local government must report specific information on impact fees imposed, including the specific purpose of the fee, the impact fee schedule describing the method of calculating the fee, the amount assessed for each purpose and for each type of dwelling, the total amount of fees charged by type of dwelling, and each exception or waiver to the imposition of impact fees provided for construction of affordable housing.[50] Additionally, the chief financial officer or executive officer (if there is no chief financial officer) must submit with the annual financial report an affidavit attesting that all impact fees were collected and expended by the local government, or on its behalf, in full compliance with the spending period provisions in the local ordinance and that funds expended from each impact fee account were used to acquire, construct, or improve those specific infrastructure needs.[51]

Mobility Plans and Fees

In the Community Renewal Act[52] of 2009 (Act), the Legislature found that the concept and application of transportation concurrency was "complex, inequitable, lack(ed) uniformity among jurisdictions, (was) too focused on roadways to the detriment of desired land use patterns and transportation alternatives, and frequently prevent(ed) the attainment of important growth management goals."[53] The Act required completion and submission of a mobility fee methodology study[54] and stated the Legislature's intent that a mobility fee "should be designed to provide for mobility needs, ensure that development provides mitigation for its impacts on the transportation system in approximate proportionality to those impacts, fairly distribute the fee among the governmental entities responsible for maintaining the impacted roadways, and promote compact, mixed-use, and energy-efficient development."[55] In 2013, the concept of a mobility fee-based funding system was added to the comprehensive planning statutes as an encouraged alternative to transportation concurrency.[56]

Alternative mobility funding systems using a mobility fee are encouraged to incorporate one or more of the statutory tools and techniques, including:

- Adoption of long-term strategies to facilitate development patterns that support multimodal solutions, including urban design, appropriate land use mixes, intensity and density;
- Adoption of an area wide level of service not dependent on any single road segment function;
- Exempting or discounting impacts of locally desired development;
- Assigning secondary priority to vehicle mobility and primary priority to ensuring a safe, comfortable, and attractive pedestrian environment with convenient interconnection to transit;
- Establishing multimodal level of service standards that rely primarily on non-vehicular modes of transportation where existing or planned community design will provide adequate a level of mobility; and
- Reducing impact fees or local access fees to promote development within urban areas, multimodal transportation districts, and a balance of mixed-use development in certain areas or districts, or for affordable or workforce housing.[57]

[48] S. 163.31801(7), F.S.
[49] *See* ss. 218.32, 218.39, F.S.
[50] S. 163.31801(13), F.S.
[51] S. 163.31801(8), F.S.
[52] Ch. 2009-96, s. 1, Laws of Fla.
[53] Ch. 2009-96, s. 13(1)(a), Laws of Fla.
[54] Center for Urban Transportation Research, *Evaluation of the Mobility Fee Concept Final Report*, University of South Florida (Nov. 2009), available at https://cutr.usf.edu/wp-content/uploads/2012/08/Evaluation-of-the-Mobility-Fee-Concept-CUTR-Webcast-04.21.11.pdf (last visited Jan. 14, 2024).
[55] Ch. 2009-96, s. 13(1)(b), Laws of Fla.
[56] Ch. 2013-78, s. 1, Laws of Fla.
[57] S. 163.3180(5)(f), F.S.

Some local governments have adopted mobility plans and mobility fees.[58]

Effect of Proposed Changes

The bill revises provisions concerning impact fees and concurrency while providing additional guidance concerning mobility fees. The bill provides definitions for "mobility fee" and "mobility plan" to be used within the Community Planning Act.[59]

The bill requires agreements between local governments that implement a transportation concurrency system and applicants for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit concerning the applicants offer to pay for or construct its proportionate share of required improvements to that after an applicant makes its contribution or constructs its proportionate share, the project shall be considered to have mitigated its transportation impacts and must be allowed to proceed. The bill provides that local governments may not prevent a single applicant from proceeding after the applicant has satisfied its proportionate-share contribution.

The bill prohibits local governments from charging for transportation impacts if they are not the local government that is issuing a building permit, requires that local governments collect for extra-jurisdictional impacts if they are issuing building permits, and prohibits local governments from assessing multiple charges for the same transportation impact.

Impact Fees

The bill provides that local governments adopting and collecting impact fees must use localized data **available within the previous 12 months of adoption** for the local government's calculation of impact fees. The bill provides that a local government must credit against the collection of the impact fee any contribution identified in the **development order** or any form of exaction, including **monetary contributions**.

The bill provides that holders of transportation or road impact fee credits granted under s. 163.3180 or s. 380.06, F.S., along with other provisions, which existed before the adoption of the mobility fee-based funding system, is entitled to the full benefit of the intensity and density prepaid by the credit balance as of the date it was first establish.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3164, F.S., relating to Community Planning Act definitions.
Section 2: Amends s. 163.3180, F.S., relating to concurrency.
Section 3: Amends s. 163.31801. F.S., relating to impact fees.
Section 4: Amends s. 212.055, F.S., relating to discretionary sales surtaxes.
Section 5: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[58] *See* Hillsborough County Code of County Ordinances, ch. 40, art. III, div. 2, *Mobility Fees*; Pasco County Code of Ordinances, Land Development Code, ch. 1300, s. 1302.2; City of Port St. Lucie Code of Ordinances, Title XV, ch. 159, s. 159.101, *Port St. Lucie Mobility Fee Ordinance*.
[59] The Community Planning Act is part II of ch. 163, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to alternative mobility funding systems; amending s. 163.3164, F.S.; providing definitions; amending s. 163.3180, F.S.; revising requirements relating to agreements to pay for or construct certain improvements; authorizing certain local governments to adopt an alternative mobility planning and fee system or an alternative system in certain circumstances; providing requirements for the application of an adopted alternative system; prohibiting an alternative system from imposing responsibility for funding an existing transportation deficiency upon new development; prohibiting local governments that do not issue building permits from charging for transportation impacts; requiring local governments that issue building permits to collect for extrajurisdictional impacts; prohibiting local governments from assessing multiple charges for the same transportation impact; amending s. 163.31801, F.S.; revising requirements for the calculation of impact fees by certain local governments and special districts; requiring local governments transitioning to alternative funding systems to provide holders of impact fee credits with full benefit of intensity and density of prepaid credit balances as of a specified

date; amending s. 212.055, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsections (32) through (52) of section 163.3164, Florida Statutes, are renumbered as subsections (34) through (54), respectively, and new subsections (32) and (33) are added to that section, to read:

163.3164 Community Planning Act; definitions.—As used in this act:

(32) "Mobility fee" means a local government fee schedule established by ordinance and based on the projects included in the local government's adopted mobility plan.

(33) "Mobility plan" means an integrated land use and alternative mobility transportation plan adopted into a local government comprehensive plan that promotes a compact, mixed-use, and interconnected development served by a multimodal transportation system in an area that is urban in character as defined in s. 171.031.

Section 2. Paragraphs (h) and (i) of subsection (5) of section 163.3180, Florida Statutes, are amended, and paragraph (j) is added to that subsection, to read:

163.3180 Concurrency.—

(5)

(h)1. Local governments that continue to implement a transportation concurrency system, whether in the form adopted into the comprehensive plan before the effective date of the Community Planning Act, chapter 2011-139, Laws of Florida, or as subsequently modified, must:

a. Consult with the Department of Transportation when proposed plan amendments affect facilities on the strategic intermodal system.

b. Exempt public transit facilities from concurrency. For the purposes of this sub-subparagraph, public transit facilities include transit stations and terminals; transit station parking; park-and-ride lots; intermodal public transit connection or transfer facilities; fixed bus, guideway, and rail stations; and airport passenger terminals and concourses, air cargo facilities, and hangars for the assembly, manufacture, maintenance, or storage of aircraft. As used in this sub-subparagraph, the terms "terminals" and "transit facilities" do not include seaports or commercial or residential development constructed in conjunction with a public transit facility.

c. Allow an applicant for a development-of-regional-impact development order, development agreement, rezoning, or other land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06, when applicable, if:

(I) The applicant in good faith offers to enter into a binding agreement to pay for or construct its proportionate share of required improvements in a manner consistent with this subsection. The agreement must provide that after an applicant makes its contribution or constructs its proportionate share pursuant to this sub-sub-subparagraph, the project shall be considered to have mitigated its transportation impacts and be allowed to proceed.

(II) The proportionate-share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility. A local government may accept contributions from multiple applicants for a planned improvement if it maintains contributions in a separate account designated for that purpose. A local government may not prevent a single applicant from proceeding after the applicant has satisfied its proportionate-share contribution.

d. Provide the basis upon which the landowners will be assessed a proportionate share of the cost addressing the transportation impacts resulting from a proposed development.

2. An applicant shall not be held responsible for the additional cost of reducing or eliminating deficiencies. When an applicant contributes or constructs its proportionate share pursuant to this paragraph, a local government may not require payment or construction of transportation facilities whose costs

would be greater than a development's proportionate share of the improvements necessary to mitigate the development's impacts.

a. The proportionate-share contribution shall be calculated based upon the number of trips from the proposed development expected to reach roadways during the peak hour from the stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain or achieve the adopted level of service, multiplied by the construction cost, at the time of development payment, of the improvement necessary to maintain or achieve the adopted level of service.

b. In using the proportionate-share formula provided in this subparagraph, the applicant, in its traffic analysis, shall identify those roads or facilities that have a transportation deficiency in accordance with the transportation deficiency as defined in subparagraph 4. The proportionate-share formula provided in this subparagraph shall be applied only to those facilities that are determined to be significantly impacted by the project traffic under review. If any road is determined to be transportation deficient without the project traffic under review, the costs of correcting that deficiency shall be removed from the project's proportionate-share calculation and the necessary transportation improvements to correct that deficiency shall be considered to be in place for purposes of the proportionate-share calculation. The improvement necessary to

correct the transportation deficiency is the funding responsibility of the entity that has maintenance responsibility for the facility. The development's proportionate share shall be calculated only for the needed transportation improvements that are greater than the identified deficiency.

c. When the provisions of subparagraph 1. and this subparagraph have been satisfied for a particular stage or phase of development, all transportation impacts from that stage or phase for which mitigation was required and provided shall be deemed fully mitigated in any transportation analysis for a subsequent stage or phase of development. Trips from a previous stage or phase that did not result in impacts for which mitigation was required or provided may be cumulatively analyzed with trips from a subsequent stage or phase to determine whether an impact requires mitigation for the subsequent stage or phase.

d. In projecting the number of trips to be generated by the development under review, any trips assigned to a toll-financed facility shall be eliminated from the analysis.

e. The applicant shall receive a credit on a dollar-for-dollar basis for impact fees, mobility fees, and other transportation concurrency mitigation requirements paid or payable in the future for the project. The credit shall be reduced up to 20 percent by the percentage share that the project's traffic represents of the added capacity of the selected improvement, or by the amount specified by local

ordinance, whichever yields the greater credit.

3. This subsection does not require a local government to approve a development that, for reasons other than transportation impacts, is not qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

4. As used in this subsection, the term "transportation deficiency" means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing, committed, and vested trips, plus additional projected background trips from any source other than the development project under review, and trips that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida's Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.

(i) If a local government elects to repeal transportation concurrency, the local government may ~~it is encouraged to~~ adopt an alternative mobility planning and fee ~~funding~~ system or an alternative system that is not mobility plan and fee based. The local government ~~that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted~~ may not use an alternative system ~~be used~~ to deny, time, or phase an application for site plan approval,

plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. An alternative ~~A mobility fee-based funding~~ system must comply with s. 163.31801 governing impact fees. An alternative system may not impose ~~that is not mobility fee-based shall not be applied in a manner that imposes~~ upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

(j) Only the local government issuing the building permit may charge for transportation impacts within its jurisdiction. Such local government must collect and account for any extrajurisdictional impacts pursuant to s. 163.3177(6)(h), regardless of whether it implements a transportation concurrency system or an alternative system. A local government may not charge new development or redevelopment for the same transportation impacts.

Section 3. Paragraph (a) of subsection (4), paragraph (a) of subsection (5), and subsection (7) of section 163.31801, Florida Statutes, are amended to read:

163.31801 Impact fees; short title; intent; minimum

requirements; audits; challenges.—

(4) At a minimum, each local government that adopts and collects an impact fee by ordinance and each special district that adopts, collects, and administers an impact fee by resolution must:

(a) Ensure that the calculation of the impact fee is based on the most recent and localized data available within the previous 12 months before adoption.

(5)(a) Notwithstanding any charter provision, comprehensive plan policy, ordinance, development order, development permit, or resolution, the local government or special district that requires any improvement or contribution must credit against the collection of the impact fee any contribution, whether identified in a development order, proportionate share agreement, or any ~~other~~ form of exaction~~,~~ related to public facilities or infrastructure, including monetary contributions, land dedication, site planning and design, or construction. Any contribution must be applied on a dollar-for-dollar basis at fair market value to reduce any impact fee collected for the general category or class of public facilities or infrastructure for which the contribution was made.

(7) If an impact fee is increased, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence

before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established. If a local government adopts an alternative funding system pursuant to s. 163.3180(5)(i), the holder of any transportation or road impact fee credits granted under s. 163.3180 or s. 380.06 or otherwise that were in existence before the adoption of the alternative funding system is entitled to the full benefit of the intensity and density prepaid by the credit balance as of the date the alternative funding system was first established.

Section 4. Paragraph (d) of subsection (2) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure; to acquire any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern; to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011, and charter counties may, in

addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service. For purposes of this sub-subparagraph, the term "public facilities" means facilities as defined in s. 163.3164(41) ~~s. 163.3164(39)~~, s. 163.3221(13), or s. 189.012(5), and includes facilities that are necessary to carry out governmental purposes, including, but not limited to, fire stations, general governmental office buildings, and animal shelters, regardless of whether the facilities are owned by the local taxing authority or another governmental entity.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to

outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008.

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38. Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

e. Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median

income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

f. Instructional technology used solely in a school district's classrooms. As used in this sub-subparagraph, the term "instructional technology" means an interactive device that assists a teacher in instructing a class or a group of students and includes the necessary hardware and software to operate the interactive device. The term also includes support systems in which an interactive device may mount and is not required to be affixed to the facilities.

2. For the purposes of this paragraph, the term "energy efficiency improvement" means any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; installation of solar panels; building modifications to increase the use of daylight or shade;

replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of systems for natural gas fuel as defined in s. 206.9951; and installation of efficient lighting equipment.

3. Notwithstanding any other provision of this subsection, a local government infrastructure surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the surtax proceeds for deposit into a trust fund within the county's accounts created for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

Section 5. This act shall take effect July 1, 2024.

COMMERCE COMMITTEE

HB 479 by Rep. Robinson, W
Alternative Mobility Funding Systems

AMENDMENT SUMMARY
January 30, 2024

Amendment 1 by Rep. Robinson (line 170):

- Provides that the impact fee calculation must be based on the most recent, localized data available within the previous 12 months before adoption, **if the ordinance or resolution increases the impact fee**.
- Provides technical and clarifying language.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee
Representative Robinson, W. offered the following:

Amendment

Remove lines 170-208 and insert:

an alternative mobility plan and fee ~~funding~~ system or an alternative system that is not mobility plan and fee based. The local government ~~that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted~~ may not use an alternative system ~~be used~~ to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism

used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. An alternative ~~A mobility fee-based funding~~ system must comply with s. 163.31801 governing impact fees. An alternative system may not impose ~~that is not mobility fee-based shall not be applied in a manner that imposes~~ upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

(j) Only the local government issuing the building permit may charge for transportation capacity impacts associated with new development or redevelopment that occurs within its jurisdiction. Such local government must collect and account for any extrajurisdictional impacts pursuant to s. 163.3177(6)(h), regardless of whether it implements a transportation concurrency system or an alternative system. A local government may not charge new development or redevelopment for the same transportation impacts.

Section 3. Paragraph (a) of subsection (4), paragraph (a) of subsection (5), and subsection (7) of section 163.31801, Florida Statutes, are amended to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—

(4) At a minimum, each local government that adopts and collects an impact fee by ordinance and each special district

that adopts, collects, and administers an impact fee by resolution must:

(a) Ensure that the calculation of the impact fee is based on the most recent and localized data available within the previous 12 months before adoption if the ordinance or resolution increases the impact fee.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 675 State Recognition of Indian Tribes and Bands
SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, Salzman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1010

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N, As CS	Burgess	Darden
2) Commerce Committee		Thompson	Hamon
3) State Affairs Committee			

SUMMARY ANALYSIS

Federal law recognizes Indian tribes as "distinct, independent political communities, retaining their original natural rights." Indian tribes recognized by the federal government have a government-to-government relationship with the United States.

Historically, tribes secured federal recognition by treaties, acts of Congress, executive branch actions, or federal court decisions. Today, a tribe may gain federal recognition by an act of Congress, administrative procedures, or a decision by a federal court. The administrative process, known as the Federal Acknowledgment Process (FAP), is intended to recognize the continued existence of an inherent sovereign authority, not provide a grant of sovereign status or create a tribe made of Indian descendants. Some non-recognized tribes have expressed that the administrative process for recognition can be costly and time-consuming. Since 1978, the FAP has resulted in the acknowledgement of 18 tribes (out of 52 completed applications). There are two federally recognized tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, that currently reside and have tribal lands in the state.

Additionally, some states provide a process for tribal recognition. State recognition of a tribe may provide access to certain federal grant programs, permit tribe members to market their arts and crafts as genuine, and apply for certain scholarship programs.

The bill provides for state recognition for the Santa Rosa Band of the Lower Muscogee. The bill clarifies that state recognition of an Indian tribe or band does not create any basis or authority for a tribe to engage in prohibited gaming activity or to claim any interest in real estate or land that is not already provided elsewhere in law. The bill also provides that state recognition does not grant any authority or ability for a tribe or band to consult on state undertakings by the Division of Historical Resources or activities carried out by the State Archaeologist.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Tribal Sovereignty and Federal Recognition

Federal law recognizes Indian tribes as "distinct, independent political communities, retaining their original natural rights."[1] Indian tribes recognized by the federal government have a government-to-government relationship with the United States.[2] There are currently 574 federally recognized Indian tribes in the United States, 347 in the contiguous 48 states, and 227 federally recognized Native entities within the state of Alaska.[3]

Historically, tribes secured federal recognition by treaties, acts of Congress, executive branch actions, or federal court decisions.[4] Today, a tribe may gain federal recognition through one of three processes:

- An act of Congress;
- Administrative procedures under 25 C.F.R. Part 83; or
- A decision by a federal court.[5]

The administrative process under 25 C.F.R. Part 83, known as the Federal Acknowledgment Process (FAP), originates from a regulation first issued by the Interior Department in 1978.[6] The FAP underwent significant revisions in 1994 and 2015.[7] The purpose of the FAP was to recognize the continued existence of an inherent sovereign authority, not provide a grant of sovereign status or to create a tribe made of Indian descendants.[8] To qualify for acknowledgment under the current version of the FAP, a petitioner must:

- Demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;
- Show that the petitioning group comprises a distinct community and has existed as a community from 1900 until the present;
- Demonstrate that it has maintained political influence or authority over its members as an autonomous entity from 1900 until the present;
- Provide a copy of the group's present governing document, including its membership criteria, or a written statement describing in full its membership criteria and current governing procedures;
- Demonstrate that its membership consists of individuals who descend from the historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list;
- Show that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and
- Demonstrate that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.[9]

Some non-recognized tribes have expressed that the administrative process for recognition can be costly and time-consuming.[10] Since 1978, the FAP has resulted in the acknowledgement of 18 tribes (out of 52 completed applications).[11]

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[1] *Worcester v. Georgia*, 31 U.S. 515, 519 (1832).
[2] Bureau of Indian Affairs, *Frequently Asked Questions*, https://www.bia.gov/frequently-asked-questions (last visited Jan. 12, 2024).
[3] 88 Fed. Reg. 2112 (Jan. 12, 2023).
[4] Bureau of Indian Affairs, *Frequently Asked Questions*, https://www.bia.gov/frequently-asked-questions (last visited Jan. 12, 2024).
[5] Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454. If a tribe has previously had its relationship with the United States expressly terminated by an act of Congress, that tribe's recognition may only be restored by a subsequent act.
[6] Bureau of Indian Affairs, *Frequently Asked Questions*, https://www.bia.gov/frequently-asked-questions (last visited Jan. 12, 2024).
[7] *See id.* and 80 Fed. Reg. 37887 (July 1, 2015) (publication of final rule for 25 C.F.R. Part 83, concerning Federal Acknowledgment of American Indian Tribes).
[8] *The Federal Acknowledgement Process: Hearing Before S. Committee on Indian Affairs*, May 11, 2005 (statement of R. Lee Fleming, Director, Office of Federal Acknowledgment).
[9] 25 C.F.R. s. 83.11 (2015).

State Recognition of Indian Tribes

There are currently 63 state-recognized tribes across 11 states: Alabama, Connecticut, Georgia, Louisiana, Maryland, Massachusetts, New York, North Carolina, South Carolina, Vermont, and Virginia.[12] The method of determining which tribes to recognize varies, from giving a decision-making role to other tribes in the state (e.g., North Carolina[13]), an advisory role to other tribes (e.g. Vermont[14]), or providing for recognition as determined solely by the legislature (e.g., Georgia[15]).

State recognition of a tribe can provide certain benefits. State-recognized tribes are eligible to apply to several federal grant programs.[16] Members of state-recognized tribes are also allowed to market their arts and crafts products as being genuine[17] and may access certain scholarship programs.[18]

Indian Tribes in Florida

There are six federally-recognized tribes that are considered "culturally affiliated" with Florida.[19] Two tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, currently reside and have tribal lands in the state. Four other tribes—the Muscogee Creek Nation, the Poarch Band of Creek Indians, the Seminole Nation of Oklahoma, and the Mississippi Band of Choctaw Indians—do not have reservation lands within the state, but have previously lived in the state and have a direct historical and cultural association.

Most state law governing the relationship between the state and the federally-recognized tribes with tribal lands in the state is contained in ch. 285, F.S.[20] This chapter:

- Describes the respective reservations of the tribes;[21]
- Provides that members may hunt, fish, and frog for personal consumption on tribal lands without paying licensing or permitting fees;[22]
- Establishes state criminal and civil jurisdiction on reservations;[23]
- Creates special improvement districts for reservation lands;[24] and
- Provides for the gaming compact between the state and the Seminole Tribe of Florida.[25]

Additionally, Florida law previously provided for a Creek Indian Council to assist Creek Indians and their descendants in accessing state, local, and federal programs that could provide for economic, cultural, and social advancement.[26] This provision was repealed in 2001.[27]

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[10] National Congress of American Indians (NCAI), *Federal Recognition*, https://www.ncai.org/policy-issues/tribal-governance/federal-recognition (last visited Jan. 12, 2024).
[11] Bureau of Indian Affairs, *Petitions Resolved*, https://www.bia.gov/as-ia/ofa/petitions-resolved (last visited Jan. 12, 2024).
[12] Natl. Conf. of State Legislatures, *State Recognition of American Indian Tribes*, https://www.ncsl.org/quad-caucus/state-recognition-of-american-indian-tribes (last visited Jan. 12, 2024)
[13] N.C. Gen. Stat. s. 143B-406(a)(10).
[14] Vt. Stat. Ann. tit. 1, s. 852(c)(5).
[15] Ga. Code Ann. S. 44-12-300.
[16] *See* Natl. Conf. of State Legislatures, *State Recognition of American Indian Tribes*, https://www.ncsl.org/quad-caucus/state-recognition-of-american-indian-tribes (last visited Jan. 12, 2024) ("Departments of Housing and Urban Development, Labor, Education, and Health and Human Services have statutory and regulatory authority to provide funding for state-recognized tribes). *See also* U.S. Dept. of Health and Human Services, *Tribal Programs*, https://www.acf.hhs.gov/tribal-programs (last visited Jan. 12, 2024) (state-recognized tribes eligible for Administration for Native Americans programs).
[17] Dept. of the Interior Indian Arts and Crafts Board, *The Indian Arts and Crafts Act of 1990*, https://www.doi.gov/iacb/act (last visited Jan. 12, 2024).
[18] American Indian College Fund, *Scholarships*, https://collegefund.org/students/scholarships/ (last visited Jan. 12, 2024).
[19] Fla. Dept. of Transportation, Office of Environmental Management Consulting Tribes, https://www.fdot.gov/environment/na-website-files/consulting-tribes.shtm (last visited Jan. 12, 2024)
[20] Ch. 285, F.S. *But see* s. 210.1801, F.S. (exempting the sale of cigarettes to tribe members on reservation land for personal use from the cigarette excise tax).
[21] S. 285.061, F.S.
[22] Ss. 285.09, 285.10, and 285.15, FS.
[23] S. 285.16, F.S.
[24] Ss. 285.17-285.18, F.S.
[25] Ch. 285, Part II, *passim*.
[26] Ch. 79-421, s. 1, Laws of Fla.
[27] Ch. 2001-89, Laws of Fla.

Division of Historical Resources

The Division of Historical Resources is granted many powers and responsibilities necessary to carry out the state policy regarding historical resources, including, but not limited to:

- Directing and conducting a comprehensive statewide survey of historic resources in cooperation with federal and state agencies, local governments, and private organizations;
- Developing a comprehensive statewide historic preservation plan;
- Ensuring that historic resources are taken into consideration at all levels of planning and development;
- Advising and assisting federal and state agencies and local governments in carrying out their historic preservation responsibilities and programs;
- Providing public information, education, and technical assistance relating to historic preservation programs;
- Carrying out on behalf of the state the programs of the National Historic Preservation Act of 1966, to establish, maintain, and administer a state historic preservation program meeting the requirements of an approved program and fulfilling the responsibilities of state historic preservation programs as provided in s. 101(b) of that act;
- Establishing professional standards for the preservation, exclusive of acquisition, of historic resources in state ownership or control; and
- Advising and assisting federal and state agencies, local governments, and organizations and individuals in the recognition, protection, and preservation of the archaeological sites and artifacts of this state.[28]

The division also has jurisdiction over unmarked human burial in order to initiate efforts for the proper protection of the burial and the human skeletal remains and associated burial artifacts.[29] The State Archaeologist is responsible for determining whether an unmarked human burial is historically, archaeologically, or scientifically significant.[30] The State Archaeologist must make reasonable efforts to identify and locate persons who can establish direct kinship, tribal, community, or ethnic relationships with the individual or individuals discovered.[31] If the State Archaeologist is unable to establish a kinship, tribal, community, or ethnic relationship with the unmarked human burial, he or she must determine the proper disposition of the burial and consult with persons with relevant experience, which include:

- A human skeletal analyst.
- Two Native American members of current state tribes recommended by the Governor's Council on Indian Affairs, Inc., if the remains are those of a Native American;
- Two representatives of related community or ethnic groups if the remains are not those of a Native American; and
- An individual who has special knowledge or experience regarding the particular type of the unmarked human burial.[32]

Effect of Proposed Changes

The bill provides for state recognition for the Santa Rosa Band of the Lower Muscogee.

The bill clarifies that state recognition of an Indian tribe or band does not create any basis or authority for a tribe to engage in prohibited gaming activity or to claim any interest in real estate or land that is not already provided elsewhere in law. The bill also provides that state recognition does not grant any authority or ability to consult on state undertakings by the Division of Historical Resources or activities carried out by the State Archaeologist.

B. SECTION DIRECTORY:

[28] *See* s. 267.031(5), F.S.
[29] S. 872.05(5), F.S.
[30] S. 872.05(6)(a), F.S.
[31] S. 872.05(6)(b), F.S.
[32] S. 872.05(6)(c), F.S.

Section 1: Creates s. 285.195, F.S., relating to state recognition of Indian tribes and bands.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None

2. Expenditures:
   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
None.

D. FISCAL COMMENTS:
None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:
   None.

B. RULE-MAKING AUTHORITY:
None.

C. DRAFTING ISSUES OR OTHER COMMENTS:
None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2024, the Local Administration, Federal Affairs, & Special Districts Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removed the Muscogee Nation of Florida and the Lower Chattahoochee Band of Yuchi Indians from the list of state recognized tribes that would be created by the bill. The bill clarifies that state recognition of an

Indian tribe or band does not create authority or ability to consult on state undertakings by the Division of Historical Resources or activities carried out by the State Archaeologist.

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.

A bill to be entitled

An act relating to state recognition of Indian tribes and bands; creating s. 285.195, F.S.; providing for state recognition of specified Indian tribes and bands; providing construction; providing an effective date.

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

Section 1. Section 285.195, Florida Statutes, is created to read:

285.195 State recognition of Indian tribes and bands.—This state recognizes the Santa Rosa Band of the Lower Muscogee. State recognition of an Indian tribe or band under this section may not be construed to create any basis or authority not otherwise provided by law for an Indian tribe or band to establish or promote any form of otherwise prohibited gaming activity. State cultural recognition of an Indian tribe or band under this section does not provide those recognized with any authority or ability to consult on issues related to state undertakings including those outlined in s. 267.031 or carried out under rule 1A-46, F.A.C., and does not provide any authority or ability to consult on activities carried out by the State Archaeologist as specified in s. 872.05.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 943 Pub. Rec./My Safe Florida Home Program
SPONSOR(S): Ethics, Elections & Open Government Subcommittee, LaMarca
TIED BILLS: **IDEN./SIM. BILLS:** SB 988

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N	Fortenberry	Lloyd
2) Ethics, Elections & Open Government Subcommittee	14 Y, 0 N, As CS	Rando	Toliver
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

In 2006, the Legislature created the My Safe Florida Home Program (MSFH Program) within the Department of Financial Services (DFS), with the intent that the MSFH Program provide licensed inspectors to perform inspections for owners of site-built, single-family, residential properties and grants to eligible applicants, subject to the availability of funds.

Under the MSFH Program, licensed inspectors must provide home inspections of site-built, single-family, residential properties for which a homestead exemption has been granted, to determine what mitigation measures are needed, what insurance premium discounts may be available, and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. The inspections provided to homeowners under the MSFH Program must include, at a minimum, certain information. Further, the inspection reports provide detailed information to the MSFH Program regarding the applicant's home.

Similarly, financial grants under the MSFH Program are intended to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage. For a homeowner to be eligible for a grant, the following criteria must be met:

- The homeowner must have been granted a homestead exemption on the home;
- The home must be a dwelling with an insured value of $700,000 or less;
- The home must undergo an acceptable hurricane mitigation inspection under the MSFH Program;
- The building permit application for initial construction of the home must have been made before January 1, 2008; and
- The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.

The bill creates a public record exemption for information contained in applications and inspection reports submitted under the MSFH Program. The exemption applies retroactively to such reports submitted before, on, or after the effective date of the bill.

The bill provides for repeal of the exemption on October 2, 2029, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill may have an indeterminate negative fiscal impact on state government expenditures, no fiscal impact on state government revenues, no fiscal impact on local government revenues or expenditures, and an indeterminate positive fiscal impact on the private sector.

The bill provides an effective date of upon becoming a law.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

My Safe Florida Home Program

In 2006, the Legislature created the My Safe Florida Home Program (MSFH Program) within the Department of Financial Services (DFS), with the intent that the MSFH Program provide licensed inspectors to perform inspections for owners of site-built, single-family, residential properties and grants to eligible applicants, subject to the availability of funds.[1] Under the MSFH Program, DFS must develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that may include hurricane mitigation inspections,[2] mitigation grants,[3] and education, consumer awareness, and outreach.[4]

HURRICANE MITIGATION INSPECTIONS

Under the MSFH Program, licensed inspectors must provide home inspections of site-built, single-family, residential properties for which a homestead exemption has been granted, to determine:

- What mitigation measures are needed,
- What insurance premium discounts may be available, and
- What improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage.[5]

DFS must also contract with wind certification entities to provide hurricane mitigation inspections. To qualify for selection by DFS as a wind certification entity to provide hurricane mitigation inspections, the entity must meet certain requirements.[6] The inspections provided to homeowners by such entities, at a minimum, must include:

- A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Information regarding estimated premium discounts, which are correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.[7]

The inspection report provides information to the MSFH Program regarding the applicant's home, such as detailed descriptions of the premises, pictures of the interior and exterior of the structure, including private areas, entry points, and possible vulnerabilities to its security.

An application for an inspection must contain a signed or electronically verified statement, made under penalty of perjury, that the applicant has submitted only a single application for that home.[8]

MITIGATION GRANTS

Financial grants under the MSFH Program are intended to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage.[9]

[1] S. 215.5586, F.S.
[2] *See* s. 215.5586(1), F.S.
[3] *See* s. 215.5586(2), F.S.
[4] *See* s. 215.5586(3), F.S.
[5] S. 215.5586(2)(a), F.S.
[6] *See* s. 215.5586(2)(c), F.S.
[7] S. 215.5586(1)(b), F.S.
[8] S. 215.5586(1)(d), F.S.

For a homeowner to be eligible for a grant, the following criteria must be met:

- The homeowner must have been granted a homestead exemption on the home under ch. 196, F.S.;[10]
- The home must be a dwelling with an insured value of $700,000 or less;[11]
- The home must undergo an acceptable hurricane mitigation inspection under the MSFH Program;
- The building permit application for initial construction of the home must have been made before January 1, 2008; and
- The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.[12]

An application for a grant must contain a signed or electronically verified statement, made under penalty of perjury, that the applicant has submitted only a single application.[13] The application must include attachments that demonstrate the applicant meets the requirements described above.[14]

Under the MSFH Program, DFS must develop a process that ensures the most efficient means to collect and verify grant applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the internet or other electronic means to collect information and determine eligibility.[15]

Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.[16] The Legislature, however, may provide by general law an exemption[17] from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.[18]

Current law also addresses the public policy regarding access to government records by guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.[19] Furthermore, the Open Government Sunset Review (OGSR) Act[20] provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."[21] An identifiable public purpose is served if the exemption meets one of the following purposes:

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[9] S. 215.5586(2), F.S.
[10] Chapter 196, F.S., relates to, among other things, homestead exemptions.
[11] Homeowners who are low-income persons, as defined s. 420.0004(11), F.S., are exempt from this requirement. The term "low-income persons" is defined by s. 420.0004(11), F.S., as one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80% of the median annual adjusted gross income for households within the state, or 80% of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.
[12] S. 215.5586(2)(a), F.S.
[13] S. 215.5586(2), F.S.
[14] *Id.*
[15] S. 215.5586(2)(i), F.S.
[16] Art. I, s. 24(a), FLA. CONST.
[17] A "public record exemption" means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. *See* s. 119.011(8), F.S.
[18] Art. I, s. 24(c), FLA. CONST.
[19] *See* s. 119.01, F.S.
[20] S. 119.15, F.S.
[21] S. 119.15(6)(b), F.S.

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.[22]

Pursuant to the OGSR Act, a new public record exemption, or the substantial amendment of an existing public record exemption, is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.[23]

Effect of the Bill

The bill creates a public record exemption for information contained in applications and inspection reports submitted under the MSFH Program. The exemption applies retroactively to such reports submitted before, on, or after the effective date of the bill.. The bill also provides a statement of public necessity as required by the Florida Constitution.

The exemption is subject to the Open Government Sunset Review Act, and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1. Creates s. 215.55861, F.S., relating to My Safe Florida Home Program public records exemption.

Section 2. Provides a statement of public necessity.

Section 3. Provides that the bill will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See "Fiscal Comments" section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[22] *Id.*
[23] S. 119.15(3), F.S.

The proposed public record exemption may encourage the submission of applications and inspection reports under the MSFH Program, in which case the bill would have a positive impact on communities affected by natural disasters. However, the impact to the private sector is indeterminate.

D. FISCAL COMMENTS:

The bill may have a minimal negative fiscal impact on state agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would likely be absorbed by existing resources, as they are part of the day-to-day responsibilities of such agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement
Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement. The public necessity statement states that the Legislature finds, in part, that the exemption is necessary because public availability of such information can be used for identity theft, consumer scams, unwanted solicitations, or other invasive contact, and put applicants of the My Safe Florida Home Program at increased risk for home invasions and reduced privacy in their homes.

Breadth of Exemption
Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for certain information received by DFS pursuant to an application and inspection reports submitted to the MSFH Program. The purpose of the exemption is to protect sensitive personal information, such as names, email addresses, mailing addresses, and telephone numbers, that DFS receives in conjunction with its duties related to the review of such applications and inspection reports. As such, the bill appears to be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 24, 2024, the Ethics, Elections & Open Government Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment conformed HB 943 to its Senate companion, SB 988. Prior to the adoption of the amendment, the two bills were substantially identical except, SB 988 contained more specific language regarding the bill's retroactive application.

This analysis is drafted to the committee substitute as approved by the Ethics, Elections & Open Government Subcommittee.

A bill to be entitled

An act relating to public records; creating s. 215.5587, F.S.; providing an exemption from public records requirements for applications and home inspection reports submitted by applicants to the Department of Financial Services as a part of the My Safe Florida Home Program; providing retroactive applicability; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 215.5587, Florida Statutes, is created to read:

215.5587 My Safe Florida Home Program; public records exemption.—

(1) Applications and home inspection reports submitted by applicants as part of the My Safe Florida Home Program under s. 215.5586 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) This exemption applies retroactively to applications and home inspection reports submitted before, on, or after the effective date of this exemption.

(3) This section is subject to the Open Government Sunset

Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that My Safe Florida Home Program applications and home inspection reports be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. More than 99 percent of all home inspections and grant applications are completed electronically or by phone. Under current law, My Safe Florida Home Program applications and home inspection reports are public records and can be obtained by anyone for any purpose. These documents contain personal information, including, but not limited to, names, e-mail addresses, mailing addresses, and telephone numbers. This information is unique to each individual and, when combined with other personal identifying information, can be used for identity theft, consumer scams, unwanted solicitations, or other invasive contact. Additionally, the My Safe Florida Home Program applications and home inspection reports contain detailed descriptions and pictures of the inside and outside of applicants' homes, including private areas, points of entry, and other vulnerabilities. The public availability of these records puts participants in the My Safe Florida Home Program at increased risk of home invasions and reduces privacy in their homes. Such risk may be significantly limited by making My Safe

Florida Home Program applications and home inspection reports exempt from public record requirements.

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1569 Exemption from Regulation for Bona Fide Nonprofit Organizations
SPONSOR(S): Insurance & Banking Subcommittee, Grant
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N, As CS	Fletcher	Lloyd
2) Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

In response to the 2008 financial crisis, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). The SAFE Act and the regulations promulgated thereunder set forth the minimum standards for the state licensing and registration of residential mortgage loan originators (MLOs). The SAFE Act also requires that federal and state licensing and registration of residential MLOs be accomplished through the same online registration system.

Florida adopted its registration requirements for MLOs in 2009. Florida has also adopted similar requirements for the licensure and registration of mortgage brokers and mortgage lenders, exceeding the federal requirements.

States are permitted to provide an exemption from the SAFE Act registration requirements to a bona fide nonprofit organization and its employees if the state determines that the organization meets certain criteria. Florida law does not currently provide an exemption from regulation for bona fide nonprofit organizations, but does provide exemptions for certain other entities consistent with federal law.

The bill:

- Creates an exemption from loan originator and mortgage broker regulation for bona fide nonprofit organizations and their employees, provided certain conditions are met; this exemption is parallel to the exemption provided in the SAFE Act for bona fide nonprofit organizations;
- Provides that the Office of Financial Regulation (OFR) must determine whether an organization is a bona fide nonprofit organization based on specified factors;
- Requires OFR to periodically examine the books and activities of an organization and revoke an organization's exemption if it does not continue to meet the requirements; and
- Provides the Financial Services Commission with rule-making authority to prescribe criteria and processes required for OFR to make determinations regarding bona fide nonprofit organizations.

The bill has no fiscal impact on local government. It has an indeterminable fiscal impact on state government revenues but no fiscal impact on state government expenses. The bill has an indeterminable positive fiscal 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

The S.A.F.E Act

The U.S. financial crisis of 2008 began as a housing crisis that first seemed to be localized in certain states and in the subprime mortgage market.[1] Eventually, however, the seemingly localized housing collapse spread to the entire U.S. housing market, as house prices declined nationwide.[2]

Because the financial system was integral to the housing boom, the system was highly exposed to the housing market, whose downturn would prove to be so severe that it threatened to bring down the entire financial system with it in the absence of significant government intervention.[3] The 2008 financial crisis, known as the "Great Recession," became the most severe financial crisis since the Great Depression, and its effects spread throughout the global economy.[4]

In response to the housing crisis, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).[5] The SAFE Act and the regulations promulgated thereunder:

- Set forth the minimum standards for the state licensing and registration of residential mortgage loan originators (MLOs);[6]
- Prohibit individuals from engaging in the business of a residential MLO without first obtaining and maintaining annually certain licensure and registration requirements;[7] and
- Require that federal and state licensing and registration of residential MLOs be accomplished through the same online registration system, known as the Nationwide Mortgage Licensing System and Registry (NMLSR).[8]

The objectives of the NMLSR under the SAFE Act include aggregating and improving the flow of information to and between regulators; providing increased accountability and tracking of MLOs; enhancing consumer protections by supporting anti-fraud measures; and providing consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, MLOs.[9]

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[1] Cynthia Angell and Krishna Patel, *Crisis and Response: An FDIC History, 2008-2013*, Federal Deposit Insurance Corporation (last updated June 12, 2023), at xiv. Available at https://www.fdic.gov/bank/historical/crisis/chap1.pdf (last visited Jan. 20, 2024).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *See* 12 U.S.C. Sec. 5101–5116, Title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 122 Stat. 2654, 12 U.S.C. 5101 et seq.) as amended by Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. No. 111–203, 124 Stat. 1376).
[6] A mortgage loan originator is an individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain. *See* 12 C.F.R. Sec. 1007.102.
[7] For an individual who is an employee of a covered financial institution, the individual must obtain and annually maintain registration as a registered mortgage loan originator and a unique identifier (federal registration). For all other individuals, they must obtain and annually maintain a state license and registration as a state-licensed mortgage loan originator, and a unique identifier (state licensing/registration). *See* Consumer Financial Protection Bureau, *Secure and Fair Enforcement for Mortgage Licensing Act: Manual V.2*, CFPB Laws and Regulation (Oct. 1, 2012), https://files.consumerfinance.gov/f/documents/102012_cfpb_secure-fair-enforcement-for-mortgage-licensing-safe-act_procedures.pdf (last visited Jan. 20, 2024).
[8] Consumer Financial Protection Bureau, *Secure and Fair Enforcement for Mortgage Licensing Act: Manual V.2*, CFPB Laws and Regulation (Oct. 1, 2012), https://files.consumerfinance.gov/f/documents/102012_cfpb_secure-fair-enforcement-for-mortgage-licensing-safe-act_procedures.pdf (last visited Jan. 20, 2024).
[9] 12 U.S.C. Sec. 5101.

State Regulation of Loan Originators, Mortgage Brokers, and Mortgage Lenders

Soon after the enactment of the SAFE Act, states began adopting licensure and registration requirements for residential MLOs pursuant to the requirements of the SAFE Act.[10] Florida adopted its requirements for MLOs[11] in 2009 with the enactment of s. 494.00312, F.S.[12] In addition to MLOs, however, Florida also adopted similar requirements for the licensure and registration of mortgage brokers[13] and mortgage lenders,[14] exceeding the federal requirements.

The Office of Financial Regulation (OFR) regulates state-chartered banks, credit unions, other financial institutions, finance companies, and the securities industry.[15] The OFR's Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including individuals and businesses engaged in the mortgage business.[16] Specifically, under ch. 494, F.S., OFR licenses and regulates MLOs, mortgage brokers, and mortgage lenders.

An individual or entity applying for licensure under ch. 494, F.S., is required to meet certain conditions and pay a nonrefundable application fee in the following amounts:

- For a mortgage broker license, an applicant must submit a nonrefundable application fee of $425, and an additional $100 nonrefundable fee if the applicant meets certain other criteria;[17]
- For a loan originator license, an applicant must submit a nonrefundable application fee of $195, and an additional $20 nonrefundable fee if the applicant meets certain other criteria;[18] and
- For a mortgage lender license, an applicant must submit a nonrefundable application fee of $500, and an additional $100 nonrefundable fee if the applicant meets certain other criteria.[19]

[10] National Reverse Mortgage Lenders Association, *States Move Aggressively to Implement SAFE Act and Improve Mortgage Supervision*, https://www.nrmlaonline.org/app_assets/public/ef8c2414-00da-4cff-8c69-e45d2ca45a82/SAFE%20Act%20Update.pdf (last visited Jan. 20, 2024).

[11] Florida statute defines "loan originator" as an individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. The term includes an individual who is required to be licensed as a loan originator under the SAFE Act. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower. *See* s. 494.001(18), F.S.

[12] *See* ch. 2009-241, L.O.F.

[13] Florida statute defines "mortgage broker" as a person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker. *See* s. 494.001(23), F.S.

[14] Florida statute defines "mortgage lender" as a person making a mortgage loan or servicing a mortgage loan for others, or, for compensation or gain, directly or indirectly, selling or offering to sell a mortgage loan to a noninstitutional investor. *See* s. 494.001(24), F.S.

[15] S. 20.121(3)(a)2. and (d), F.S. OFR is housed within the Financial Services Commission (Commission). The Commission, comprised of the Governor and Cabinet, appoints OFR's Commissioner.

[16] Office of Financial Regulation, *Division of Consumer Finance*, https://flofr.gov/sitePages/DivisionOfConsumerFinance.htm#:~:text=The%20Division%20of%20Consumer%20Finance,determine%20compliance%20with%20Florida%20law. (last visited Jan. 20, 2024).

[17] S. 494.00321(1)(c), F.S.

[18] S. 494.00312(2)(e), F.S.

[19] S. 494.00611(2)(c), F.S.

Exemption from Regulation: Bona Fide Nonprofit Organizations

Notwithstanding the policies of the SAFE Act, federal regulations provide that a state is not required to impose registration requirements on certain individuals.[20] Among those exemptions, states are permitted to provide an exemption from registration requirements under the SAFE Act to a bona fide nonprofit organization and its employees if, under criteria and pursuant to processes established by the state, the state supervisory authority determines that the organization:

- Has the status of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;
- Promotes affordable housing or provides homeownership education, or similar services;
- Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;
- Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;
- Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;
- Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and
- Meets other standards that the state determines are appropriate.[21]

A state must periodically examine the books and activities of an organization it classifies as a bona fide nonprofit organization and revoke its status as a bona fide nonprofit organization if it does not continue to meet the criteria described above.[22] Moreover, for residential mortgage loans to have terms that are favorable to the borrower, a state must determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.[23]

Florida law does not currently provide an exemption from regulation for bona fide nonprofit organizations, but does provide exemptions for certain other individuals and entities consistent with federal law, provided certain criteria are met.[24]

Effect of the Bill

The bill creates an exemption under Florida law parallel to the exemption provided in the SAFE Act for bona fide nonprofit organizations. For an organization to be considered a bona fide nonprofit organization and qualify for the exemption, the bill requires OFR to determine, pursuant to criteria and processes established by rule, that the organization satisfies all of the following criteria:

- Has the status of a tax-exempt organization under s. 501(c)(3) of the Internal Revenue Code of 1986;
- Promotes affordable housing or provides homeownership education or similar services;
- Conducts its activities in a manner that serves public or charitable purposes rather than commercial purposes;
- Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;
- Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients; and
- Provides or identifies for borrowers residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

For residential mortgage loans to be considered as having terms that are favorable to the borrower, the

[20] *See* 12 C.F.R. Sec. 1008.103(e) for a full list of exempt individuals.
[21] 12 U.S.C. Sec. 1008.103(e)(7)(ii).
[22] 12 U.S.C. Sec. 1008.103(e)(7)(iii).
[23] 12 U.S.C. Sec. 1008.103(e)(7)(iv).
[24] *See* s. 494.00115, F.S., for a full list of individuals and entities exempt from regulation under ch. 494, F.S.

bill requires OFR to determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.

Additionally, the bill:

- Requires OFR to periodically examine the books and activities of an organization and revoke an organization's exemption if it does not continue to meet the requirements; and
- Provides the Financial Services Commission (Commission) with rule-making authority to prescribe criteria and processes required for OFR to make determinations regarding bona fide nonprofit organizations.

B. SECTION DIRECTORY:

Section 1. Amends s. 494.00115, F.S., relating to exemptions.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill has an indeterminable negative fiscal impact on OFR to the extent that entities and employees of entities that qualify for the proposed exemption will no longer pay application fees associated with licensure requirements under ch. 494, F.S. The total number of nonprofit organizations that are eligible for the exemption, however, is unclear.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Entities and employees of entities that meet the criteria for the proposed exemption will likely benefit financially by not having to pay costs associated with licensure requirements under ch. 494, F.S. The total number of nonprofit organizations that are eligible for the exemption is unclear.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Commission with rule-making authority to prescribe criteria and processes required for OFR to make determinations regarding bona fide nonprofit organizations.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment:

- Conformed the provisions of the bill to the exemption provided in the SAFE Act for bona fide nonprofit organizations and their employees from loan originator and mortgage broker regulation;
- Clarified the conditions under which an organization and an employee may be exempt from the SAFE Act regulations adopted by Florida law;
- Provided that OFR must determine whether an organization is a bona fide nonprofit organization based on specified factors;
- Required OFR to periodically examine the books and activities of an organization and revoke an organization's exemption if it does not continue to meet the requirements; and
- Provided the Commission with rule-making authority to prescribe criteria and processes required for OFR to make determinations regarding bona fide nonprofit organizations.

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

A bill to be entitled

An act relating to an exemption from regulation for bona fide nonprofit organizations; amending s. 494.0011, F.S.; authorizing the Financial Services Commission to adopt rules prescribing criteria and processes for determining whether an organization is a bona fide nonprofit organization for a specified purpose; amending s. 494.00115, F.S.; providing exemptions from certain regulation for bona fide nonprofit organizations and certain employees of a bona fide nonprofit organization that meet specified criteria; requiring the Office of Financial Regulation to make a specified determination; requiring the office to make such determination based on terms consistent with loan origination in a public or charitable context; requiring the office to periodically examine the books and activities of an organization and to revoke its status as a bona fide nonprofit organization under certain circumstances; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 494.0011, Florida Statutes, is amended to read:

494.0011 Powers and duties of the commission and office.—

(2) The commission may adopt rules to administer parts I, II, and III of this chapter, including rules:

(b) Relating to compliance with the S.A.F.E. Mortgage Licensing Act of 2008, including rules to:

1. Require loan originators, mortgage brokers, mortgage lenders, and branch offices to register through the registry.

2. Require the use of uniform forms that have been approved by the registry, and any subsequent amendments to such forms if the forms are substantially in compliance with the provisions of this chapter. Uniform forms that the commission may adopt include, but are not limited to:

a. Uniform Mortgage Lender/Mortgage Broker Form, MU1.

b. Uniform Mortgage Biographical Statement & Consent Form, MU2.

c. Uniform Mortgage Branch Office Form, MU3.

d. Uniform Individual Mortgage License/Registration & Consent Form, MU4.

3. Require the filing of forms, documents, and fees in accordance with the requirements of the registry.

4. Prescribe requirements for amending or surrendering a license or other activities as the commission deems necessary for the office's participation in the registry.

5. Prescribe procedures that allow a licensee to challenge information contained in the registry.

6. Prescribe procedures for reporting violations of this chapter and disciplinary actions on licensees to the registry.

7. Prescribe criteria and processes for determining if an organization is and remains a bona fide nonprofit organization for the purpose of determining whether the organization and its employees who are acting as loan originators are exempt from regulation under this chapter pursuant to s. 494.00115.

Section 2. Subsections (3), (4), and (5) of section 494.00115, Florida Statutes, are renumbered as subsections (4), (5), and (6), respectively, and a new subsection (3) is added to that section, to read:

494.00115 Exemptions.—

(3)(a) As provided in this subsection, a bona fide nonprofit organization and an employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties for the bona fide nonprofit organization and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower, are exempt from regulation under this chapter.

1. For an organization to be considered a bona fide nonprofit organization under this subsection, the office must determine, pursuant to criteria and processes established by rule, that the organization satisfies all of the following criteria:

a. Has the status of a tax-exempt organization under s.

501(c)(3) of the Internal Revenue Code of 1986.

b. Promotes affordable housing or provides homeownership education or similar services.

c. Conducts its activities in a manner that serves public or charitable purposes rather than commercial purposes.

d. Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients.

e. Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients.

f. Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

2. For residential mortgage loans to be deemed under this subsection to have terms that are favorable to the borrower, the office must determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.

(b) The office must periodically examine the books and activities of an organization that it determines is a bona fide nonprofit organization and revoke its status as a bona fide nonprofit organization if it does not continue to meet the criteria specified in paragraph (a).

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