Commerce Committee

Thursday, February 8, 2024
8:00 AM - 10:00 AM
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

Thursday, February 8, 2024
8:00 am – 10:00 am
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 95 Yacht and Ship Brokers' Act by Regulatory Reform & Economic Development Subcommittee, LaMarca

HB 367 Household Moving Services by Tant

HB 377 License or Permit to Operate a Vehicle for Hire by Borrero

HB 471 Valuation of Timeshare Units by Fine

CS/HB 535 Low-voltage Alarm System Projects by Local Administration, Federal Affairs & Special Districts Subcommittee, Snyder

HB 577 Spaceport Territory by Griffitts

CS/HB 583 Individual Wine Containers by Regulatory Reform & Economic Development Subcommittee, LaMarca

CS/HB 585 Access to Financial Institution Customer Accounts by Insurance & Banking Subcommittee, Rommel

HB 587 Pub. Rec./Access to Financial Institution Customer Accounts by Rommel

CS/HB 593 Misdescription of Beneficiaries and Banks by Insurance & Banking Subcommittee, Beltran

CS/HB 665 Expedited Approval of Residential Building Permits by Regulatory Reform & Economic Development Subcommittee, McClain

CS/HB 709 In-store Servicing of Alcoholic Beverages by Regulatory Reform & Economic Development Subcommittee, Rizo

HB 791 Development Permits and Orders by Overdorf, Esposito

CS/HB 813 Certified Public Accountants by Regulatory Reform & Economic Development Subcommittee, Caruso

CS/HB 1031 Debt Relief Services by Insurance & Banking Subcommittee, Buchanan

HB 1147 Broadband by Tomkow

CS/HB 1221 Land Use and Development Regulations by Local Administration, Federal Affairs & Special Districts Subcommittee, McClain

HB 1231 Limited Liability Companies by Jacques

HB 1559 Professional Licensure by McClure

V. Consideration of the following proposed committee substitute(s):

PCS for HB 429 -- Real Property

PCS for HB 1305 -- Residential Tenancies

VI. Closing Remarks

VII. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 0 N, As CS	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	10 Y, 0 N	Helpling	Topp
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

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

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

A license is not required for:

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

The bill expands the definition of “yacht” by:

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

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

The bill amends the requirements to become a broker by:

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Yacht and Ship Brokers

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

The division provides consumer protection for Florida residents through education, complaint resolution, mediation and arbitration, and developer disclosure.[2] The division has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations.[3]

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

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

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

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

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

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

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[1] S. 20.165, F.S.
[2] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/ (last visited Nov. 12, 2022).
[3] *Id.*
[4] S. 326.002(4), F.S.
[5] S. 326.002(1), F.S.
[6] S. 326.004(8), F.S.
[7] S. 326.002(3), F.S.
[8] Ch. 326, F.S.
[9] S. 326.004(1), F.S.
[10] S. 326.004(6), F.S.

A license is not required for:[11]

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

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

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

Effect of the Bill

The bill expands the definition of "yacht" by:

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

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

The bill amends the requirements to become a broker by:

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

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

B. SECTION DIRECTORY:

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The division will need to adopt rules to approve education credits.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

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[15] Florida Department of Business and Professional Regulation, Agency Analysis of 2023 Senate Bill 92, p. 4 (November 2, 2023).

[16] Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for HB 83* at 3 (Feb. 17, 2023).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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

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

1 A bill to be entitled
2 An act relating to the Yacht and Ship Brokers' Act;
3 amending s. 326.002, F.S.; revising the definition of
4 the term "yacht"; amending s. 326.004, F.S.; exempting
5 a person who conducts business as a broker or
6 salesperson in another state from licensure in this
7 state for specified transactions; requiring, rather
8 than authorizing, the Division of Florida
9 Condominiums, Timeshares, and Mobile Homes of the
10 Department of Business and Professional Regulation to
11 deny licenses for applicants who fail to meet certain
12 requirements; revising requirements for licensure as a
13 broker; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Subsection (4) of section 326.002, Florida
18 Statutes, is amended to read:
19 326.002 Definitions.—As used in ss. 326.001-326.006, the
20 term:
21 (4) "Yacht" means any vessel that ~~which~~ is propelled by
22 sail or machinery in the water, ~~which~~ exceeds 32 feet in length,
23 and is:
24 (a) Manufactured or operated primarily for pleasure; or
25 (b) Leased, rented, or chartered to someone other than the

26 owner for the other person's pleasure ~~which weighs less than 300~~
27 ~~gross tons~~.
28 Section 2. Subsections (6) and (8) of section 326.004,
29 Florida Statutes, are amended, and paragraph (f) is added to
30 subsection (3) of that section, to read:
31 326.004 Licensing.—
32 (3) A license is not required for:
33 (f) A person who conducts business as a broker or
34 salesperson in another state as his or her primary profession
35 and engages in the purchase or sale of a yacht under this act if
36 the transaction is executed in its entirety with a broker or
37 salesperson licensed in this state.
38 (6) The division must ~~may~~ deny a license to any applicant
39 who does not meet all of the following requirements:
40 (a) Furnish proof satisfactory to the division that he or
41 she is of good moral character.
42 (b) Certify that he or she has never been convicted of a
43 felony.
44 (c) Post the bond required by the Yacht and Ship Brokers'
45 Act.
46 (d) Demonstrate that he or she is a resident of this state
47 or that he or she conducts business in this state.
48 (e) Furnish a full set of fingerprints taken within the 6
49 months immediately preceding the submission of the application.
50 (f) Have a current license and has operated as a broker or

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

51 salesperson without a license.
52 (8) A person may not be licensed as a broker unless he or
53 she has been licensed as a salesperson and can demonstrate that
54 he or she has been directly involved in at least four
55 transactions that resulted in the sale of a yacht or can certify
56 that he or she has obtained at least 20 education credits
57 approved by the division ~~for at least 2 consecutive years, and~~
58 ~~may not be licensed as a broker unless he or she has been~~
59 ~~licensed as a salesperson for at least 2 consecutive years~~.
60 Section 3. This act shall take effect October 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 367 Household Moving Services
SPONSOR(S): Tant
TIED BILLS: **IDEN./SIM. BILLS:** SB 304

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N	Larkin	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee	14 Y, 0 N	Byrd	Pigott
3) Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

In order for an intrastate mover to operate in Florida, the mover must register with the Department of Agriculture and Consumer Services (DACS) and comply with the provisions of ch. 507, F.S., which applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state. Movers and brokers engaged in the interstate transportation of household goods are regulated by the Federal Motor Carrier Safety Administration within the United States Department of Transportation.

The bill:

- Revises requirements related to estimates and contracts for moving services prepared by a registered mover.
- Provides certain requirements for moving broker advertisements.
- Requires each moving broker to provide the DACS a list of registered movers that the broker is associated with in some capacity.
- Requires DACS to publish and maintain a list of all moving brokers and registered movers each moving broker is contracted with on its website.
- Revises alternative coverages for movers and moving brokers.
- Provides that DACS must immediately suspend the registration of a moving broker or registered mover that does not maintain a performance bond, certificate of deposit, or liability insurance.
- Requires the shipper, mover, and moving broker, if applicable, to sign or electronically acknowledge, and date an estimate or contract, and provide other detailed information.
- Provides that a broker may only arrange a move with a registered mover and cannot give estimates or provide a consumer with a contract for services; only a registered mover may provide those documents.
- Amends s. 507.11(1), F.S., relating to criminal penalties, for movers who refuse to relinquish a shipper’s household goods under certain circumstances.

The bill has no fiscal impact on local governments but may have an indeterminate fiscal impact on the state.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Moving Scams

The Better Business Bureau (BBB) has seen a marked increase in complaints and negative reviews about movers in recent years.[1] Moving scams were projected to have increased 35% year over year in 2023, according to analysis by Hire-A-Helper, which researches and analyzes Better Business Bureau complaints filed about movers. Scams are being blamed for bilking consumers out of an expected $1.59 million in 2023, a 42% jump over 2022. The average victim says they've lost $836 in a moving scam this year, the survey shows.

The most common scams are:

- No-shows: Incidents of movers not showing up for a scheduled move accounted for 26% of the scams reported. This is when a moving company asks the customer to make a deposit or to pay an upfront fee but then fails to show up for the job. Often, the so-called moving company is later unreachable, too.
- Mover fraud: This is when fake moving companies pose as real businesses and perform the work of moving people's possessions—but then demand a ransom for consumers to get their belongings back. This is also known as "hostage load," as these movers extort customers for additional charges. These comprised 24% of BBB complaints in 2023. The growth in these reports has prompted the Federal Motor Carrier Safety Administration to launch a crackdown this spring.
- Change-of-address scam: This is when scammers trick people who have recently moved into paying a fee (usually around $100 or more) in order to have their address changed to their new residence. Victims are directed to a website disguised to look like the U.S. Postal Service. (The USPS offers a change-of-address service for free in person or at a modest fee of $1.05 online.) Change of address scams accounted for 31% of complaints—the highest percentage—but that is down from 37% last year, the report notes.[2]

The report warns of other scams, like movers who fail to adhere to the terms of the contract, overcharge or bribe customers with discounts for positive reviews. The report notes that moving scams this year are the most prevalent in Wyoming (among one in every 4,426 moves), followed by Vermont, South Dakota and Oregon.

To avoid being duped by a moving scam, researchers offer the following tips:

- Compare multiple quotes from moving companies, and be skeptical of significantly lower or higher quotes, lack of details, absence of written contracts and excessive down payments.
- Check the company's online presence, and look up verified customer reviews on websites such as the Better Business Bureau.
- Keep a detailed inventory, including photos, of your possessions in case anything goes missing. Lock up your most expensive valuables.
- Consider buying moving insurance as added protection.

[1] Melissa Dittmann Tracey, National Association of Realtors, Realtor Magazine, Real Estate News, *Moving Costs, Scams Create Relocation Challenges,* Aug. 1, 2023, https://www.nar.realtor/magazine/real-estate-news/moving-costs-scams-create-relocation-challenges (last visited Jan. 18, 2024).

[2] *Id.*

In 2022, nearly 15,198 complaints were filed with the BBB against moving companies,[3] which also reported the following frequent scams:

- An initial low-ball estimate (usually provided without an in-person visit to review the belongings that need to be moved) that turns into a demand for a much higher price once all of the household belongings are on the moving truck and awaiting delivery. The truck driver can simply drive away if the consumer refuses to pay the higher price.[4,5]
- Requiring the shipper to sign a blank or incomplete estimate or contract, which results in a higher than expected price demanded at the time of delivery.[6]

In March of 2021, the Florida Consumer Protection Division within the Office of the Attorney General secured four judgments against moving companies that used deceptive advertising, failed to provide proper estimates, failed to relinquish household goods, and failed to provide timely pick-up or delivery of goods in accordance with service contracts.

In December, 2022, Attorney General Moody filed legal action against three individuals, two holding companies, and multiple fraudulent moving brokerage businesses.[7] According to the consumer protection investigation, the businesses acted as a common enterprise to deceive more than 400 Floridians into believing the company professionally handled moving services, and promised to provide refunds if anything went wrong. Instead, the companies hired third parties to complete the moving services at subpar quality and refused to provide refunds.[8]

Mover Regulations

In order for an intrastate mover to operate in Florida, the mover must register with the Department of Agriculture and Consumer Services (DACS) and comply with the provisions of ch. 507, which applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state. Movers and brokers engaged in the interstate transportation of household goods are regulated by the Federal Motor Carrier Safety Administration within the United States Department of Transportation.

Movers and moving brokers who do business in Florida must register annually with DACS.[9] As of December 4, 2023, there were 1,348 movers and 39 moving brokers with active Florida registrations.[10] In order to obtain a registration certificate, the mover or moving broker must file an application, pay a

[3] Better Business Bureau, *BBB Scam Alert: Avoid Moving Scams this National Moving Month* (May 17, 2023) https://www.bbb.org/article/scams/24198-bbb-scam-alert-avoid-moving-scams-this-national-moving-month (last visited Jan. 18, 2024).
[4] Better Business Bureau, *Know Your Mover: BBB Study Reveals Scammers Price Gouge, Take Belongings Hostage, and Destroy Goods* (Jun. 30, 2020), https://www.bbb.org/article/news-releases/22659-know-your-mover-bbb-study-reveals-scammers-price-gouge-take-belongings-hostage-and-destroy-goods (last visited Jan. 18, 2024).
[5] *See, e.g.*, Jackie Callaway, *Record Number of People File Complaints About Florida Movers in 2021; BBB rates 1,300 Companies 'F'*, (Dec. 2, 2021), *available at* https://www.abcactionnews.com/money/consumer/taking-action-for-you/record-number-of-people-file-complaints-about-florida-movers-in-2021-bbb-rates-1-300-companies-f (last visited Jan. 18, 2024).
[6] Florida Attorney General's Office, *Scams at a Glance: On the Move*, http://myfloridalegal.com/webfiles.nsf/WF/TDGT-BYLQQL/$file/Movers_Scams+at+a+Glance_English.pdf (last visited Jan. 18, 2024).
[7] *See* Office of Attorney General Ashley Moody, *Attorney General Moody Takes Action to Shut Down Massive Moving Scam* (Dec. 8, 2022), *News Release - Attorney General Moody Takes Action to Shut Down Massive Moving Scam (myfloridalegal.com)* (last visited Jan. 18, 2024).
[8] *Id.*
[9] Florida Department of Agriculture and Consumer Services (FDACS), *Moving Companies: Who has to Register?*, https://www.fdacs.gov/Business-Services/Moving-Companies (last visited Jan. 18, 2024).
[10] FDACS, *License/Complaint Lookup*, *available at* https://csapp.fdacs.gov/cspublicapp/businesssearch/businesssearch.aspx (last visited Jan. 18, 2024). Search by "program."

$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.[11]

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover or moving broker engaged in intrastate transportation or shipment of household goods that originates and terminates in Florida.[12] These regulations co-exist with federal law, which governs interstate moving of household goods.[13]

A "mover" is a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move.[14] A "moving broker" arranges for another person to load, transport, ship, or unload household goods as part of a household move or who refers a shipper to a mover by telephone, postal, or electronic mail, website, or other means.[15]

'Household move' means the loading of household goods into a mode of transportation or shipment; the transportation or shipment of those household goods; and the unloading of those household goods, when the transportation or shipment originates and terminates at one of the following ultimate locations:

- From one dwelling to another;
- From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent; or
- From a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent to a dwelling.

Application for Registration

An applicant for a mover registration must provide:

- its legal business and trade name, mailing address, and business locations;
- the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation;
- a statement whether it is a domestic or foreign corporation, its state and date of incorporation, its charter number, and, if a foreign corporation, the date it registered with the Department of State;
- the date on which the mover or broker registered its fictitious name if the mover or broker is operating under a fictitious or trade name;
- the name of all other corporations, business entities, and trade names through which each owner of the mover or broker operated, was known, or did business as a mover or moving broker within the preceding 5 years;
- proof of the required insurance or alternative coverages;
- statements attesting to the current and pending history of any mover owners, officers, directors, managing members, or general partners regarding:
    - crimes involving fraud, dishonest dealings, or any act of moral turpitude; and
    - civil fines or penalties arising out of any administrative or enforcement action brought by any government agency or private person based upon conduct involving fraud, dishonest dealing, or any violation of ch. 507, F.S.

DACS may deny, refuse to renew, or revoke the registration of any mover or broker when it determines that the mover or broker, or any of the mover's or broker's directors, officers, owners, or general partners has:

- failed to meet the requirements for registration as provided in ch. 507, F.S.;

[11] Section 507.03, F.S.
[12] Section 507.02, F.S.
[13] Interstate movers in the U.S. must be licensed by the Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA).
[14] Section 507.01(9), F.S.
[15] Section 507.01(10), F.S.

- been convicted of a crime involving fraud, dishonest dealing, or any other act of moral turpitude[16];
- not satisfied a civil fine or penalty arising out of any administrative or enforcement action brought by any governmental agency or private person based upon conduct involving fraud, dishonest dealing, or any violation of this chapter;
- pending against him or her any criminal, administrative, or enforcement proceedings in any jurisdiction, based upon conduct involving fraud, dishonest dealing, or any other act of moral turpitude; or
- had a judgment entered against him or her in any action brought by DACS or the Department of Legal Affairs under this chapter or the Florida Deceptive and Unfair Trade Practices Act.

Contracts and Estimate Requirements

Section 507.05, F.S., requires an intrastate mover to provide an **estimate and contract** to the perspective shipper in writing and must be signed and dated by the shipper and mover **before commencing the move.** The contract and estimate must include:
- The name, telephone number, and physical address where the mover's employees are available during normal business hours.
- The date prepared and any proposed date of the move.
- The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.
- The name, telephone number, and physical address of any location where the goods will be held pending further transportation, including situations where the mover retains possession of goods pending resolution of a fee dispute with the shipper.
- An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods;
- acceptable forms of payment, and
- a phrase signifying that the mover is state-registered and identifying the mover's registration number.

A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept. A mover shall accept a minimum of two of the three following forms of payment:
- Cash, cashier's check, money order, or traveler's check;
- Valid personal check; or
- Valid credit card.

Should a dispute arise over payment or costs, s. 507.06, F.S., provides that the mover may place the shipper's goods in a storage unit until payment is tendered. Because of ambiguity regarding what payment may legally be demanded, some shippers have been taken advantage of by deceptive or fraudulent moving practices. Often, moving fraud manifests as an increased fee assessed by the mover, who then refuses to relinquish the shipper's goods until the inflated price has been paid in full.

While administrative, civil, and criminal penalties exist in ch. 507, F.S., for such fraudulent moving practices and other violations, the aggrieved shipper is not guaranteed the return of his or her goods until after such remedies have been finalized.

Administrative Remedies and Penalties

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[16] Crimes of moral turpitude have not been defined by statute. Applicable case law has generally defined them as acts of "baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." The determination that a crime involves moral turpitude is made based on the statutory definition or nature of the crime, not the specific conduct predicating a particular conviction.

DACS is authorized to issue an order for one or more of the following administrative remedies if it finds that a mover or broker, or a person employed or contracted by a mover or broker, has violated ch. 507, F.S., or rules or orders issued pursuant thereunder:

- issuing a notice of noncompliance,
- imposing a Class II administrative fine for each act or omission,
- directing that the person cease and desist specified activities,
- refusing to register or revoking or suspending a registration, and/or
- placing the registrant on probation, subject to the conditions specified by DACS.

Rule 5J-15.002 of the Florida Administrative Code provides the specific penalty guidelines for violations of ch. 507, F.S., or rules promulgated thereunder. DACS may issue a notice of noncompliance for certain first violations. DACS may impose fines for "minor violations" that range from $1,000 to $2,500. For "major violations," DACS may impose an administrative fine that ranges from $1,000 to $5,000 or impose any of the other penalties provided in s. 507.09(1)(b)-(e), F.S.

Insurance Coverage and Liability Limitations

Movers and moving brokers must maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least $10,000 per shipment, and not less than 60 cents per pound, per article.[17] Movers who operate fewer than two vehicles are required only to carry either a $25,000 performance bond or a $25,000 certificate of deposit in lieu of liability insurance.[18]

Any contractual limitation to a mover's liability for loss incurred to a shipper's goods must be disclosed in writing to the shipper, along with the valuation rate, but a mover's attempt to limit its liability beyond the minimum 60 cents per pound, per article rate is void under s. 507.04(4), F.S. If the mover offers valuation insurance, it must inform the shipper of the opportunity to purchase valuation coverage to compensate the shipper for household goods that are lost or damaged during a household move, prior to execution of the contract for moving services.[19]

Local Ordinances and Regulations

Chapter 507, F.S., preempts local ordinances or regulations that relate to household moving, unless the local regulation was adopted prior to January 1, 2011.[20] Broward,[21] Miami-Dade,[22] Palm Beach,[23] and Pinellas[24] counties currently have such ordinances. Movers or moving brokers whose principal place of business is located in a county or municipality with such an ordinance are required to register under local and state laws. State law also allows for local taxes, fees, and bonding related to movers and moving brokers, so long as any local registration fees are reasonable and do not exceed the cost of administering the ordinance or regulation.[25]

Effect of the Bill

[17] Sections 507.04(1)(a)1. and 507.04(4), F.S.
[18] Section 507.04(1)(b), F.S.
[19] Section 507.04(5), F.S.
[20] Section 507.13, F.S.
[21] Broward County Government, *Movers*, https://www.broward.org/Consumer/ConsumerProtection/Movers/Pages/default.aspx (last visited Dec. 4, 2023).
[22] Miami-Dade County, *Moving Companies—Laws & Tips*, https://www.miamidade.gov/global/economy/consumer-protection/moving-companies.page#:~:text=Movers%20must%20insure%20your%20property,the%20value%20of%20your%20property.&text=The%20amount%20of%20added%20value%20you%20purchase%20is%20up%20to%20you. (last visited Jan. 18, 2024).
[23] Palm Beach County, *Moving*, *available at* https://discover.pbcgov.org/publicsafety/consumeraffairs/pages/moving.aspx (last visited Dec. 4, 2023).
[24] Pinellas County, *Moving*, https://www.pinellascounty.org/consumer/moving.htm (last visited Jan. 18, 2024).
[25] Section 507.13, F.S.

The bill requires contracts and estimates to be prepared by registered movers, which prohibits such documents from being prepared by moving brokers. It also updates the following definition:

- "Moving broker" or "broker" means a person who, for compensation, arranges **with a registered mover for loading, transporting or shipping, or unloading of** household goods as part of a household move or who, for compensation, refers a shipper to a **registered** mover.

The bill clarifies that each estimate or contract of a "mover" must include a phrase that contains the following:
- The name of the firm;
- A statement that indicates the firm is registered with the State of Florida as a mover; and
- A Florida mover registration number.

The bill requires all moving brokers to be registered and clarifies that any document from a "moving broker" must include:
- The name of the firm;
- A statement that indicates the firm is registered with the State of Florida as a moving broker; and
- A Florida moving broker registration number.

Each advertisement of a "moving broker" must include the following:
- A Florida moving broker registration number;
- The name of the firm; and
- A phrase that states the firm is paid by a shipper to arrange, or offer to arrange, the transportation of property by a registered mover.

The bill requires each moving broker to provide DACS with:
- a complete list of registered movers that the moving broker has contracted or is affiliated with, advertises on behalf of, arranges moves for, or refers shippers to, including each mover's complete name, address, telephone number, email address, and registration number and the name of each mover's owners, corporate officers, and directors.
- any changes to the provided information.

DACS must publish and maintain a list of all moving brokers and the registered movers each moving broker contracts with on its website.

The bill requires DACS to immediately issue a cease and desist order to a person upon finding that such person is operating as a mover or moving broker without registering. Additionally, DACS may seek an immediate injunction from the appropriate circuit court that prohibits the person from operating in Florida until the person complies with the registration requirement, and may impose a civil penalty not to exceed $5,000, and court costs.

The bill authorizes a mover that operates two or fewer vehicles to maintain one of the following alternative coverages, in lieu of maintaining liability insurance coverage:
- A performance bond in the amount of **$50,000**, up from the current $25,000, by a Florida-approved surety company; or
- A certificate of deposit in a Florida banking institution in the amount of **$50,000**, up from the current $25,000.

The bill also requires a moving broker to maintain alternative coverages similar to a mover.

The bill requires DACS to immediately suspend a mover's or moving broker's registration if the mover or moving broker fails to maintain the required performance bond, certificate of deposit, or the appropriate insurance. In such cases, the mover or moving broker must immediately cease operating as a mover or moving broker in Florida. Additionally, DACS may seek an immediate injunction from the appropriate circuit court that prohibits the person from operating in Florida until the person complies with the aforementioned requirements, a civil penalty not to exceed $5,000, and court costs.

Estimates and Contracts for Service

The bill requires that an estimate and a contract must be prepared by a registered mover and provided to a prospective shipper in writing, and **the shipper, mover, and moving broker must sign** or electronically acknowledge and date the estimate and contract.

The bill requires the estimate and contract for service to include the following:

- The name, telephone number, and physical address where the mover's and moving broker's employees are available during normal business hours;
- The date the **estimate and contract** were prepared **by the mover** and the proposed date **or dates** of the **shipper's household** move, **including, but not limited to, loading, transportation, shipment, and unloading of household goods and accessorial services**;
- The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached;
- The name, telephone number, and physical address of the location where the household goods will be held pending further transportation, including situations in which the mover retains possession of household goods pending resolution of a fee dispute with the shipper;
- An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods, including the fees of a moving broker, if used; and
- Acceptable forms of payment, which must be clearly and conspicuously disclosed to the shipper on the binding estimate and the contract for services.

The bill:

- Limits a moving broker to only arrange with a registered mover for the loading, transportation, shipment, or unloading of household goods as part of a household move or refer a shipper to a registered mover.
- Prohibits moving brokers from giving a verbal estimate or preparing a written estimate or contract for services that sets forth the total costs and describes the basis of those costs relating to a shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services.
- Requires a moving broker, before providing any service to a prospective shipper, to disclose to the shipper that the broker may only arrange, or offer to arrange, the transportation of property by a registered mover.
- Prohibits a moving broker's fees from including the cost of the shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services.

The bill requires any document provided to a shipper by a moving broker to include the following:

- The name of the moving broker and the moving broker's registration number;
- The following statement displayed at the top of the document:
  - The name of the moving broker firm and that the firm is not a mover; and
  - The name of the moving broker firm and a phrase stating the moving broker is paid by the shipper to arrange, or offer to arrange, the transportation of property by a registered mover and that the moving broker's fees do not include the cost of the shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services;
- The name, telephone number, and physical address where the moving broker's employees are available during normal business hours;
- An itemized breakdown and description and total of all costs for the moving broker's fees to arrange with a registered mover for the loading, transportation, shipment, or unloading of household goods as part of a household move or to refer the shipper to a registered mover;
- A list of all of the registered movers the moving broker has contracted with or is affiliated with, advertises on behalf of, arranges moves for, or refers shippers to, including each mover's

complete name, address, telephone number, email address, Florida Intrastate Registration Number, and the name of each mover's owners, corporate officers, and directors; and
- A list of acceptable forms of payment, which must include all of the forms of payment listed in at least two of the following subparagraphs:
  - Cash, cashier's check, money order, or traveler's check;
  - Valid personal check; and
  - Valid credit card.

The bill provides that upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, the DACS must immediately suspend a registration or the processing of an application for a registration if the registrant, applicant, or officer or director of the registrant or applicant is formally charged with a crime involving:
- Fraud;
- Theft;
- Larceny;
- Embezzlement;
- Fraudulent conversion;
- Misappropriation of property; or
- A crime arising from conduct during a movement of household goods until final disposition of the case or removal or resignation of that officer or director.

The bill amends the criminal penalties section to clarify that it is a felony of the third degree, if a mover or mover's employee, agent, or contractor refuses to comply with an order from a law enforcement officer to relinquish a shipper's household goods in the following scenarios:
- After the officer determines that the shipper has tendered payment of the amount of a written estimate or contract, and, if applicable, amendments to the contract for services reflecting the price adjustment signed by the shipper; or
- If the officer determines that the mover did not produce a signed or electronically acknowledged binding estimate or contract for service and, if applicable, amendments to the contract for services reflecting the price adjustment signed by the shipper.

B. SECTION DIRECTORY:

Section 1: amends s. 507.01, F.S, relating to definitions.
Section 2: amends s. 507.02, F.S., relating to intent.
Section 3: amends s. 507.03, F.S., relating to registration.
Section 4: amends s. 507.04, F.S., relating to liability insurance.
Section 5: amends s. 507.05, F.S., relating to estimates and contracts for service.
Section 6: amends s. 507.06, F.S., relating to moving brokers and services.
Section 7: amends s. 507.07, F.S., relating to violations.
Section 8: amends s. 507.09, F.S., relating to administrative remedies and penalties.
Section 9: amends s. 507.10, F.S., relating to liability insurance and registration suspension.
Section 10: amends s. 507.11, F.S., relating to criminal penalties.
Section 11: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill allows DACS to impose a civil penalty up to $5,000 upon finding that a person is operating as a mover or moving broker without meeting the provisions of the bill.

2. Expenditures:

   The bill may have an insignificant negative fiscal related to rulemaking which can be absorbed by DACS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The public may see a faster resolution to moving disputes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Rulemaking may be necessary for DACS to update applications to reflect the bill changes.[26]

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement that a registrant, applicant, or officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion, DACS is required to suspend a registration or the processing of an application for registration until final disposition of the case or removal or resignation of that officer or director. However, it is unclear if DACS is receiving notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, or alternatively, if DACS is receiving notification from any person or entity, and then getting a subsequent written verification from one of the aforementioned entities. DACS stated that "notification of exclusionary offenses usually occurs through complaints or news stories that become known to division staff."[27]

In several places throughout the bill, the term "mover" has been modified to "registered mover." These revisions may create unintended consequences.[28]

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[26] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2024 House Bill 367, p.3 (Dec. 7, 2023).

[27] *Id.*, DACS Agency Analysis at 4.

[28] *Id.*

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to household moving services; amending
3 s. 507.01, F.S.; revising definitions; amending s.
4 507.02, F.S.; providing construction; amending s.
5 507.03, F.S.; revising requirements for estimates,
6 contracts, and advertisements; conforming a cross-
7 reference; revising requirements relating to lists
8 provided to the Department of Agriculture and Consumer
9 Services by moving brokers; requiring the department
10 to publish and maintain a specified list on its
11 website; prohibiting certain persons from operating as
12 or holding themselves out to be a mover or moving
13 broker without registering with the department;
14 requiring the department to issue cease and desist
15 orders to certain persons under certain circumstances;
16 authorizing the department to seek an immediate
17 injunction under certain circumstances; amending s.
18 507.04, F.S.; revising alternative coverage
19 requirements; requiring the department to immediately
20 suspend a mover's or moving broker's registration
21 under certain circumstances; authorizing the
22 department to seek an immediate injunction under
23 certain circumstances; amending s. 507.05, F.S.;
24 revising requirements for contracts and estimates for
25 prospective shippers; creating s. 507.056, F.S.;

26 providing limitations and prohibitions for moving
27 brokers; requiring moving brokers to make a specified
28 disclosure to shippers before providing any services;
29 prohibiting moving brokers' fees from including
30 certain costs; requiring that documents provided to
31 shippers by moving brokers contain specified
32 information; amending s. 507.07, F.S.; providing that
33 it is a violation of ch. 507, F.S., for moving brokers
34 to provide estimates or enter into contracts or
35 agreements that were not prepared and signed or
36 electronically acknowledged by a mover; amending s.
37 507.09, F.S.; conforming a cross-reference; requiring
38 the department, upon verification by certain entities,
39 to immediately suspend a registration or the
40 processing of an application for a registration in
41 certain circumstances; amending s. 507.10, F.S.;
42 conforming a cross-reference; amending s. 507.11,
43 F.S.; conforming provisions to changes made by the
44 act; providing an effective date.
45
46 Be It Enacted by the Legislature of the State of Florida:
47
48 Section 1. Subsections (4), (6), and (10) of section
49 507.01, Florida Statutes, are amended to read:
50 507.01 Definitions.—As used in this chapter, the term:

51 (4) "Contract for service" or "bill of lading" means a
52 written document <u>prepared by a registered mover which is</u>
53 approved <u>and electronically acknowledged or signed</u> by the
54 shipper in writing before the performance of any service <u>by the</u>
55 <u>mover and</u> which authorizes ~~services from~~ the named mover <u>to</u>
56 <u>perform</u> ~~and lists~~ the services and <u>lists</u> all costs associated
57 with the household move and accessorial services to be
58 performed.
59 (6) "Estimate" means a written document <u>prepared by a</u>
60 <u>registered mover</u> that sets forth the total costs and describes
61 the basis of those costs, relating to a shipper's household
62 move, including, but not limited to, the loading, transportation
63 or shipment, and unloading of household goods and accessorial
64 services.
65 (10) "Moving broker" or "broker" means a person who, for
66 compensation, arranges <u>with a registered mover for loading,</u>
67 <u>transporting or shipping, or unloading of</u> ~~for another person to~~
68 ~~load, transport or ship, or unload~~ household goods as part of a
69 household move or who, for compensation, refers a shipper to a
70 <u>registered</u> mover ~~by telephone, postal or electronic mail,~~
71 ~~Internet website, or other means~~.
72 Section 2. Present paragraph (b) of subsection (1) of
73 section 507.02, Florida Statutes, is redesignated as paragraph
74 (c), and a new paragraph (b) is added to that subsection, to
75 read:

76 507.02 Construction; intent; application.—
77 (1) This chapter shall be construed liberally to:
78 (b) Establish the law of this state governing the
79 brokering of moves of household goods by moving brokers.
80 Section 3. Subsections (1), (2), (5), (6), (7), (9), and
81 (11) of section 507.03, Florida Statutes, are amended, and
82 subsections (12) and (13) are added to that section, to read:
83 507.03 Registration.—
84 (1) Each mover and moving broker must register with the
85 department, providing its legal business and trade name, mailing
86 address, and business locations; the full names, addresses, and
87 telephone numbers of its owners, ~~or~~ corporate officers, and
88 directors and the Florida agent of the corporation; a statement
89 whether it is a domestic or foreign corporation, its state and
90 date of incorporation, its charter number, and, if a foreign
91 corporation, the date it registered with the Department of
92 State; the date on which the mover or moving broker registered
93 its fictitious name if the mover or moving broker is operating
94 under a fictitious or trade name; the name of all other
95 corporations, business entities, and trade names through which
96 each owner of the mover or moving broker operated, was known, or
97 did business as a mover or moving broker within the preceding 5
98 years; and proof of the insurance or alternative coverages
99 required under s. 507.04.
100 (2) A certificate evidencing proof of registration shall

101 be issued by the department and must be prominently displayed in
102 the mover's or moving broker's primary place of business.
103 (5)(a) Each estimate or contract of a mover ~~or moving~~
104 ~~broker~~ must include the phrase "...(NAME OF FIRM)... is
105 registered with the State of Florida as a Mover ~~or Moving~~
106 ~~Broker~~. Fla. Mover Registration No. ....."
107 (b) Any document from a moving broker must include the
108 phrase "...(NAME OF FIRM)... is registered with the State of
109 Florida as a Moving Broker. Fla. Moving Broker Registration No.
110 ....."
111 (6)(a) Each advertisement of a mover ~~or moving broker~~ must
112 include the phrase "Fla. Mover Reg. No. ...." or "Fla. IM No.
113 ....." Each of the mover's vehicles must clearly and
114 conspicuously display a sign on the driver's side door which
115 includes at least one of these phrases in lettering of at least
116 1.5 inches in height.
117 (b) Each advertisement of a moving broker must include the
118 phrase "Fla. Moving Broker Reg. No. ....(NAME OF MOVING
119 BROKER)... is a moving broker. ...(NAME OF MOVING BROKER)... is
120 paid by a shipper to arrange, or offer to arrange, the
121 transportation of property by a registered mover."
122 (7) A registration is not valid for any mover or moving
123 broker transacting business at any place other than that
124 designated in the mover's or moving broker's application, unless
125 the department is first notified in writing before any change of

126 location. A registration issued under this chapter is not
127 assignable, and the mover or moving broker may not conduct
128 business under more than one name except as registered. A mover
129 or moving broker desiring to change its registered name or
130 location or designated agent for service of process at a time
131 other than upon renewal of registration must notify the
132 department of the change.
133 (9) The department shall deny or refuse to renew the
134 registration of a mover or a moving broker or deny a
135 registration or renewal request by any of the mover's or moving
136 broker's directors, officers, owners, or general partners if the
137 mover or moving broker has not satisfied a civil penalty or
138 administrative fine for a violation of s. 507.07(10) ~~s.~~
139 ~~507.07(9)~~.
140 (11) ~~At the request of the department,~~ Each moving broker
141 shall provide the department with a complete list of the
142 registered movers that the moving broker has contracted or is
143 affiliated with, advertises on behalf of, arranges moves for, or
144 refers shippers to, including each mover's complete name,
145 address, telephone number, ~~and~~ e-mail address, and registration
146 number and the name of each mover's owners, corporate officers,
147 and directors ~~owner or other principal~~. A moving broker must
148 notify the department of any changes to the provided
149 information. The department shall publish and maintain a list of
150 all moving brokers and the registered movers each moving broker

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

151 is contracted with on its website.
152 (12) A person required to register pursuant to this
153 section may not operate as or hold itself out to be a mover or
154 moving broker without first registering with the department
155 pursuant to this section.
156 (13) The department must immediately issue a cease and
157 desist order to a person upon finding that such person is
158 operating as a mover or moving broker without registering
159 pursuant to this section. In addition, and notwithstanding the
160 availability of any administrative relief under chapter 120, the
161 department may seek from the appropriate circuit court an
162 immediate injunction prohibiting the person from operating in
163 this state until the person complies with this section, a civil
164 penalty not to exceed $5,000, and court costs.
165 Section 4. Present subsections (3), (4), and (5) of
166 section 507.04, Florida Statutes, are redesignated as
167 subsections (4), (5), and (6), respectively, a new subsection
168 (3) is added to that section, and subsection (1) and present
169 subsections (4) and (5) of that section are amended, to read:
170 507.04 Required insurance coverages; liability
171 limitations; valuation coverage.—
172 (1) LIABILITY INSURANCE.—
173 (a)1. Except as provided in paragraph (b), each mover
174 operating in this state must maintain current and valid
175 liability insurance coverage of at least $10,000 per shipment

176 for the loss or damage of household goods resulting from the
177 negligence of the mover or its employees or agents.
178 2. The mover must provide the department with evidence of
179 liability insurance coverage before the mover is registered with
180 the department under s. 507.03. All insurance coverage
181 maintained by a mover must remain in effect throughout the
182 mover's registration period. A mover's failure to maintain
183 insurance coverage in accordance with this paragraph constitutes
184 an immediate threat to the public health, safety, and welfare.
185 (b) A mover that operates two or fewer vehicles, in lieu
186 of maintaining the liability insurance coverage required under
187 paragraph (a), may~~, and each moving broker must,~~ maintain one of
188 the following alternative coverages:
189 1. A performance bond in the amount of $50,000 ~~$25,000~~,
190 for which the surety of the bond must be a surety company
191 authorized to conduct business in this state; or
192 2. A certificate of deposit in a Florida banking
193 institution in the amount of $50,000 ~~$25,000~~.
194 (c) A moving broker must maintain one of the following
195 coverages:
196 1. A performance bond in the amount of $50,000, for which
197 the surety of the bond must be a surety company authorized to
198 conduct business in this state; or
199 2. A certificate of deposit in a Florida banking
200 institution in the amount of $50,000.

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201

202 The original bond or certificate of deposit must be filed with
203 the department and must designate the department as the sole
204 beneficiary. The department must use the bond or certificate of
205 deposit exclusively for the payment of claims to consumers who
206 are injured by the fraud, misrepresentation, breach of contract,
207 misfeasance, malfeasance, or financial failure of the mover or
208 moving broker or by a violation of this chapter by the mover or
209 moving broker. Liability for these injuries may be determined in
210 an administrative proceeding of the department or through a
211 civil action in a court of competent jurisdiction. However,
212 claims against the bond or certificate of deposit must only be
213 paid, in amounts not to exceed the determined liability for
214 these injuries, by order of the department in an administrative
215 proceeding. The bond or certificate of deposit is subject to
216 successive claims, but the aggregate amount of these claims may
217 not exceed the amount of the bond or certificate of deposit.
218 (3) REGISTRATION SUSPENSION.—The department must
219 immediately suspend a mover's or moving broker's registration if
220 the mover or moving broker fails to maintain the required
221 performance bond or the certificate of deposit under subsection
222 (1) or the insurance required under subsection (2), and the
223 mover or moving broker must immediately cease operating as a
224 mover or moving broker in this state. In addition, and
225 notwithstanding the availability of any administrative relief

226 pursuant to chapter 120, the department may seek from a circuit
227 court an immediate injunction prohibiting the mover or moving
228 broker from operating in this state until the mover or moving
229 broker complies with subsections (1) and (2), a civil penalty
230 not to exceed $5,000, and court costs.
231 (5) ~~(4)~~ LIABILITY LIMITATIONS; VALUATION RATES.—A mover may
232 not limit its liability for the loss or damage of household
233 goods to a valuation rate that is less than 60 cents per pound
234 per article. A provision of a contract for moving services is
235 void if the provision limits a mover's liability to a valuation
236 rate that is less than the minimum rate under this subsection.
237 If a mover limits its liability for a shipper's goods, the mover
238 must disclose the limitation, including the valuation rate, to
239 the shipper in writing at the time that the estimate and
240 contract for services are executed and before any moving or
241 accessorial services are provided. The disclosure must also
242 inform the shipper of the opportunity to purchase valuation
243 coverage if the mover offers that coverage under subsection (6)
244 ~~(5)~~.
245 (6) ~~(5)~~ VALUATION COVERAGE.—A mover may offer valuation
246 coverage to compensate a shipper for the loss or damage of the
247 shipper's household goods that are lost or damaged during a
248 household move. If a mover offers valuation coverage, the
249 coverage must indemnify the shipper for at least the minimum
250 valuation rate required under subsection (5) ~~(4)~~. The mover must

251 disclose the terms of the coverage to the shipper in writing at
252 the time that the estimate and contract for services are
253 executed and before any moving or accessorial services are
254 provided. The disclosure must inform the shipper of the cost of
255 the valuation coverage, the valuation rate of the coverage, and
256 the opportunity to reject the coverage. If valuation coverage
257 compensates a shipper for at least the minimum valuation rate
258 required under subsection (5) ~~(4)~~, the coverage satisfies the
259 mover's liability for the minimum valuation rate.
260 Section 5. Section 507.05, Florida Statutes, is amended to
261 read:
262 507.05 Estimates and contracts for service.—Before
263 providing any moving or accessorial services, an estimate and a
264 contract ~~and estimate~~ must be prepared by a registered mover and
265 provided to a prospective shipper in writing, and the shipper,
266 mover, and, if applicable, moving broker must sign or
267 electronically acknowledge and date the estimate and contract.
268 At a minimum, the estimate and contract for service ~~must be~~
269 ~~signed and dated by the shipper and the mover, and~~ must include:
270 (1) The name, telephone number, and physical address where
271 the mover's and, if applicable, moving broker's employees are
272 available during normal business hours.
273 (2) The date the estimate and contract were ~~or estimate is~~
274 prepared by the mover and the ~~any~~ proposed date or dates of the
275 shipper's household move, including, but not limited to,

276 loading, transportation, shipment, and unloading of household
277 goods and accessorial services.
278 (3) The name and address of the shipper, the addresses
279 where the articles are to be picked up and delivered, and a
280 telephone number where the shipper may be reached.
281 (4) The name, telephone number, and physical address of
282 the ~~any~~ location where the household goods will be held pending
283 further transportation, including situations in which ~~where~~ the
284 mover retains possession of household goods pending resolution
285 of a fee dispute with the shipper.
286 (5) An itemized breakdown and description and total of all
287 costs and services for loading, transportation or shipment,
288 unloading, and accessorial services to be provided during a
289 household move or storage of household goods, including the fees
290 of a moving broker, if used.
291 (6) Acceptable forms of payment, which must be clearly and
292 conspicuously disclosed to the shipper on the binding estimate
293 and the contract for services. A mover must ~~shall~~ accept at
294 least ~~a minimum of~~ two of the three following forms of payment:
295 (a) Cash, cashier's check, money order, or traveler's
296 check;
297 (b) Valid personal check, showing upon its face the name
298 and address of the shipper or authorized representative; or
299 (c) Valid credit card, which shall include, but not be
300 limited to, Visa or MasterCard.

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

301

302 A mover must clearly and conspicuously disclose to the shipper
303 in the estimate and contract for services the forms of payments
304 the mover will accept, including the forms of payment described
305 in paragraphs (a)-(c).
306 Section 6. Section 507.056, Florida Statutes, is created
307 to read:
308 507.056 Moving brokers; services.—
309 (1) A moving broker may only arrange with a registered
310 mover for the loading, transportation, shipment, or unloading of
311 household goods as part of a household move or refer a shipper
312 to a registered mover. Moving brokers may not give a verbal
313 estimate or prepare a written estimate or contract for services
314 that sets forth the total costs and describes the basis of those
315 costs relating to a shipper's household move, including, but not
316 limited to, the loading, transportation, shipment, or unloading
317 of household goods and accessorial services.
318 (2) Before providing any service to a prospective shipper,
319 a moving broker must disclose to the shipper that the broker may
320 only arrange, or offer to arrange, the transportation of
321 property by a registered mover. A moving broker's fees may not
322 include the cost of the shipper's household move, including, but
323 not limited to, the loading, transportation, shipment, or
324 unloading of household goods and accessorial services. Any
325 document provided to a shipper by a moving broker must include

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326 all of the following:
327 (a) The name of the moving broker and the moving broker's
328 registration number.
329 (b) The following statement displayed at the top of the
330 document: "...(Name of Moving Broker)... is not a mover.
331 ...(Name of Moving Broker)... is paid by the shipper to arrange,
332 or offer to arrange, the transportation of property by a
333 registered mover. The moving broker's fees do not include the
334 cost of the shipper's household move, including, but not limited
335 to, the loading, transportation, shipment, or unloading of
336 household goods and accessorial services."
337 (c) The name, telephone number, and physical address where
338 the moving broker's employees are available during normal
339 business hours.
340 (d) An itemized breakdown and description and total of all
341 costs for the moving broker's fees to arrange with a registered
342 mover for the loading, transportation, shipment, or unloading of
343 household goods as part of a household move or to refer the
344 shipper to a registered mover.
345 (e) A list of all of the registered movers the moving
346 broker has contracted with or is affiliated with, advertises on
347 behalf of, arranges moves for, or refers shippers to, including
348 each mover's complete name, address, telephone number, e-mail
349 address, Florida Intrastate Registration Number, and the name of
350 each mover's owners, corporate officers, and directors.

351 (f) A list of acceptable forms of payment, which must
352 include all of the forms of payment listed in at least two of
353 the following subparagraphs:
354 1. Cash, cashier's check, money order, or traveler's
355 check.
356 2. Valid personal check, showing upon its face the name
357 and address of the shipper or authorized representative.
358 3. Valid credit card, which shall include, but not be
359 limited to, Visa or MasterCard.
360 Section 7. Present subsections (8) and (9) of section
361 507.07, Florida Statutes, are redesignated as subsections (9)
362 and (10), respectively, and a new subsection (8) is added to
363 that section, to read:
364 507.07 Violations.—It is a violation of this chapter:
365 (8) For a moving broker to provide an estimate or enter
366 into a contract or agreement for moving, loading, shipping,
367 transporting, or unloading services with a shipper which was not
368 prepared and electronically acknowledged or signed by a mover
369 who is registered with the department pursuant to this chapter.
370 Section 8. Section 507.09, Florida Statutes, is amended to
371 read:
372 507.09 Administrative remedies; penalties.—
373 (1) The department may enter an order doing one or more of
374 the following if the department finds that a mover or moving
375 broker, or a person employed or contracted by a mover or broker,

376 has violated or is operating in violation of this chapter or the
377 rules or orders issued pursuant to this chapter:
378 (a) Issuing a notice of noncompliance under s. 120.695.
379 (b) Imposing an administrative fine in the Class II
380 category pursuant to s. 570.971 for each act or omission.
381 However, the department must impose an administrative fine in
382 the Class IV category for each violation of s. 507.07(10) ~~s.~~
383 ~~507.07(9)~~ if the department does not seek a civil penalty for
384 the same offense.
385 (c) Directing that the person cease and desist specified
386 activities.
387 (d) Refusing to register or revoking or suspending a
388 registration.
389 (e) Placing the registrant on probation, subject to the
390 conditions specified by the department.
391 (2) The department, upon notification and subsequent
392 written verification by a law enforcement agency, a court, a
393 state attorney, or the Department of Law Enforcement, must
394 immediately suspend a registration or the processing of an
395 application for a registration if the registrant, applicant, or
396 officer or director of the registrant or applicant is formally
397 charged with a crime involving fraud, theft, larceny,
398 embezzlement, or fraudulent conversion or misappropriation of
399 property or a crime arising from conduct during a movement of
400 household goods until final disposition of the case or removal

401 or resignation of that officer or director.
402 (3) The administrative proceedings that ~~which~~ could result
403 in the entry of an order imposing any of the penalties specified
404 in subsection (1) or subsection (2) are governed by chapter 120.
405 (4) ~~(3)~~ The department may adopt rules under ss. 120.536(1)
406 and 120.54 to administer this chapter.
407 Section 9. Subsection (2) of section 507.10, Florida
408 Statutes, is amended to read:
409 507.10 Civil penalties; remedies.—
410 (2) The department may seek a civil penalty in the Class
411 II category pursuant to s. 570.971 for each violation of this
412 chapter. However, the department must seek a civil penalty in
413 the Class IV category for each violation of s. 507.07(10) ~~s.~~
414 ~~507.07(9)~~ if the department does not impose an administrative
415 fine for the same offense.
416 Section 10. Subsection (1) of section 507.11, Florida
417 Statutes, is amended to read:
418 507.11 Criminal penalties.—
419 (1) The refusal of a mover or a mover's employee, agent,
420 or contractor to comply with an order from a law enforcement
421 officer to relinquish a shipper's household goods after the
422 officer determines that the shipper has tendered payment of the
423 amount of a written estimate or contract for service, including
424 any amendments to the estimate or contract reflecting price
425 adjustments signed by the shipper, or after the officer

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426 determines that the mover did not produce such ~~a~~ signed or
427 electronically acknowledged binding estimate or contract for
428 service upon which demand is being made for payment, is a felony
429 of the third degree, punishable as provided in s. 775.082, s.
430 775.083, or s. 775.084. A mover's compliance with an order from
431 a law enforcement officer to relinquish goods to a shipper is
432 not a waiver or finding of fact regarding any right to seek
433 further payment from the shipper.
434 Section 11. This act shall take effect July 1, 2024.

COMMERCE COMMITTEE

HB 367 by Rep. Tant
Household Moving Services

AMENDMENT SUMMARY
February 8, 2023

Amendment 1 by Rep. Tant (strike-all):
- Conforms language to the Senate bill.

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative Tant offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Subsections (4), (6), and (10) of section
7 507.01, Florida Statutes, are amended to read:
8 507.01 Definitions.—As used in this chapter, the term:
9 (4) "Contract for service" or "bill of lading" means a
10 written document prepared by a registered mover which is
11 approved and electronically acknowledged or signed by the
12 shipper in writing before the performance of any service by the
13 mover and which authorizes ~~services from~~ the named mover to
14 perform ~~and lists~~ the services and lists all costs associated
15 with the household move and accessorial services to be
16 performed.

17 (6) "Estimate" means a written document prepared by a
18 registered mover which ~~that~~ sets forth the total costs and
19 describes the basis of those costs~~,~~ relating to a shipper's
20 household move, including, but not limited to, the loading,
21 transportation or shipment, and unloading of household goods and
22 accessorial services.
23 (10) "Moving broker" or "broker" means a person who, for
24 compensation, arranges with a registered mover for loading,
25 transporting or shipping, or unloading of ~~for another person to~~
26 ~~load, transport or ship, or unload~~ household goods as part of a
27 household move or who, for compensation, refers a shipper to a
28 registered mover ~~by telephone, postal or electronic mail,~~
29 ~~Internet website, or other means~~.
30 Section 2. Present paragraph (b) of subsection (1) of
31 section 507.02, Florida Statutes, is redesignated as paragraph
32 (c), and a new paragraph (b) is added to that subsection, to
33 read:
34 507.02 Construction; intent; application.—
35 (1) This chapter shall be construed liberally to:
36 (b) Establish the law of this state governing the
37 brokering of moves of household goods by moving brokers.
38 Section 3. Subsections (1), (2), (5), (6), (7), (9), and
39 (11) of section 507.03, Florida Statutes, are amended, and
40 subsections (12) and (13) are added to that section, to read:
41 507.03 Registration.—

42 (1) Each mover and moving broker must register with the
43 department, providing its legal business and trade name, mailing
44 address, and business locations; the full names, addresses, and
45 telephone numbers of its owners, ~~or~~ corporate officers, and
46 directors and the Florida agent of the corporation; a statement
47 whether it is a domestic or foreign corporation, its state and
48 date of incorporation, its charter number, and, if a foreign
49 corporation, the date it registered with the Department of
50 State; the date on which the mover or moving broker registered
51 its fictitious name if the mover or moving broker is operating
52 under a fictitious or trade name; the name of all other
53 corporations, business entities, and trade names through which
54 each owner of the mover or moving broker operated, was known, or
55 did business as a mover or moving broker within the preceding 5
56 years; and proof of the insurance or alternative coverages
57 required under s. 507.04.
58 (2) A certificate evidencing proof of registration shall
59 be issued by the department and must be prominently displayed in
60 the mover's or moving broker's primary place of business.
61 (5)(a) Each estimate or contract of a mover ~~or moving~~
62 ~~broker~~ must include the phrase "...(NAME OF FIRM)... is
63 registered with the State of Florida as a Mover ~~or Moving~~
64 ~~Broker~~. Fla. Mover Registration No. ....."
65 (b) Any document from a moving broker must include the
66 phrase "...(NAME OF FIRM)... is registered with the State of

67 Florida as a Moving Broker. Fla. Moving Broker Registration No.
68 ....."
69 (6)(a) Each advertisement of a mover ~~or moving broker~~ must
70 include the phrase "Fla. Mover Reg. No. ...." or "Fla. IM No.
71 ....." Each of the mover's vehicles must clearly and
72 conspicuously display a sign on the driver's side door which
73 includes at least one of these phrases in lettering of at least
74 1.5 inches in height.
75 (b) Each advertisement of a moving broker must include the
76 phrase "Fla. Moving Broker Reg. No. ....(NAME OF MOVING
77 BROKER)... is a moving broker. ...(NAME OF MOVING BROKER)... is
78 paid by a shipper to arrange, or offer to arrange, the
79 transportation of property by a registered mover."
80 (7) A registration is not valid for any mover or moving
81 broker transacting business at any place other than that
82 designated in the mover's or moving broker's application, unless
83 the department is first notified in writing before any change of
84 location. A registration issued under this chapter is not
85 assignable, and the mover or moving broker may not conduct
86 business under more than one name except as registered. A mover
87 or moving broker desiring to change its registered name or
88 location or designated agent for service of process at a time
89 other than upon renewal of registration must notify the
90 department of the change.
91 (9) The department shall deny or refuse to renew the

92 registration of a mover or a moving broker or deny a
93 registration or renewal request by any of the mover's or moving
94 broker's directors, officers, owners, or general partners if the
95 mover or moving broker has not satisfied a civil penalty or
96 administrative fine for a violation of s. 507.07(10) ~~s.~~
97 ~~507.07(9)~~.
98 (11) ~~At the request of the department,~~ Each moving broker
99 shall provide the department with a complete list of the
100 registered movers that the moving broker has contracted or is
101 affiliated with, advertises on behalf of, arranges moves for, or
102 refers shippers to, including each mover's complete name,
103 address, telephone number, ~~and~~ e-mail address, and registration
104 number and the name of each mover's owners, corporate officers,
105 and directors ~~owner or other principal~~. A moving broker must
106 notify the department of any changes to the provided
107 information. The department shall publish and maintain on its
108 website a list of all moving brokers and the registered movers
109 each moving broker is contracted with.
110 (12) A person required to register pursuant to this
111 section may not operate as or hold itself out to be a mover or
112 moving broker without first registering with the department
113 pursuant to this section.
114 (13) The department must immediately issue a cease and
115 desist order to a person upon finding that the person is
116 operating as a mover or a moving broker without registering

117 pursuant to this section. In addition, and notwithstanding the
118 availability of any administrative relief under chapter 120, the
119 department may seek from the appropriate circuit court an
120 immediate injunction prohibiting the person from operating in
121 this state until the person complies with this section and pays
122 a civil penalty not to exceed $5,000 and court costs.
123 Section 4. Present subsections (3), (4), and (5) of
124 section 507.04, Florida Statutes, are redesignated as
125 subsections (4), (5), and (6), respectively, a new subsection
126 (3) is added to that section, and subsection (1) and present
127 subsections (4) and (5) of that section are amended, to read:
128 507.04 Required insurance coverages; liability
129 limitations; valuation coverage.—
130 (1) LIABILITY INSURANCE.—
131 (a)1. Except as provided in paragraph (b), each mover
132 operating in this state must maintain current and valid
133 liability insurance coverage of at least $10,000 per shipment
134 for the loss or damage of household goods resulting from the
135 negligence of the mover or its employees or agents.
136 2. The mover must provide the department with evidence of
137 liability insurance coverage before the mover is registered with
138 the department under s. 507.03. All insurance coverage
139 maintained by a mover must remain in effect throughout the
140 mover's registration period. A mover's failure to maintain
141 insurance coverage in accordance with this paragraph constitutes

142 an immediate threat to the public health, safety, and welfare.
143 (b) A mover that operates two or fewer vehicles, in lieu
144 of maintaining the liability insurance coverage required under
145 paragraph (a), may~~, and each moving broker must,~~ maintain one of
146 the following alternative coverages:
147 1. A performance bond in the amount of $50,000 ~~$25,000~~,
148 for which the surety of the bond must be a surety company
149 authorized to conduct business in this state; or
150 2. A certificate of deposit in a Florida banking
151 institution in the amount of $50,000 ~~$25,000~~.
152 (c) A moving broker must maintain one of the following
153 coverages:
154 1. A performance bond in the amount of $50,000, for which
155 the surety of the bond must be a surety company authorized to
156 conduct business in this state; or
157 2. A certificate of deposit in a Florida banking
158 institution in the amount of $50,000.
159
160 The original bond or certificate of deposit must be filed with
161 the department and must designate the department as the sole
162 beneficiary. The department must use the bond or certificate of
163 deposit exclusively for the payment of claims to consumers who
164 are injured by the fraud, misrepresentation, breach of contract,
165 misfeasance, malfeasance, or financial failure of the mover or
166 moving broker or by a violation of this chapter by the mover or

167 moving broker. Liability for these injuries may be determined in
168 an administrative proceeding of the department or through a
169 civil action in a court of competent jurisdiction. However,
170 claims against the bond or certificate of deposit must only be
171 paid, in amounts not to exceed the determined liability for
172 these injuries, by order of the department in an administrative
173 proceeding. The bond or certificate of deposit is subject to
174 successive claims, but the aggregate amount of these claims may
175 not exceed the amount of the bond or certificate of deposit.
176 (3) REGISTRATION SUSPENSION.—The department must
177 immediately suspend a mover's or moving broker's registration if
178 the mover or moving broker fails to maintain the performance
179 bond or certificate of deposit required under subsection (1) or
180 the insurance required under subsection (2), and the mover or
181 moving broker must immediately cease operating as a mover or
182 moving broker in this state. In addition, and notwithstanding
183 the availability of any administrative relief pursuant to
184 chapter 120, the department may seek from a circuit court an
185 immediate injunction prohibiting the mover or moving broker from
186 operating in this state until the mover or moving broker
187 complies with subsections (1) and (2) and pays a civil penalty
188 not to exceed $5,000 and court costs.
189 (5) ~~(4)~~ LIABILITY LIMITATIONS; VALUATION RATES.—A mover may
190 not limit its liability for the loss or damage of household
191 goods to a valuation rate that is less than 60 cents per pound

192 per article. A provision of a contract for moving services is
193 void if the provision limits a mover's liability to a valuation
194 rate that is less than the minimum rate under this subsection.
195 If a mover limits its liability for a shipper's goods, the mover
196 must disclose the limitation, including the valuation rate, to
197 the shipper in writing at the time that the estimate and
198 contract for services are executed and before any moving or
199 accessorial services are provided. The disclosure must also
200 inform the shipper of the opportunity to purchase valuation
201 coverage if the mover offers that coverage under subsection (6)
202 ~~(5)~~.
203 (6) ~~(5)~~ VALUATION COVERAGE.—A mover may offer valuation
204 coverage to compensate a shipper for the loss or damage of the
205 shipper's household goods that are lost or damaged during a
206 household move. If a mover offers valuation coverage, the
207 coverage must indemnify the shipper for at least the minimum
208 valuation rate required under subsection (5) ~~(4)~~. The mover must
209 disclose the terms of the coverage to the shipper in writing at
210 the time that the estimate and contract for services are
211 executed and before any moving or accessorial services are
212 provided. The disclosure must inform the shipper of the cost of
213 the valuation coverage, the valuation rate of the coverage, and
214 the opportunity to reject the coverage. If valuation coverage
215 compensates a shipper for at least the minimum valuation rate
216 required under subsection (5) ~~(4)~~, the coverage satisfies the

217 mover's liability for the minimum valuation rate.
218 Section 5. Section 507.05, Florida Statutes, is amended to
219 read:
220 507.05 Estimates and contracts for service.—Before
221 providing any moving or accessorial services, an estimate and a
222 contract ~~and estimate~~ must be prepared by a registered mover and
223 provided to a prospective shipper in writing, and the shipper,
224 the mover, and, if applicable, the moving broker must sign or
225 electronically acknowledge and date the estimate and contract.
226 At a minimum, the estimate and contract for service ~~must be~~
227 ~~signed and dated by the shipper and the mover, and~~ must include:
228 (1) The name, telephone number, and physical address where
229 the mover's and, if applicable, the moving broker's employees
230 are available during normal business hours.
231 (2) The date the estimate and contract were ~~or estimate is~~
232 prepared by the mover and the ~~any~~ proposed date or dates of the
233 shipper's household move, including, but not limited to,
234 loading, transportation, shipment, and unloading of household
235 goods and accessorial services.
236 (3) The name and address of the shipper, the addresses
237 where the articles are to be picked up and delivered, and a
238 telephone number where the shipper may be reached.
239 (4) The name, telephone number, and physical address of
240 the ~~any~~ location where the household goods will be held pending
241 further transportation, including situations in which ~~where~~ the

242 mover retains possession of household goods pending resolution
243 of a fee dispute with the shipper.
244 (5) An itemized breakdown and description and total of all
245 costs and services for loading, transportation or shipment,
246 unloading, and accessorial services to be provided during a
247 household move or storage of household goods, including the fees
248 of a moving broker, if used.
249 (6) Acceptable forms of payment, which must be clearly and
250 conspicuously disclosed to the shipper on the binding estimate
251 and the contract for services. A mover must ~~shall~~ accept at
252 least ~~a minimum of~~ two of the three following forms of payment:
253 (a) Cash, cashier's check, money order, or traveler's
254 check;
255 (b) Valid personal check, showing upon its face the name
256 and address of the shipper or authorized representative; or
257 (c) Valid credit card, which shall include, but not be
258 limited to, Visa or MasterCard.
259
260 A mover must clearly and conspicuously disclose to the shipper
261 in the estimate and contract for services the forms of payments
262 the mover will accept, including the forms of payment described
263 in paragraphs (a)-(c).
264 Section 6. Section 507.056, Florida Statutes, is created
265 to read:
266 507.056 Moving brokers; services.—

267 (1) A moving broker may only arrange with a registered
268 mover for the loading, transportation or shipment, or unloading
269 of household goods as part of a household move or refer a
270 shipper to a registered mover. Moving brokers may not give a
271 verbal estimate or prepare a written estimate or contract for
272 services which sets forth the total costs and describes the
273 basis of those costs relating to a shipper's household move,
274 including, but not limited to, the loading, transportation or
275 shipment, or unloading of household goods and accessorial
276 services.
277 (2) Before providing any service to a prospective shipper,
278 a moving broker must disclose to the shipper that the broker may
279 only arrange, or offer to arrange, the transportation of
280 property by a registered mover. A moving broker's fees may not
281 include the cost of the shipper's household move, including, but
282 not limited to, the loading, transportation or shipment, or
283 unloading of household goods and accessorial services. Any
284 document provided to a shipper by a moving broker must include
285 all of the following:
286 (a) The name of the moving broker and the moving broker's
287 registration number.
288 (b) The following statement displayed at the top of the
289 document: "...(Name of Moving Broker)... is not a mover.
290 ...(Name of Moving Broker)... is paid by the shipper to arrange,
291 or offer to arrange, the transportation of property by a

292 registered mover. The moving broker's fees do not include the
293 cost of the shipper's household move, including, but not limited
294 to, the loading, transportation or shipment, or unloading of
295 household goods and accessorial services."
296 (c) The name, telephone number, and physical address where
297 the moving broker's employees are available during normal
298 business hours.
299 (d) An itemized breakdown, description, and total of all
300 fees the moving broker charges to arrange with a registered
301 mover for the loading, transportation or shipment, or unloading
302 of household goods as part of a household move or to refer the
303 shipper to a registered mover.
304 (e) A list of all of the registered movers the moving
305 broker has contracted with or is affiliated with, advertises on
306 behalf of, arranges moves for, or refers shippers to, including
307 each mover's complete name, address, telephone number, e-mail
308 address, and Florida Intrastate Registration Number and the name
309 of each mover's owners, corporate officers, and directors.
310 (f) A list of acceptable forms of payment, which must
311 include all of the forms of payment listed in at least two of
312 the following subparagraphs:
313 1. Cash, cashier's check, money order, or traveler's
314 check.
315 2. Valid personal check, showing upon its face the name
316 and address of the shipper or authorized representative.

317 3. Valid credit card, including, but not limited to, Visa
318 or MasterCard.
319 Section 7. Present subsections (8) and (9) of section
320 507.07, Florida Statutes, are redesignated as subsections (9)
321 and (10), respectively, and a new subsection (8) is added to
322 that section, to read:
323 507.07 Violations.—It is a violation of this chapter:
324 (8) For a moving broker to provide an estimate or enter
325 into a contract or agreement for moving, loading, shipping or
326 transporting, or unloading services with a shipper which was not
327 prepared and electronically acknowledged or signed by a mover
328 who is registered with the department pursuant to this chapter.
329 Section 8. Section 507.09, Florida Statutes, is amended to
330 read:
331 507.09 Administrative remedies; penalties.—
332 (1) The department may enter an order doing one or more of
333 the following if the department finds that a mover or moving
334 broker, or a person employed or contracted by a mover or moving
335 broker, has violated or is operating in violation of this
336 chapter or the rules or orders issued pursuant to this chapter:
337 (a) Issuing a notice of noncompliance under s. 120.695.
338 (b) Imposing an administrative fine in the Class II
339 category pursuant to s. 570.971 for each act or omission.
340 However, the department must impose an administrative fine in
341 the Class IV category for each violation of s. 507.07(10) ~~s.~~

342 ~~507.07(9)~~ if the department does not seek a civil penalty for
343 the same offense.
344 (c) Directing that the person cease and desist specified
345 activities.
346 (d) Refusing to register or revoking or suspending a
347 registration.
348 (e) Placing the registrant on probation, subject to the
349 conditions specified by the department.
350 (2) The department, upon notification and subsequent
351 written verification by a law enforcement agency, a court, a
352 state attorney, or the Department of Law Enforcement, must
353 immediately suspend a registration or the processing of an
354 application for a registration if the registrant, applicant, or
355 officer or director of the registrant or applicant is formally
356 charged with a crime involving fraud, theft, larceny,
357 embezzlement, or fraudulent conversion or misappropriation of
358 property or a crime arising from conduct during a movement of
359 household goods until final disposition of the case or removal
360 or resignation of that officer or director.
361 (3) The administrative proceedings that ~~which~~ could result
362 in the entry of an order imposing any of the penalties specified
363 in subsection (1) or subsection (2) are governed by chapter 120.
364 (4)~~(3)~~ The department may adopt rules under ss. 120.536(1)
365 and 120.54 to administer this chapter.
366 Section 9. Subsection (2) of section 507.10, Florida

367 Statutes, is amended to read:
368 507.10 Civil penalties; remedies.—
369 (2) The department may seek a civil penalty in the Class
370 II category pursuant to s. 570.971 for each violation of this
371 chapter. However, the department must seek a civil penalty in
372 the Class IV category for each violation of s. 507.07(10) ~~s.~~
373 ~~507.07(9)~~ if the department does not impose an administrative
374 fine for the same offense.
375 Section 10. Subsection (1) of section 507.11, Florida
376 Statutes, is amended to read:
377 507.11 Criminal penalties.—
378 (1) The refusal of a mover or a mover's employee, agent,
379 or contractor to comply with an order from a law enforcement
380 officer to relinquish a shipper's household goods after the
381 officer determines that the shipper has tendered payment of the
382 amount of a written estimate or contract, and, if applicable,
383 amendments to the contract for services reflecting the price
384 adjustment signed by the shipper or after the officer determines
385 that the mover did not produce a signed or electronically
386 acknowledged binding estimate or contract for service and, if
387 applicable, amendments to the contract for services reflecting
388 the price adjustment signed by the shipper upon which demand is
389 being made for payment, is a felony of the third degree,
390 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
391 A mover's compliance with an order from a law enforcement

392 officer to relinquish goods to a shipper is not a waiver or
393 finding of fact regarding any right to seek further payment from
394 the shipper.
395 Section 11. This act shall take effect July 1, 2024.
396
397 ---
398 **T I T L E A M E N D M E N T**
399 Remove everything before the enacting clause and insert:
400 A bill to be entitled
401 An act relating to household moving services; amending
402 s. 507.01, F.S.; revising definitions; amending s.
403 507.02, F.S.; providing construction; amending s.
404 507.03, F.S.; revising requirements for mover and
405 moving broker estimates, contracts, and
406 advertisements; conforming a cross-reference; revising
407 requirements relating to lists that moving brokers
408 must provide to the Department of Agriculture and
409 Consumer Services; requiring the department to publish
410 and maintain a specified list on its website;
411 prohibiting certain persons from operating as or
412 holding themselves out to be a mover or moving broker
413 without first registering with the department;
414 requiring the department to issue cease and desist
415 orders to certain persons under certain circumstances;
416 authorizing the department to seek an immediate

417 injunction under certain circumstances; making
418 technical changes; amending s. 507.04, F.S.; revising
419 alternative insurance coverage requirements for
420 movers; revising liability coverage requirements for
421 moving brokers; requiring the department to
422 immediately suspend a mover's or moving broker's
423 registration under certain circumstances; authorizing
424 the department to seek an immediate injunction under
425 certain circumstances; conforming cross-references;
426 amending s. 507.05, F.S.; revising requirements for
427 contracts and estimates for prospective shippers;
428 creating s. 507.056, F.S.; providing limitations and
429 prohibitions for moving brokers; requiring moving
430 brokers to make a specified disclosure to shippers
431 before providing any services; prohibiting moving
432 brokers' fees from including certain costs; requiring
433 that the documents moving brokers provide to shippers
434 contain specified information; amending s. 507.07,
435 F.S.; providing that it is a violation of ch. 507,
436 F.S., for moving brokers to provide estimates or enter
437 into contracts or agreements that were not prepared
438 and signed or electronically acknowledged by a
439 registered mover; amending s. 507.09, F.S.; conforming
440 a cross-reference; requiring the department, upon
441 verification by certain entities, to immediately

442 suspend a registration or the processing of an
443 application for a registration in certain
444 circumstances; amending s. 507.10, F.S.; conforming a
445 cross-reference; amending s. 507.11, F.S.; conforming
446 provisions to changes made by the act; providing an
447 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 377 License or Permit to Operate a Vehicle for Hire
SPONSOR(S): Borrero
TIED BILLS: **IDEN./SIM. BILLS:** SB 648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N	Larkin	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N	Burgess	Darden
3) Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

Motor vehicles used for transporting persons or goods for compensation are called "vehicles for-hire" or "transportation for-hire." The transport of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is also considered transportation "for hire."

Some counties and municipalities require persons to obtain a permit or license to operate a vehicle for-hire within its jurisdiction. Counties are authorized by general law to license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for-hire that operate in the unincorporated areas of the county. Some municipalities currently license and regulate vehicles for-hire under their broad general powers because they are not currently prohibited from doing so in general law. Similarly, county airports and airport authorities are not restricted from licensing and regulating vehicles for-hire.

The bill:

- Prohibits a county or municipality from requiring a person to obtain an additional license from such county or municipality when that person holds a valid, active license or permit to operate a vehicle for-hire in any other county or municipality if the person:
    - Holds a valid, active license or permit to operate a vehicle for-hire in the county or municipality in which the person permanently resides.
    - Has not had a license or permit to operate a vehicle for hire suspended or revoked within the preceding 5 years.
- Provides that public-use airports are exempted from the provisions of the bill.
- Provides that certain persons who hold a valid, active license or permit to operate a vehicle-for-hire are exempted from the provisions of the bill when such person provides transportation of persons:
    - While on stretchers or wheelchairs, or
    - Whose handicap, illness, other incapacitation makes it impractical to be transported by a regular common carrier such as a bus, taxi, non-taxi, limousine, or other vehicle-for-hire.

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

The bill may have an insignificant indeterminate fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

License or Permit to Operate a Vehicle for-Hire- Current Situation

Background

With certain exceptions[1], offering for lease or rent any motor vehicle or offering passengers transportation in exchange for compensation in the State of Florida qualifies the vehicle as a "for-hire vehicle." A "for-hire vehicle" is a motor vehicle used for transporting persons or goods for compensation. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported for compensation in a motor vehicle not owned by the person owning the goods, such transportation is considered "for-hire." In addition, the carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for-hire."[2] Moreover, there are companies that provide for-hire medical transportation of individuals while they are on stretchers or wheelchairs, or are handicap, have an illness, injury, or other incapacitation.[3] This kind of medical transportation is included in the definition of a "for-hire vehicle" because the vehicle is transporting passengers for compensation. Some local governments require a nonemergency and emergency medical transportation service provider to apply for a license or certificate.[4]

Florida law establishes specific financial responsibility requirements applicable to for-hire vehicles. For-hire vehicles, such as taxis and limousines, must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, $250,000 per incident for bodily injury, and $50,000 for property damage.[5] The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.[6]

Vehicles for-hire are not the same as transportation network companies or TNC's, like Uber or Lyft. **The regulation and licensing of TNC's are expressly preempted to the state** and are regulated by the Department of Financial Services.[7]

The State imposes annual license taxes on certain types of motor vehicles for-hire upon registration or renewal, including locally operated motor vehicles for-hire. These taxes range from a $17 flat fee plus $1.50 per cwt[8] to a $3.50 flat fee plus $1.50 per cwt.[9] However, the state does not require special licenses for drivers for vehicles for-hire.

Counties

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[1] S. 320.01(15)(b), F.S.
[2] S. 320.01(15)(a), F.S.
[3] A couple examples of medical transportation: *Explore about Nonmedical Transport Services*, Frang Zeal, July 22, 2022, https://frangzeal.com/faq-s/ (last visited Jan. 12, 2024) and *Trans Mobility Private Hire Service*, Trans Mobility Private Hire Service, https://www.transmobilityfl.com/ (last visited Jan. 12, 2024).
[4] For example, Broward County requires nonemergency medical transportation service providers to obtain a license and requires emergency medical transport or non-transport services such as Advanced Life Services and Basic Life Services to obtain a certificate of public convenience and necessity from the Broward County Board of Commissioners. *See*, Requirements for a Nonemergency Medical Transportation Service License, https://www.broward.org/Consumer/Forms/Documents/NonemergencyMedicalTransportServLic_CPD2023.pdf (last visited Jan. 12, 2024); *See also,* Broward County Ordinance Code Sec. 3½-6.
[5] S. 324.032(1), F.S.
[6] S. 324.031, F.S.
[7] S. 627.748(17)(a), F.S.
[8] "Cwt" means the weight per hundred pounds, or major fraction thereof, of a motor vehicle. S. 320.01(8), F.S.
[9] S 320.08(6) and (14), F.S.

Counties are specifically authorized by general law to license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for-hire that operate in the unincorporated areas of the county.[10] The county may impose licensing fees in order to license these vehicles for-hire.

Municipalities

Municipalities have broad home rule powers, authorizing them to enact legislation concerning any subject matter upon which the Legislature may act, except:

- The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
- Any subject expressly prohibited by the State Constitution;
- Any subject expressly preempted to state or county government by the constitution or by general law; or
- Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.[11]

A municipality is allowed to impose reasonable regulatory fees, proportionate to the cost of the regulatory activity.[12]

Currently, counties and municipalities differ on whether they require vehicles for-hire to be licensed and regulated. Some counties require licensure and some do not. Some cities require licensure for vehicles for-hire within the city and also at the airport, while others only require the license for the city but not the airport and vice versa. Here are some examples of local requirements:[13]

- Miami-Dade County's Passenger Transportation Regulatory Division regulates for-hire chauffeurs and vehicles such as taxicabs, limousines, passenger motor carriers, including jitneys and tour vans. The county charges $70 for an initial inspection fee;, quarterly, semi-annual and annual inspection fees of $38, depending on the type of service; $35 for re-inspection; and $20 for a replacement decal. The for-hire application fees are non-refundable and are separate from the annual license fee, inspection fees and Local Business Tax Receipt.[14]
- Hillsborough County requires any person engaged in the business of operating vehicles for-hire in the county to obtain a "public vehicle driver's license" (PVDL) from the Hillsborough County Tax Collector, in addition to a valid certificate for the operator and a valid permit for the vehicle after passing a safety and mechanical inspection. Vehicles 10 years of age or older must have additional inspections.[15] A PVDL initial application and renewal fee is $65 and requires fingerprinting.
- The City of Orlando's police department has a vehicle for-hire unit that requires applicants to show proof of payment of the business tax, pass a vehicle inspection, pass a national background check, and obtain a vehicle permit and a driver permit. The application fee for the vehicle for-hire permit is $250 and each permit is $200.[16]

Some cities and counties have made the decision to end their practice of specifically licensing vehicles for-hire.

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[10] S. 125.01(1)(n), F.S.; an incorporated area of the county means that the area is not located within the boundaries of an incorporated municipality.
[11] S. 166.021(3), F.S.
[12] S. 166.221, F.S; *see also* s. 205.042, F.S. (municipalities may levy, by appropriate resolution or ordinance, business tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction).
[13] Examples of other cities with vehicle for-hire requirements include: The City of Fort Lauderdale. *See Vehicle For Hire*, City of Fort Lauderdale, https://www.fortlauderdale.gov/government/departments-i-z/transportation-and-mobility/vehicle-for-hire (last visited Jan. 12, 2024).
[14] Miami-Dade County, Transportation and Public Work, *For-Hire Transportation,* https://www.miamidade.gov/global/service.page?Mduid_service=ser1498077559199786 (last visited Jan. 12, 2024)
[15] Hillsborough County Tax Collectors Office, https://www.hillstax.org/other-services/vehicle-for-hire/ordinance-information/ (Last visited Jan. 12, 2024).
[16] *Vehicle for Hire Permit Application*, City of Orlando Police Department, https://www.orlando.gov/Public-Safety/OPD/Start-a-Transportation-Company (last visited Jan. 12, 2024).

- For example, Sarasota, Naples and Collier County made the decision in 2015 to stop licensing vehicles for-hire. "The decision will deregulate the industry once the county's ordinance is officially taken off the books in the coming weeks. Taxi companies will no longer have to buy commercial insurance and their drivers won't have to pass criminal background checks. Collier County will no longer issue licenses to taxi or limo companies. Essentially, anyone with a driver's license will be able to operate a car-for-hire in Collier County."[17]

Special Districts

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.[18] Special districts are created by general law, special act, local ordinance, or rule of the Governor and Cabinet.[19] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[20] Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.[21]

Special districts may be classified as dependent or independent based on their relationship with local general-purpose governments. A special district is classified as "dependent" if the governing body of a single county or municipality:

- Serves as governing body of the district;
- Appoints the governing body of the district;
- May remove members of the district's governing body at-will during their unexpired terms; or
- Approves or can veto the budget of the district.[22]

A district is classified as "independent" if it does not meet any of the above criteria or is located in more than one county, unless the district lies entirely within the boundaries of a single municipality.[23]

Preemption[24]

Generally, local governments are preempted from issuing occupational licenses that are not specifically authorized in general law. Local governments include counties, municipalities, and special districts.

In 2021, the Governor signed HB 735, Preemption of Local Occupational Licensing, which preempts occupational licensing to the state unless the local government has specific authority to license and regulate as set out in general law. In 2023, the Governor signed HB 1383, which extended the expiration date for local licensing without general law authority to July 1, 2024. Because counties have specific authority in general law to license and regulate vehicles for-hire, HB 735 does not appear to affect a county's ability to license vehicles for-hire. However, this preemption may prevent municipalities from licensing and regulating vehicles for-hire after July 1, 2024, because they do not have specific authority to do so.[25]

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[17] Naples Daily News, Greg Stanley, *Collier tosses out regulations for cabs and ride-sharing, helping Uber and similar businesses*, https://archive.naplesnews.com/business/local/collier-tosses-out-regulations-for-cabs-and-ride-sharing-helping-uber-and-similar-businesses-2319126-337701871.html/ (last visited Jan. 12, 2024).

[18] *See Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

[19] *See* ss. 189.02(1), 189.031(3), and 190.005(1), F.S. *See generally* s. 189.012(6), F.S.

[20] Local Administration, Federal Affairs & Special Districts Subcommittee, *The Local Government Formation Manual*, 62, available at https://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3227 (last visited January 18, 2024).

[21] The method of financing a district must be stated in its charter. Ss. 189.02(4)(g) and 189.031(3), F.S. Independent special districts may be authorized to impose ad valorem taxes as well as non-ad valorem special assessments in the special acts comprising their charters. *See, e.g.,* ch. 2023-335, s. 6 of s. 1, Laws of Fla. (East River Ranch Stewardship District). *See also, e.g.,* ss. 190.021 (community development districts), 191.009 (independent fire control districts), 197.3631 (non-ad valorem assessments), 298.305 (water control districts), and 388.221, F.S. (mosquito control), and ch. 2004-397, s. 27 of s. 3, Laws of Fla. (South Broward Hospital District).

[22] S. 189.012(2), F.S.

[23] S. 189.012(3), F.S.

[24] S.163.211, F.S.

[25] *See* s. 163.211, F.S.; This may be preempted on July 1, 2024.

Public Use Airports

A "public-use airport" means any publicly owned airport which is used or to be used for public purposes.[26] An airport is classified as a commercial service airport when the U.S. Secretary of Transportation determines that it has more than 10,000 passenger boardings each year.[27]

In Florida, the Department of Transportation (DOT) is responsible for planning airport systems and overseeing the public airport system.[28] The owner or lessee of a proposed public airport[29] must receive DOT approval before site acquisition, construction, or establishment of a public airport facility.[30] DOT is also responsible for licensing public airport facilities prior to the operation of aircraft to or from the facility and must inspect such facilities prior to licensing or renewal.[31] Current law authorizes local governments to establish and operate airports.[32] Neither state law nor federal law establish requirements for airport governance or ownership. As such, Florida airports operate under either a government department model (where the airport operates as a department of the local government) or an airport authority model (where the airport authority is created as either an independent or a dependent special district). Because airports are generally governed and subsumed as part of local governments, state law provides for very little oversight and accountability.

With respect to county-owned or operated airports, the board of county commissioners has the right, power, and authority to enter into contracts with one or more motor carriers for the transportation of passengers for-hire between airports and points within such county.[33] These contracts define the period of authorization to transport passengers.[34] The county is required to use the competitive bidding process[35] to grant an exclusive right to use certain parking areas at the county-owned airport for motor carriers for the transportation of passengers, such as a taxicab and limousine stand.[36] A county-owned airport, which is located within the jurisdictional boundaries of a municipality, is under the county's exclusive authority and the municipality does not have authority over such airport.[37]

Some airport authorities require vehicles for-hire to obtain a permit to operate from the local government and the airport. For example, Orlando International Airport requires vehicles for hire to have:[38]

- a valid, current driver's license issued by the City of Orlando,
- a vehicle permit (V-Permit) decal issued by the Orlando International Airport displayed on the vehicle at all times, and
- a vehicle for-hire permit decal issued by the City of Orlando displayed on the vehicle at all times.

The Fort Lauderdale-Hollywood International Airport requires persons that operate a vehicle for hire to first register with and obtain a permit from the Environmental and Consumer Protection Division of Broward County. Then, persons with a permit to operate a vehicle for hire must apply for a decal permit

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[26] S. 332.004(14), F.S.
[27] 49 U.S.C.A. § 47102 (2018); *see also*, s. 332.0075 (1)(a), F.S.
[28] S. 332.001, F.S.
[29] S. 330.27(6), F.S. For purposes of DOT approval and licensure, the term "public airport" means a publicly or privately-owned airport for public use.
[30] S. 330.30(1), F.S.
[31] S. 330.30(2), F.S.
[32] *See* ch.332, F.S.
[33] This does not apply to counties who own or operate an airport which is located on land that is separated from the mainland of the state by a body of water or the county has a population between 150,000 and 200,000. S. 331.15(2), F.S.
[34] S. 331.15(2), F.S.
[35] "Competitive bidding is a process of issuing a public bid with the intent that companies will put together their best proposal and compete for a specific project." *"Competitive Bidding: What Is Competitive Bidding?"*, FindRFP Inc. https://www.findrfp.com/Government-Contracting/competitive-bidding.aspx (last visited Jan. 12, 2024); A county is required to use a competitive bidding procedure to lease county-owned property. *See* 1988 Op. Att'y Gen. Fla. 110 (1988).
[36] *Randall Indus., Inc. v. Lee Cnty.*, 307 So. 2d 499, 501 (Fla. 2d DCA 1975).
[37] Fla. Att'y Gen. Op. 2009-46 (2009); s. 125.015, F.S.; *see also City of Dania v. Hertz Corp.*, 518 So. 2d 1387, 1388 (Fla. 4th DCA 1988).
[38] Greater Orlando Aviation Authority, Vehicle-For-Hire (VFH): V-Permit Holders and Drivers Handbook p. 5, Orlando International Airport, https://orlandoairports.net/site/uploads/VFH-Handbook.pdf (last visited Jan. 26, 2024).

from the Broward County Aviation Department.[39] The Jacksonville International Airport has a similar arrangement.[40]

On the other hand, some airport authorities issue a separate permit for vehicles for-hire for transporting passengers at the airport. For example, the Orlando Sanford International Airport requires a vehicle for hire to obtain a ground transportation prearranged permit which is issued by the airport.[41] This includes a ground transportation agreement which excludes taxicabs.[42]

The following are public-use airports:[43]

- Airglades Airport;
- Albert Whitted Airport;
- Apalachicola Regional-Cleve Randolph Field;
- Arcadia Municipal Airport;
- Arthur Dunn Air Park;
- Avon Park Executive Airport;
- Bartow Executive Airport;
- Belle Glade State Municipal Airport;
- Bob Sikes Airport;
- Boca Raton Airport;
- Brooksville - Tampa Bay Regional Airport;
- Buchan Airport;
- Calhoun County Airport;
- Carrabelle - Thompson Airport;
- Cecil Airport;
- Clearw ater Air Park;
- Cross City Airport;
- Crystal River - Captain Tom Davis Field;
- Dade-Collier Training and Transition Airport;
- Daytona Beach International Airport;
- Defuniak Springs Airport;
- DeLand Municipal - Sidney H. Taylor Field;
- Destin - Fort Walton Beach Airport / Eglin Air Force Base;
- Destin Executive Airport;
- Dow ntow n Fort Lauderdale Heliport;
- Everglades Airpark;
- Orlando Executive Airport;
- Fernandina Beach Municipal Airport;
- Flagler Executive Airport;
- Fort Lauderdale Executive Airport;
- Fort Lauderdale/Hollyw ood International Airport;
- Gainesville Regional Airport;
- George T. Lew is Airport;
- Herlong Recreational Airport;
- Hilliard Airpark;
- Immokalee Regional Airport;
- Inverness Airport;
- Jacksonville Executive at Craig Airport;
- Jacksonville International Airport;
- Key West International Airport;
- Keystone Heights Airport;
- Kissimmee Gatew ay Airport;
- La Belle Municipal Airport;
- Lake City Gatew ay Airport;
- Lake Wales Municipal Airport;
- Lakeland Linder International Airport;
- Leesburg International Airport;
- Marco Island Executive Airport;
- Marianna Municipal Airport;
- Marion County Airport;
- Melbourne Orlando International Airport;
- Merritt Island Airport;
- Miami Executive Airport;
- Miami Homestead General Aviation Airport;
- Miami International Airport;
- Miami-Opa Locka Executive Airport;
- Naples Municipal Airport;
- New Smyrna Beach Municipal Airport;
- North Palm Beach County General Aviation Airport;
- North Perry Airport;
- Northeast Florida Regional Airport;
- Northw est Florida Beaches International Airport;
- Ocala International-Jim Taylor Field;
- Okeechobee County Airport;
- Orlando International Airport;
- Orlando Sanford International Airport;
- Ormond Beach Municipal Airport;
- Page Field;
- Palatka Municipal-Lt Kay Larkin Field;
- Palm Beach County Glades Airport;
- Palm Beach County Park Airport;
- Palm Beach International Airport;
- Pensacola International Airport;
- Perry-Foley Airport;
- Peter O Knight Airport;
- Peter Prince Field;
- Pierson Municipal Airport;
- Plant City Airport;
- Pompano Beach Airpark;
- Punta Gorda Airport;
- Quincy Municipal Airport;
- Sarasota/Bradenton International Airport;
- Sebastian Municipal Airport;
- Sebring Regional Airport;
- Southw est Florida International Airport;
- Space Coast Regional Airport;
- St Cloud Seaplane Base;

[39] *Operational Guidelines for Ground Transportation at Fort Lauderdale-Hollywood International Airport,* p. 5, Broward County Board of County Commissioners (Aug. 17, 2021), https://www.broward.org/Airport/Business/about/Documents/Operationalguidelinesforgroundtransportationservices01.pdf (last visited Jan. 26, 2024).

[40] First a person must obtain a vehicle for hire permit issued from the City of Jacksonville. Then, the person must obtain an annual permit from the Jacksonville Aviation Authority. *Commercial Ground Transportation Policy* p. 7, Jacksonville International Airport, Jacksonville Aviation Authority, (Jan. 28, 2013), https://flyjacksonville.com/PDFs/AppndxG.pdf (last visited Jan. 26, 2024).

[41] The fees to obtain a permit to operate vehicle for hire depend on the weight and length of the vehicle.

[42] *2023 Ground Transportation Pre-Arranged Permit,* Orlando Sanford International Airport, https://web1.osaa.net/GTX/docs/GT-Permit-2023-for-Website.pdf (last visited Jan. 26, 2024).

[43] E-mail from Lisa Waters, President/CEO, Florida Airports Council, RE: HB 807 (April 14, 2023) (on file with Regulatory Reform & Economic Development Subcommittee).

- St Pete-Clearwater International Airport;
- Suwannee County Airport;
- Tallahassee International Airport;
- Tampa Executive Airport;
- Tampa International Airport;
- Tavares Seaplane Base;
- The Florida Keys Marathon International Airport;
- Treasure Coast International Airport;
- Tri-County Airport;
- Umatilla Municipal Airport;
- Valkaria Airport;
- Venice Municipal Airport;
- Vero Beach Regional Airport;
- Wakulla County Airport;
- Wauchula Municipal Airport; and
- Williston Municipal Airport;
- Winter Haven Regional Airport;
- Witham Field.
- Zephyrhills Municipal Airport

Effect of the Bill

Counties and Municipalities

The bill provides an exception from certain local licensing requirements for a person who holds a valid, active license or permit issued by a county or municipality to operate a vehicle for-hire. Such person may operate a vehicle-for hire without being subject to additional licensing or permitting requirements and without paying additional fees if the person:

- Holds a valid, active license or permit to operate a vehicle for hire in the county or municipality in which the person is domiciled.[44]
- Has not had a license or permit to operate a vehicle for hire suspended or revoked within the preceding 5 years.

A county may still license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for-hire. However, if the person is already licensed or permitted by the county or municipality where they live and has a license or permit in good standing, the county will not be able to enforce additional licensing or permitting requirements or impose additional fees upon that person.

As for municipalities, if a person is licensed or permitted by the area where they live and has a license or permit in good standing, the municipality will not be able to enforce additional licensing or permitting requirements or impose additional fees upon that person.

A person who is unlicensed or does not fall within the exception may be able to obtain a license or permit to operate a vehicle for hire in another county or municipality, despite where he or she currently lives.

Thus, the bill allows persons who possess a license or permit in one jurisdiction to operate a vehicle for-hire in other jurisdictions without being subject to obtaining another license or permit.

The bill states that this section does not grant specific authority to counties, municipalities, or special districts to regulate or license vehicles.

Furthermore, the bill provides that reciprocity under certain circumstances **does not apply** to a person who holds a valid, active license or permit to operate a vehicle when such person provides transportation of persons:

- o While on stretchers or wheelchairs, or
- o Whose handicap, illness, other incapacitation makes it impractical to be transported by a regular common carrier such as a bus, taxi, non-taxi, limousine, or other vehicle-for-hire.

This will likely allow counties or municipalities to maintain or implement required certifications or licenses for a company to operate a medical transportation service for hire.

Public Use Airports

The bill provides that the ability for a person to operate a vehicle for hire to obtain reciprocity under certain circumstances **does not apply** to an airport that licenses or certifies persons who operate a

[44] Domicile means someone's permanent residence or principal home. *Domicile Definition and Meaning*, Merriam-Webster, https://www.merriam-webster.com/dictionary/domicile (last visited Jan. 12, 2024).

vehicle for hire. For purposes of this section, the term "airport" includes an airport, airport authority, aviation authority, or other entity that operates a public-use airport as defined in s. 332.004(14), F.S.[45], including counties, municipalities or special districts that operate airports defined in this subsection.

Overall, this will allow an airport to license or permit persons who operate a vehicle for hire and charge a licensing fee.

B. SECTION DIRECTORY:

Section 1. Creating s. 320.0603, F.S., relating to a license or permit to operate a vehicle for hire.

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:

   The bill may potentially impact the revenues of municipalities who raise revenue from the licenses that they issue if such fees are not in proportion to the regulatory activity. However, municipalities are required to only impose regulatory fees that are proportionate to the cost of regulation in accordance with section 166.221, F.S. Since municipalities will no longer be issuing as many licenses or inspecting as many vehicles for hire, this loss of revenue should be offset by a decrease in expenditures.

   As for counties, the negative impact on revenues is indeterminate.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive economic impact on the vehicles for-hire industry. There would be a positive economic impact for persons who:

- hold a valid, active license or permit to operate a for hire vehicle in the municipality or county where they live and
- maintain their license or permit to operate in good standing for the preceding 5 years.

Such persons will not be subject to additional licensing or permitting requirements or fees in other municipalities or counties.

D. FISCAL COMMENTS:

None.

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[45] A "public-use airport" means any publicly owned airport which is used or to be used for public purposes. S. 332.004(14), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to a license or permit to operate a
3 vehicle for hire; creating s. 320.0603, F.S.;
4 providing that a person who holds a license or permit
5 issued by a county or municipality to operate a
6 vehicle for hire may operate a vehicle for hire in any
7 other county or municipality without being subject to
8 certain requirements or fees under certain
9 circumstances; defining the term "airport"; providing
10 construction and applicability; providing an effective
11 date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Section 320.0603, Florida Statutes, is created
16 to read:
17 320.0603 Vehicle-for-hire license or permit; reciprocity.—
18 (1) A person who holds a valid, active license or permit
19 issued by a county or municipality to operate a vehicle for hire
20 may operate a vehicle for hire in any other county or
21 municipality without being subject to additional licensing or
22 permitting requirements and without paying additional license or
23 permit fees if the person:
24 (a) Holds a valid, active license or permit to operate a
25 vehicle for hire in the county or municipality in which the

26 person is domiciled; and
27 (b) Has not had a license or permit to operate a vehicle
28 for hire suspended or revoked within the preceding 5 years.
29 (2) Notwithstanding subsection (1) or subsection (3), this
30 section does not apply to an airport. For purposes of this
31 section, the term "airport" includes an airport, airport
32 authority, aviation authority, or other entity that operates a
33 public-use airport as defined in s. 332.004, including counties,
34 municipalities, or special districts that operate airports
35 defined in this subsection.
36 (3) This section does not grant specific authority to
37 counties, municipalities, or special districts to regulate or
38 license vehicles for hire which is required by s. 163.211.
39 (4) This section does not apply to a person who holds a
40 valid, active license or permit to operate a vehicle for hire
41 when such person provides transportation of persons while on
42 stretchers or wheelchairs, or transportation of persons whose
43 disability, illness, injury, or other incapacitation makes it
44 impractical to be transported by a regular common carrier such
45 as a bus, taxi, non-taxi, limousine, or other vehicle for hire.
46 Section 2. This act shall take effect July 1, 2024.

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

HB 471

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 471 Valuation of Timeshare Units
SPONSOR(S): Fine
TIED BILLS: **IDEN./SIM. BILLS:** SB 886

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	18 Y, 4 N	Berg	Aldridge
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Under Florida law, a property appraiser must first look to the resale market to value timeshare property. If the property appraiser determines that there is an inadequate number of resales to provide a basis for determining value, the property appraiser must use the original purchase price of the timeshare and then deduct "usual and reasonable fees and costs of the sale" to determine value.

The bill provides that, upon an appeal of a property appraiser's valuation of timeshare units that are part of a timeshare development with more than 300 timeshare units, the number of resales is deemed to be adequate if the taxpayer provides a reasonable number of resales as supported by the most recent standards adopted by the Uniform Standards of Professional Appraisal Practice.

The bill provides that this method meets the requirement of just valuation of all property, including timeshare units, as required under s. 4, Art. VII of the State Constitution. Additionally, under the bill, the taxpayer may submit the known and controlling resales of the properties sold to assist in arriving as value conclusions.

The bill does not have an effect on state government revenues or expenditures. However, the Revenue Estimating Conference estimates that the bill would have a recurring negative impact on local government property tax revenues of $171.5 million ($65.6 million school taxes; $105.9 million non-school taxes), beginning in FY 2024-25.

The bill is effective July 1, 2024.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[1] The ad valorem tax is an annual tax levied by counties, municipalities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[2] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,[3] and it provides for specified assessment limitations, property classifications, and exemptions.[4] After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[5]

Timeshares

A timeshare interest is a form of ownership of real and personal property.[6] In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time during which the owner has the exclusive right to use the property.

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.[7] Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state.[8] Part I of ch. 721, F.S., relates to vacation plans and timesharing, and Part II of chapter 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.[9]

A "timeshare estate" is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.[10] The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary's spouse or other dependent.

[1] Art. VII, s. 1(a), Fla. Const.
[2] S. 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. S. 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in Art. VII, s. 1(b), Fla. Const., and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.
[3] Art. VII, s. 4, Fla. Const.
[4] Art. VII, ss. 3, 4, and 6, Fla. Const.
[5] S. 196.031, F.S.
[6] See s. 721.05(36), F.S.
[7] S. 721.02(2) and (3), F.S.
[8] S. 721.03, F.S.
[9] See ss. 721.05(41) and 718.103(26), F.S.
[10] S. 721.05(34), F.S.

The “managing entity” for a timeshare property is the person who operates or maintains the timeshare plan pursuant to s. 721.13(1), F.S., which defines the managing entity as either the developer, a separate manager or management firm, or an owners' association.[11]

Tax Assessments

Section 192.037, F.S., governs the ad valorem taxation of fee timeshare real property.[12] The managing entity responsible for operating and maintaining fee timeshare real property is considered the taxpayer as an agent of the timeshare period titleholder.[13]

The managing entity responsible for operating and maintaining the timesharing plan and each person having a fee interest in a timeshare unit or timeshare period may contest or appeal an ad valorem tax assessment in the same manner as other property owners under ch. 194, F.S., which relates to the administrative and judicial review of property taxes assessed by the property appraiser.[14]

The managing entity is required to collect and remit the taxes and special assessments due on fee timeshare real property. In allocating taxes, special assessments, and common expenses to individual timeshare period titleholders, the managing entity must clearly label the portion of any amounts due which are attributable to ad valorem taxes and special assessments.[15]

A property appraiser must first look to the resale market for determining the value of timeshare property.[16] In order for resales to meet the definition of “fair market” value, those resales must constitute arms-length transactions.[17] If the property appraiser finds an inadequate number of resales exists for such a determination, the property appraiser must determine the value by deducting the “usual and reasonable fees and costs of the sale” from the original purchase price.[18]

The term “usual and reasonable fees and costs of the sale” for timeshare real property includes all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange network of resorts.[19] For timeshare real property, the “usual and reasonable fees and costs of the sale” is presumed to be 50 percent of the original purchase price, but that presumption is rebuttable.[20]

Section 4, Art. VII of the State Constitution requires regulations for securing a just valuation of all property to be prescribed by general law subject to the conditions in this section, including providing that no assessment may exceed just value.

Litigation

The valuation of timeshare properties has been the subject of recent litigation and is the subject of ongoing litigation.[21] In Star Island Vacation Ownership Ass'n v. Scarborough, 313 So. 3d 1168 (Fla. Dist. Ct. App. 2021), the Fifth District Court of Appeals per curium affirmed the ruling of the circuit court

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[11] See s. 721.02(22), F.S., defining the term “managing entity.”
[12] S. 192.001(14), F.S., defines the term “fee timeshare real property” to mean “the land and buildings and other improvements to land that are subject to timeshare interests which are sold as a fee interest in real property.”
[13] S. 192.001(15), F.S., defines the term “timeshare period titleholder” to mean “the purchaser of a timeshare period sold as a fee interest in real property, whether organized under ch. 718, F.S., relating to condominium associations, or ch. 721, F.S, relating to timeshares and vacation plans.
[14] S. 192.037(4), F.S.
[15] S. 192.037(5), F.S.
[16] S. 192.037(10), F.S.
[17] Star Island v. Scarborough, case no. 2016-CA-1006-OC, 9th Cir. Ct. Fla. 2019.
[18] S. 192.037(11), F.S.
[19] S. 192.037(11), F.S.
[20] S. 192.037(11), F.S.
[21] See, e.g., the following pending cases from 9th Cir. Ct. Fla.: Grande Vista vs. Rick Singh, case no. 2018-CA-013570-O, Isle of Bali II Condominium Association vs. Amy Mercado, case no. 2021-CA-006130-O, Sabal Palms Condominium Association vs. Rick Singh, case no. 2019-CA-015110-O, and Cypress Pointe Resort vs. Amy Mercado, case no. 2021-CA-006108-O.

that the resale market of timeshares does not provide a sufficient basis for obtaining reliable resale data.[22]

In Star Island, the Property Appraiser presented evidence that during the year at issue (2014), out of approximately 25,000 total sales of timeshares, only 3,790 were classified as resales.[23] Of those resales, approximately 90% were transacted for nominal amounts which removed them from consideration for valuation purposes.[24] The Property Appraiser also presented evidence that the exceedingly large number of resales at nominal amounts reflected significant financial distress in the overall market.[25] The remaining number of resales constituted less than 1.7% of the total timeshare sales market each year.[26] When evaluating the sales from the viewpoint of total sales consideration, the resale market constituted less than 1% of the total sales of timeshares.[27]

While there were hundreds of developer sales each year that clearly qualified as arms-length transactions reflective of just value, the resales showed no consistent trend in pricing, and, accordingly, the court agreed with the Property Appraiser that there were not a sufficient number (only 4 resales potentially qualified as arms-length transactions) to support an accurate, credible, and reliable value conclusion.[28] In sum, the court concluded that the resale market does not provide a sufficient basis for obtaining reliable sales data.[29]

Effect of Proposed Changes

The bill amends s. 192.037, F.S., to require the property appraiser to defer to the taxpayer for the determination of whether the number of resales is adequate if, on appeal of the tax assessment for a timeshare unit that is part of a timeshare development with more than 300 timeshare units, the taxpayer asserts that there is an adequate number of resales to provide a basis for arriving at a value and provides a reasonable number of resales as would be supported by the Uniform Standards of Professional Appraisal Practice.[30]

The bill further provides that this method meets the requirement of just valuation of all property, as provided in s. 4, Art. VII of the State Constitution. Additionally, under the bill, the taxpayer may submit known and controlling resales of the properties sold to assist in arriving at value conclusions.

The bill is effective July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 192.037, F.S., relating to fee timeshare real property; taxes and assessments; escrow.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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[22] Star Island v. Scarborough, case no. 2016-CA-1006-OC, 9th Cir. Ct. Fla. 2019.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] Adopted by Congress in 1989, the Uniform Standards of Professional Appraisal Practice are the generally recognized ethical an d performance standards for the appraisal profession in the United States. *See* The Appraisal Foundation, *What is UPAP?*, available at: https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal%20Practice/TAF/USPAP.aspx (last visited January 24, 2024).

None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference estimates that the bill would have a recurring negative impact on local government property tax revenues of $171.5 million ($65.6 million school taxes; $105.9 million non-school taxes), beginning in FY 2024-25.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals and businesses having an interest in a timeshare unit or timeshare period may benefit from a reduction in assessed ad valorem taxes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce the authority of cities and counties to raise total aggregate revenues. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

   The bill provides that the valuation methodology provided for in the bill meets the requirement of just valuation of all property, as provided in s. 4, Art. VII of the State Constitution. The authority to make this determination vests with the judicial branch of state government.[31]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue noted in its agency analysis that the "statutory amendment [providing for assessment at less that just value] could create very significant difficulties in administration because it appears to reverse and/or potentially contradict the just value requirements outlined in s. 194.301, F.S."[32]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[31] *See* Art. V, s. 1., and Art. III, s. 3., Fla. Const.

[32] Department of Revenue, 2024 Agency Legislative Bill Analysis of HB 471 (on file with the Ways & Means Committee).

1 A bill to be entitled
2 An act relating to valuation of timeshare units;
3 amending s. 192.037, F.S.; specifying the methodology
4 by which certain timeshare units must be valued in
5 certain tax appeals; providing that the methodology
6 meets the constitutional mandate for just valuation;
7 authorizing a taxpayer to submit certain information
8 for a specified purpose; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Subsection (12) of section 192.037, Florida
13 Statutes, is renumbered as subsection (13), and a new subsection
14 (12) is added to that section to read:
15 192.037 Fee timeshare real property; taxes and
16 assessments; escrow.—
17 (12) In all tax appeals regarding timeshare units that are
18 part of a timeshare development with more than 300 timeshare
19 units, if the taxpayer asserts that there are an adequate number
20 of resales to provide a basis for arriving at value conclusions,
21 the number of resales shall be considered adequate when a
22 reasonable number of resales of timeshare units within the same
23 timeshare development are provided by the taxpayer and supported
24 by the most recent standards adopted by the Uniform Standards of
25 Professional Appraisal Practice. This methodology meets the

26 requirement of just valuation of all real estate located in this
27 state, including timeshare units, as recognized by and provided
28 in s. 4, Art. VII of the State Constitution. The taxpayer may
29 submit the known and controlling resales of the properties sold
30 to assist in arriving at value conclusions.
31 Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 535 Low-voltage Alarm System Projects
SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, Snyder
TIED BILLS: **IDEN./SIM. BILLS:** SB 496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N	Wright	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N, As CS	Burgess	Darden
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

A “low-voltage electric fence” is an alarm system that consists of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure. Florida law sets out a streamlined process for permitting low-voltage electric fence projects.

If a low-voltage electric fence meets certain requirements, it may be permitted as a low-voltage alarm system project, and no other permit may be required. Requirements include:

- The low-voltage electric fence will be completely enclosed by a nonelectric fence or wall. Current law is unclear if the fence must be enclosed on both sides or enclosed only on the outside perimeter.
- The low-voltage electric fence will not be installed in an area zoned exclusively for single-family or multifamily residential use.

A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is inconsistent with Florida Statutes.

Recently, two Florida trial courts differed on when an ordinance or rule relating to a low-voltage alarm system project is preempted and inconsistent with Florida law.

The bill clarifies that a nonelectric fence or wall must only be completely enclosed on the outside perimeter of the low-voltage electric fence but does not have to be completely enclosed on both sides. The bill requires a low-voltage electric fence to be 2 feet higher than the perimeter nonelectric fence or wall.

The bill provides that a local government must allow low-voltage electric fences in areas not exclusively zoned for single- or multi-family residential use and therefore may not prohibit such fences in areas zoned in multiple zoning categories.

The bill clarifies that any ordinance or rule with additional requirements beyond those set out in, or that is otherwise inconsistent, with Florida Statutes related to the installation or maintenance of a low-voltage alarm system project may not be adopted by a municipality, county, district, or other entity of local government.

The bill has no fiscal impact on state and local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Building Code

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

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

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

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

Building Permits

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction for the protection of the public's health, safety, and welfare.[7] Every local government must enforce the Building Code and issue building permits.[8]

A building permit is an official document or certificate issued by the local building official that authorizes the performance of a specific activity.[9] Any construction work that requires a building permit also

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[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan, 11, 2024).
[2] *Id.*
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Jan, 11, 2024).
[4] *See* s. 553.72(1), F.S.
[5] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Jan, 11, 2024).
[6] S. 553.73(7)(a), F.S.
[7] S. 553.72, F.S.
[8] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[9] S. 468.603(2), F.S; § 202, FBC, Building, 7th Ed., (2020).

requires plan reviews and inspections by the building official, inspector, or plans examiner to ensure the work complies with the Building Code.[10]

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[11] A building permit is not valid until the fees for the permit have been paid.[12]

To obtain a permit, an applicant must complete an application for the proposed work on the form furnished by the local enforcing agency, which must be posted on its website.[13] An application for a permit must include building plans.[14] A local enforcing agency may not issue a permit until the building official or plans reviewer has reviewed the building plans and determined that they comply with the Building Code.[15]

Streamlined Permitting for Low-voltage Electric Fences

Section 553.793, F.S., sets out a streamlined process for permitting low-voltage alarm system projects, which includes low-voltage electric fence projects.

A "low-voltage alarm system project" means a project for the installation, maintenance, inspection, replacement, or service of the following new or existing alarm systems, or any ancillary components thereof, by a licensed electrical or alarm systems contractor:[16]

- Hardwired and low-voltage[17] video cameras and closed-circuit television systems used to signal or detect a burglary, fire, robbery, or medical emergency; and
- Low-voltage electric fences.

A "low-voltage electric fence" is an alarm system that consists of a fence structure and an energizer powered by a commercial storage battery not exceeding 12 volts which produces an electric charge upon contact with the fence structure.[18]

If a low-voltage electric fence meets all of the following requirements, it may be permitted as a low-voltage alarm system project, and no other permit may be required:[19]

- The electric charge produced by the fence upon contact does not exceed the international standard for energizer characteristics.[20]
- The low-voltage electric fence will be **completely enclosed** by a nonelectric fence or wall. The low-voltage electric fence may be up to 2 feet higher than the perimeter nonelectric fence or wall.
    - Current law is unclear if the fence must be enclosed on both sides or enclosed only on the outside perimeter.
- The low-voltage electric fence is identified using warning signs attached to the fence at intervals of not more than 60 feet.
- The low-voltage electric fence will not be installed in an area zoned exclusively for **single-family or multifamily residential use**.
- The low-voltage electric fence will not enclose **residential** portions of a property.

[10] §§ 107, 110.1, and 110.3, FBC, Building, 7th Ed., (2020).
[11] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[12] § 109.1, FBC, Building, 7th Ed., (2020).
[13] Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.
[14] Ss. 468.603(8), and 553.79(2), F.S.
[15] S. 553.79(2), F.S.
[16] S. 553.793(1)(b), F.S.
[17] As defined in Standard 70, NEC. S. 553.793(1)(b), F.S.
[18] S. 553.793(1)(c), F.S.
[19] S. 553.793(3), F.S.
[20] § 22.108, Figure 102, IEC 60335-2-76.

The streamlined permitting process is as follows:

- First, instead of requiring individualized permits, the local enforcement agency must make uniform basic permit labels available for purchase in bulk by an electrical or alarm systems contractor to be used for the installation or replacement of a new or existing alarm system at a cost of not more than $40 per label per project per unit.[21]
    - The local enforcement agency may not require a contractor, as a condition of purchasing a label, to submit any information other than identification information and proof of license.[22]
- Second, before commencing a project, the contractor must post an unused uniform basic permit label in a conspicuous place on the premises of the low-voltage alarm system project site.[23]
    - The contractor is not required to notify the local enforcement agency before commencing work.
- Third, within 14 days after completing the project, the contractor must submit a notice of completing the project[24] to the local enforcement agency.[25]
- Fourth, to inspect the project for compliance with applicable codes and standards, a local enforcement agency may coordinate directly with the owner or customer to inspect the project.
    - If the project fails the inspection, the contractor must take corrective action as necessary to pass inspection.[26]

A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is inconsistent with s. 553.793, F.S.[27]

Preemption

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[28] To expressly preempt a subject area, the Legislature must use clear statutory language stating its intention to do so.[29] Implied preemption occurs when the Legislature has demonstrated an intent to preempt an area, though not expressly. Florida courts find implied preemption when "the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature."[30]

Where state preemption applies, a local government may not exercise authority in that area.[31] Whether a local government ordinance or other measure violates preemption is ultimately decided by a court. If a local government improperly enacts an ordinance or other measure on a matter preempted to the state, a person may challenge the ordinance by filing a lawsuit. A court ruling against the government may declare the preempted ordinance void.[32]

Recent Litigation Concerning Low-voltage Electric Fences

Recently, two Florida trial courts differed on whether an ordinance or rule relating to a low-voltage alarm system project is preempted and inconsistent with Florida law as set forth in s. 553.793, F.S.

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[21] S. 553.793(5), F.S.
[22] S. 553.793(5)(b), F.S.
[23] S. 553.793(6), F.S.
[24] The form requirements are outlined in s. 553.793(8), F.S.
[25] S. 553.793(7), F.S.
[26] S. 553-793(9), F.S.
[27] S. 553.793(10), F.S.
[28] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005).
[29] *Mulligan*, 934 So. 2d at 1243.
[30] *Tallahassee Mem. Reg. Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).
[31] *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017); Judge James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).
[32] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So. 2d 504 (Fla. 3d DCA 2002).

Hillsborough County

In a case filed in Hillsborough County,[33] the trial court held that the county ordinance for low-voltage electric fences was inconsistent with and preempted by state law "to the extent that it prohibits or imposes additional requirements for low-voltage electric fences in areas of Hillsborough County other than those areas zoned exclusively for single-family or multiple-family residential use, where these fences satisfy the requirements of s. 553.793, F.S." The ordinance imposed restrictions on such fences in mixed-use areas.[34]

City of Orlando

In a case addressing a requirement in the City of Orlando's zoning code which prohibited the installation of electric fences in a certain heritage zoning district,[35] the trial court disagreed with the finding in the Hillsborough County case. The court held that the "standard is not whether the city's code imposes *additional* requirements, but whether those requirements *conflict* with [s. 553.793, F.S.]. That is, whether the code and the statute cannot coexist, or if the Plaintiff must violate one to comply with the other."[36]

The court also held that "as long as the ordinance is not inconsistent with [that section], a municipality is not prevented from enacting regulations regarding electric fences."[37]

The court also found that the city's ordinance was not preempted by s. 553.793, F.S, as the ordinance at issue:

> Does not require an additional permit for an electric fence--it only regulates where the electric fences can be installed. It is within Orlando's police powers to maintain its communities, and the city has a legitimate interest in maintaining the appearance of the [heritage zoning] district with importance to the community.[38]

Accordingly, the City of Orlando's regulation prohibiting low-voltage electric fences in certain locations did not constitute an additional requirement for installing such fences, and the court found in favor of the City of Orlando.[39]

Effect of the Bill

The bill clarifies that a nonelectric fence or wall must only be completely enclosed on **the outside perimeter** of the low-voltage electric fence but does not have to be completely enclosed on both sides. The low-voltage electric fence must be 2 feet higher than the perimeter nonelectric fence or wall.

The bill provides that a local government must allow low-voltage electric fences in areas not exclusively zoned for single- or multi-family residential use and therefore may not prohibit such fences in areas zoned in multiple zoning categories.

The bill provides any ordinance or rule with additional requirements beyond those set out in, or that is otherwise inconsistent, with s. 553.793, F.S., for the installation or maintenance of a low-voltage alarm system project may not be adopted by a municipality, county, district, or other entity of local government.

B. SECTION DIRECTORY:

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[33] *See Electric Guard Dog, LLC v. Hillsborough Co., Fla.*, (Case No. 17-CA-010362, Fla.13th Jud. Cir. 2019), at pp. 1-2.
[34] *Id.* at 2.
[35] *See Amarok Security, LLC v. City of Orlando, Fla.*, (Case No. 2022-CA-011454-0, Div. 35, Fla. 9th Jud. Cir. 2023).
[36] *Id.* at p. 8.
[37] *Id.* at p. 9.
[38] *Id.*
[39] *Id.*

Section 1:	Amends s. 553.793, F.S.; providing requirements for low-voltage electric fence permits.
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 require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 31, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment requires a low-voltage electric fence to be 2 feet higher than the perimeter nonelectric fence or wall.

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.

1 A bill to be entitled
2 An act relating to low-voltage alarm system projects;
3 amending s. 553.793, F.S.; specifying that a
4 nonelectric fence or wall must enclose the outside
5 perimeter of a low-voltage electric fence; requiring a
6 low-voltage electric fence to be a specified number of
7 feet above such nonelectric fence or wall; permitting
8 low-voltage electric fences to be installed in areas
9 within more than one zoning category; prohibiting a
10 municipality, county, district, or other entity of
11 local government from adopting or maintaining certain
12 ordinances or rules that provide additional
13 requirements for low-voltage alarm system projects;
14 providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Paragraphs (b) and (d) of subsection (3) and
19 subsection (10) of section 553.793, Florida Statutes, are
20 amended to read:
21 553.793 Streamlined low-voltage alarm system installation
22 permitting.—
23 (3) A low-voltage electric fence must meet all of the
24 following requirements to be permitted as a low-voltage alarm
25 system project, and no further permit shall be required for the

low-voltage alarm system project other than as provided in this section:

(b) A nonelectric fence or wall must completely enclose the outside perimeter of the low-voltage electric fence. The low-voltage electric fence must ~~may~~ be ~~up to~~ 2 feet higher than the perimeter nonelectric fence or wall.

(d) A ~~The~~ low-voltage electric fence is allowed ~~shall not be installed~~ in any ~~an~~ area unless the area is zoned exclusively for single-family or multifamily residential use. An area is not considered to be zoned exclusively for single-family or multifamily residential use if the area is within more than one zoning category.

(10) A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that provides additional requirements beyond those set out in this section for the installation or maintenance of a low-voltage alarm system project or that is otherwise ~~is~~ inconsistent with this section.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 577 Spaceport Territory
SPONSOR(S): Griffitts and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 968

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N	Thompson	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N	Mwakyanjala	Darden
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Space Florida is an independent special district, a body politic and corporate, and a subdivision of the state, and is the point of contact for state aerospace-related activities with federal agencies, the military, state agencies, businesses, and the private sector. Space Florida is authorized to purchase or construct facilities, set rates, fees, and charges for the use of facilities, and undertake joint financing with municipalities or private sector entities for any project. Space Florida's ability to develop spaceport infrastructure is statutorily limited to geographic areas called spaceport territories.

The following properties constitute "spaceport territory:"

- Certain real property located in Brevard County that is included within the 1998 boundaries of Patrick Space Force Base, formerly Patrick Air Force Base; Cape Canaveral Space Force Station, formerly Cape Canaveral Air Force Station; or John F. Kennedy Space Center. The territory consisting of areas within the John F. Kennedy Space Center and the Cape Canaveral Space Force Station may be referred to as the "Cape Canaveral Spaceport."
- Certain real property located in Santa Rosa, Okaloosa, Gulf, and Walton Counties which is included within the 1997 boundaries of Eglin Air Force Base.
- Certain real property located in Duval County which is included within the boundaries of Cecil Airport and Cecil Commerce Center.
- Real property within the state which is a spaceport licensed by the Federal Aviation Administration, as designated by the board of directors of Space Florida.
- Certain real property located in Brevard County which is included within the boundaries of Space Coast Regional Airport, Space Coast Regional Airport Industrial Park, and Spaceport Commerce Park.

Currently, Homestead Air Reserve Base and Tyndal Air Force Base are not designated in Florida Statute as "spaceport territory."

The bill designates certain real property located in the following areas, as spaceport territory:

- Miami-Dade County, which was formerly included within the boundaries of Homestead Air Force Base and is included within the boundaries of Homestead Air Reserve Base or deeded to Miami-Dade County or the City of Homestead.
- Bay County, which is included within the boundaries of Tyndall Air Force Base.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Commercial Space Industry

The commercial space transportation industry emerged in the 1990s and was primarily used to launch commercial satellites and transport cargo to the International Space Station (ISS). In just the last few years, growing interest in commercial space is realizing new possibilities for the industry including providing transportation to the ISS, laboratories for research, and space tourism. This rapidly growing industry is inspiring scientists, engineers, teachers, and a whole generation, to imagine entirely new possibilities for the future of space.[1]

The Office of Commercial Space Transportation within the Federal Aviation Administration (FAA) is the federal agency responsible for regulating and facilitating the safe operations of the U.S. commercial space transportation industry.[2] The Commercial Space Launch Act of 1984 authorizes the FAA to establish licensing and regulatory requirements for launch vehicles, launch sites, and reusable suborbital rockets.[3] The FAA's launch regulations and licensing procedures apply to all commercial launches taking place within U.S. territory and for launches being conducted abroad by U.S. companies. In general, the FAA does not license launch sites owned or operated by agencies of the U.S. government.[4]

Spaceports in Florida

Currently, Florida has two federally owned and operated spaceports and four FAA licensed spaceports. The spaceports, operator or licensure body, and launch type include:[5]

- Cape Canaveral Space Force Station, operated by U.S. Space Force, Vertical and Horizontal.
- Kennedy Space Center, operated by the National Aeronautics and Space Administration (NASA), Vertical and Horizontal.
- Space Florida Launch Complex 46, FAA, Vertical.
- Space Florida Launch and Landing Facility, FAA, Horizontal and Orbital Reentry.
- Cecil Air and Space Port, FAA, Horizontal.
- Space Coast Regional Airport, FAA, Horizontal.

Spaceport Territory

Currently, the following properties constitute spaceport territory under Florida law:[6]

- Certain real property located in Brevard County that is included within the 1998 boundaries of Patrick Space Force Base, formerly Patrick Air Force Base; Cape Canaveral Space Force Station, formerly Cape Canaveral Air Force Station; or John F. Kennedy Space Center. The territory consisting of areas within the John F. Kennedy Space Center and the Cape Canaveral Space Force Station may be referred to as the "Cape Canaveral Spaceport."
- Certain real property located in Santa Rosa, Okaloosa, Gulf, and Walton Counties which is included within the 1997 boundaries of Eglin Air Force Base.

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[1] U.S. Department of Transportation, *Federal Aviation Administration*, https://www.faa.gov/space#:~:text=The%20commercial%20space%20transportation%20industry,International%20Space%20Station%20(ISS) (last visited Jan. 10, 2024).
[2] 14 C.F.R. s. 401.1-401.3.
[3] 51 U.S.C. Ch. 509, §§ 50901-23.
[4] The FAA also exempts certain classes of small rockets from licensure. See 14 C.F.R. § 400.2.
[5] Federal Aviation Administration, *Spaceports by State*, https://www.faa.gov/space/spaceports_by_state (last visited Jan. 10, 2024).
[6] S. 331.304, F.S.

- Certain real property located in Duval County which is included within the boundaries of Cecil Airport and Cecil Commerce Center.
- Real property within the state which is a spaceport licensed by the Federal Aviation Administration, as designated by the board of directors of Space Florida.
- Certain real property located in Brevard County which is included within the boundaries of Space Coast Regional Airport, Space Coast Regional Airport Industrial Park, and Spaceport Commerce Park.

Space Florida

Space Florida is established as an independent special district, a body politic and corporate, and a subdivision of the state, to foster the growth and development of a sustainable and world-leading aerospace industry in the state. Space Florida has all the powers, rights, privileges, and authority as provided under the laws of this state.[7]

Space Florida acts as Florida's point of contact for state aerospace-related activities with federal agencies, the military, state agencies, businesses, and the private sector.[8] Space Florida is authorized to purchase or construct facilities, set rates, fees, and charges for the use of facilities, and undertake joint financing with municipalities or private sector entities for any project.[9] Space Florida's ability to develop spaceport infrastructure is statutorily limited to geographic areas called spaceport territories.

Space Florida is authorized to exercise the following powers regarding spaceport territory:

- Own, acquire, construct, reconstruct, equip, operate, maintain, extend, or improve transportation facilities appropriate to meet the transportation requirements of Space Florida and activities conducted within spaceport territory.[10]
- Own, acquire, construct, reconstruct, equip, operate, maintain, extend, or improve electric power plants, transmission lines and related facilities, gas mains and facilities of any nature for the production or distribution of natural gas, transmission lines and related facilities and plants and facilities for the generation and transmission of power through traditional and new and experimental sources of power and energy; purchase electric power, natural gas, and other sources of power for distribution within any spaceport territory.[11]
- Designate, set aside, and maintain lands and areas within or without the territorial limits of any spaceport territory as conservation areas or bird and wildlife sanctuaries.[12]
- Establish a program for the control, abatement, and elimination of mosquitoes and other noxious insects, rodents, reptiles, and other pests throughout the spaceport territory.[13]
- Own, acquire, construct, reconstruct, equip, maintain, operate, extend, and improve public safety facilities for the spaceport, including security stations, security vehicles, fire stations, water mains and plugs, and fire trucks and other vehicles and equipment; hire employees, security officers, and firefighters; and undertake such works and construct such facilities determined by the board to be necessary or desirable to promote and ensure public safety within the spaceport territory.[14]
- Own, acquire, construct, develop, create, maintain, equip, extend, improve, reconstruct, and operate its projects within the geographical limits of the spaceport territory. This includes any portions of the spaceport territory located inside the boundaries of any incorporated municipality or other political subdivision.[15]
- Within the territorial limits of any spaceport territory, acquire, through purchase or interagency agreement, or as otherwise provided in law, construct, control, and maintain, roads, connections

[7] S. 331.302, F.S.
[8] S. 331.3011, F.S.
[9] S. 331.305, F.S.
[10] S. 331.305(12), F.S.
[11] S. 331.305(13), F.S.
[12] S. 331.305(14), F.S.
[13] S. 331.305(15), F.S.
[14] S. 331.305(17), F.S.
[15] S. 331.312, F.S.

and extensions that it deems necessary in accordance with established highway safety standards.[16]

Space Florida is required to regularly solicit input on Space Florida plans and activities from the aerospace industry, private sector spaceport territory stakeholders, each entity that owns or has ownership interest in a facility within spaceport territory, and other political subdivisions within spaceport territory.[17]

The Space Florida board of directors is authorized to take the following actions regarding comprehensive planning within spaceport territory:[18]

- Adopt, and from time to time review, amend, supplement, or repeal, a comprehensive general plan for the physical development of the area within the spaceport territory in accordance with the Space Florida Act, and consistent with the applicable county or municipal comprehensive plans.
- Prohibit within the spaceport territory the construction, alteration, repair, removal, or demolition, or the commencement of the construction, alteration, repair (except emergency repairs), removal, or demolition, of any building or structure, including, but not by way of limitation, public utility poles, lines, pipes, and facilities, without first obtaining a permit from the board or such other officer or agency as the board may designate, and prescribe the procedure with respect to the obtaining of such permit.
- Divide spaceport territory into zones or districts of such number, shape, and area as the board may deem best suited to carry out the purposes of the Space Florida Act, and make certain regulations and restrictions.[19]

The Space Florida board of directors is authorized to enter into contracts and agreements with municipalities located within a spaceport territory to help ensure effective cooperation and coordination in:[20]

- Discharging their common functions, powers, and duties; and
- Rendering services to the respective residents and property owners.

Space Florida is authorized to apply to the Federal Government for a grant allowing the designation of any spaceport territory as a foreign trade zone pursuant to ss. 288.36 and 288.37, F.S. However, the designation of any spaceport territory as a foreign trade zone does not authorize an exemption from any tax imposed by the state or by any political subdivision, agency, or instrumentality.[21]

The Space Florida board of directors is authorized to strike out or correct the description of any land within or claimed to be within the boundary lines of any spaceport territory upon the written consent of the owners of all the land that would be included or excluded from the boundary lines of any spaceport territory or otherwise affected by the taking of such action, and of the owners of not less than the majority in acreage of all lands within any spaceport territory.[22]

Homestead Air Reserve Base and Tyndall Air Force Base

Homestead Air Reserve Base is an Air Force Reserve base and combat unit in Homestead, Florida, located about 25 miles south of Miami. It is home to the 482nd Fighter Wing of the Air Force Reserve Command's Tenth Air Force, as well as the headquarters of Special Operations Command South. This wing has 1,600 members in addition to the 1,200 reservists. This combat unit supplies General Dynamics F-16 Fighting Falcon fighter aircraft, along with mission ready pilots and support personnel,

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[16] S. 331.313, F.S.
[17] S. 331.3051(11), F.S.
[18] S. 331.319, F.S.
[19] S. 331.320, F.S.
[20] S. 331.322, F.S.
[21] S. 331.327, F.S.
[22] S. 331.329, F.S.

for short-notice worldwide deployment. The base is utilized as a staging area for operations and palliation efforts in the southern hemisphere and provides assistance in many natural disasters.[23]

Tyndall Air Force Base is located on the Gulf Coast of Florida, 12 miles east of Panama City in Bay County. Tyndall is home to the 325th Fighter Wing, which provides training for F-22 Raptor pilots, maintenance personnel, and battle managers for the combat faction of the Air Force. The 325th Fighter Wing also provides training for F-22 intelligence officers, F-22 crew members, and officer and enlisted air traffic controllers. The Fighter Wing hosts over 30 tenant organizations which are located on base. The 325th Fighter Wing is comprised of the Operations Group, Maintenance Group, Mission Support Group and the Medical Group, and tenant groups.[24]

Currently, Homestead Air Reserve Base and Tyndal Air Force Base are not designated in Florida Statute as spaceport territories.

According to representatives of the aerospace industry, expansion of Florida's aerospace capabilities and infrastructure is needed in order to accommodate the industry's rapid growth.[25]

Effect of Proposed Changes

The bill designates certain real property in the following areas, as spaceport territory:

- Miami-Dade County, which was formerly included within the boundaries of Homestead Air Force Base and is included within the boundaries of Homestead Air Reserve Base or deeded to Miami-Dade County or the City of Homestead.
- Bay County, which is included within the boundaries of Tyndall Air Force Base.

B. SECTION DIRECTORY:

Section 1: Amends s. 331.304, F.S., relating to spaceport territory.

Section 2: Creates 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.

[23] MILITARYBASES.com, *Homestead Air Reserve Base in Miami, FL*, https://militarybases.com/florida/homestead/ (last visited Jan. 10, 2024).
[24] MILITARYBASES.com, *Tyndall Air Force Base in Panama City, FL*, https://militarybases.com/florida/tyndall/ (last visited Jan. 10, 2024).
[25] Caden DeLisa, *SpaceX, Blue Origin urge Florida lawmakers for aerospace sector support*, The CAPITOLIST (Nov. 16, 2023), https://thecapitolist.com/spacex-blue-origin-urge-florida-lawmakers-for-aerospace-sector-support/ (last visited Jan. 10, 2024).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Including additional bases in Florida's spaceport territory system may expand the development of the state's aerospace industry, and have a positive fiscal impact on individuals and businesses in the private sector and related entities in the public sector.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to spaceport territory; amending s.
3 331.304, F.S.; revising spaceport territory to include
4 certain property; providing an effective date.
5
6 Be It Enacted by the Legislature of the State of Florida:
7
8 Section 1. Subsections (6) and (7) are added to section
9 331.304, Florida Statutes, to read:
10 331.304 Spaceport territory.—The following property shall
11 constitute spaceport territory:
12 (6) Certain real property located in Miami-Dade County
13 which was formerly included within the boundaries of Homestead
14 Air Force Base and is included within the boundaries of
15 Homestead Air Reserve Base or deeded to Miami-Dade County or the
16 City of Homestead.
17 (7) Certain real property located in Bay County which is
18 included within the boundaries of Tyndall Air Force Base.
19 Section 2. This act shall take effect July 1, 2024.

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

COMMERCE COMMITTEE

HB 577 by Rep. Griffitts
Spaceport Territory

AMENDMENT SUMMARY
February 8, 2024

Amendment 1 by Rep. Griffitts (line 16):

- Adds clarifying language regarding the location of Homestead Airforce Base, which conforms to the Senate Companion.

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative Griffitts offered the following:
3
4 **Amendment**
5 Remove line 16 and insert:
6 City of Homestead. Homestead Air Force Base refers to and
7 includes:
8 (a) Federal property that is part of Homestead Air Reserve
9 Base; and
10 (b) Former federal property that was previously part of
11 Homestead Air Force Base and, as of July 1, 2024, or any time
12 thereafter, is deeded to Miami-Dade County or the City of
13 Homestead.
14

CS/HB 583

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 583 Individual Wine Containers
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, LaMarca
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	15 Y, 0 N, As CS	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Current law addressing limitations on the size of individual wine containers provides the following:

- The sale of wine in an individual container that holds more than one gallon of wine is prohibited.
- Wine may be sold in a reusable container of 5.16 gallons.
- Distributors and manufacturers are allowed to sell wine to other distributors and manufacturers in containers of any size.
- Except for restaurants in certain situations, wine sold or offered for sale by a licensed vendor to be consumed off the premises must be in the unopened original container.
- Violations are a second-degree misdemeanor.

The bill provides an exception to the limitations on the size of individual wine containers by allowing the sale of wine in a glass container holding 4.5 liters, 6 liters, 9 liters, 12 liters, or 15 liters.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

"Alcoholic beverages" are defined as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[4]

The license and registration classifications used in the Beverage Law include the following:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.[5]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."[6]

Wine Container Limitations

"Wine" is defined as all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.[7]

Current law governing limitations of the size of wine containers:[8]

- Prohibits the sale of wine in an individual container that holds more than one gallon. However, allows wine to be sold in a reusable container of 5.16 gallons.
- Authorizes qualified distributors and manufacturers to sell wine to other qualified distributors and manufacturers in any size container.[9]
- Except for restaurants in certain situations,[10] requires wine sold or offered for sale by a licensed vendor to be consumed off-premises to be in the unopened original container.

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[1] Section 561.01(6), F.S., provides that the "The Beverage Law" includes chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] S. 561.02, F.S.
[4] S. 563.01, F.S.
[5] S. 561.01(5), F.S.
[6] S. 561.14, F.S.
[7] S. 564.01(1), F.S.
[8] S. 564.05, F.S.
[9] *Id.*

- Provides that violations are a second-degree misdemeanor, punishable by a maximum $500 fine[11] and 60 days in prison.[12]

Effect of the Bill

The bill provides an exception to the limitations on the size of individual wine containers by allowing the sale of wine in a glass container holding 4.5 liters, 6 liters, 9 liters, 12 liters, or 15 liters.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill relaxes the limitation on the size of individual wine containers. This may have a positive fiscal impact on businesses that sell wine.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[10] The exception allows restaurant patrons to leave the premises with "one unsealed bottle of wine for consumption off the premises," provided certain conditions are met. The wine bottle must be partially consumed with a full course meal, securely resealed by the licensee or one of its employees, secured in a bag or container, wrapped in a way that shows it was previously opened, attached to a dated receipt indicating the full course meal, and transported in a locked vehicle glove compartment, locked trunk, or behind the last upright seat of a motor vehicle that is not equipped with a trunk. Section 564.09, F.S.

[11] S. 775.083(1)(e), F.S.

[12] S. 775.082(4)(b), F.S.

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Regulatory Reform & Economic Development Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment revises the exception to the limitations on the size of individual wine containers in the bill that allows a glass container of any size, to instead allow a glass container holding 4.5 liters, 6 liters, 9 liters, 12 liters, or 15 liters.

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

1 A bill to be entitled
2 An act relating to individual wine containers;
3 amending s. 564.05, F.S.; revising an exception to the
4 maximum allowable capacity for an individual container
5 of wine sold in this state; providing an effective
6 date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 564.05, Florida Statutes, is amended to
11 read:
12 564.05 Limitation of size of individual wine containers;
13 penalty.—It is unlawful for a person to sell within this state
14 wine in an individual container holding more than 1 gallon of
15 such wine, unless such wine is in a reusable container holding
16 5.16 gallons or a glass container holding 4.5 liters, 6 liters,
17 9 liters, 12 liters, or 15 liters. However, qualified
18 distributors and manufacturers may sell wine to other qualified
19 distributors or manufacturers in any size container. Except as
20 provided in s. 564.09, wine sold or offered for sale by a
21 licensed vendor to be consumed off the premises shall be in the
22 unopened original container. A person convicted of a violation
23 of this section commits a misdemeanor of the second degree,
24 punishable as provided in s. 775.082 or s. 775.083.
25 Section 2. This act shall take effect July 1, 2024.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 585 Access to Financial Institution Customer Accounts
SPONSOR(S): Insurance & Banking Subcommittee, Rommel
TIED BILLS: HB 587 **IDEN./SIM. BILLS:** SB 1132

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 3 N, As CS	Fletcher	Lloyd
2) State Administration & Technology Appropriations Subcommittee	10 Y, 0 N	Perez	Topp
3) Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

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

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

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

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

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

The bill has no impact on state revenues or local government revenues and expenditures, but has an indeterminate negative impact on state expenditures and an indeterminate positive impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Financial Institutions Codes

Florida's Financial Institutions Codes are codified under Title XXXVIII of the Florida Statutes.[1] The Financial Institutions Codes apply to all state-authorized and state-chartered financial institutions and to the enforcement of all laws relating to state-authorized and state-chartered financial institutions.[2] The Financial Institutions Codes define the term "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.[3]

A primary purpose of the Financial Institutions Codes is to provide for and promote the safe and sound conduct of the financial services industry in Florida.[4] The specific chapters under the Financial Institutions Codes are:

- Ch. 655, F.S. – Financial Institutions Generally
- Ch. 657, F.S. – Credit Unions
- Ch. 658, F.S. – Banks and Trust Companies
- Ch. 660, F.S. – Trust Business
- Ch. 662, F.S. – Family Trust Companies
- Ch. 663, F.S. – International Banking
- Ch. 665, F.S. – Associations
- Ch. 667, F.S. – Savings Banks

Office of Financial Regulation

The Office of Financial Regulation (OFR) is the regulatory authority for Florida's financial services industry.[5] OFR reports to the Financial Services Commission (Commission) which is made up of the Governor and the members of the Florida Cabinet: the Chief Financial Officer (CFO), Attorney General (AG), and Agriculture Commissioner.[6] OFR enforces and administers the Financial Institutions Codes; is responsible for supervising banks, credit unions, savings associations, and international bank agencies; and licenses and regulates non-depository finance companies and the securities industry.[7]

Bank Secrecy Act

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

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[1] S. 655.005(1)(k), F.S.
[2] S. 655.001(1), F.S.
[3] S. 655.005(i), F.S.
[4] S. 655.001(2), F.S.
[5] Florida Office of Financial Regulation, *About Our Agency*, https://flofr.gov/sitePages/AboutOFR.htm (last visited Dec. 4, 2023).
[6] *Id.*
[7] Florida Department of Financial Services, *Financial Services Commission*, https://www.myfloridacfo.com/about/about-dfs/commission (last visited Dec. 4, 2023). *See also*, s. 655.012, F.S.
[8] 31 U.S.C. § 5311 et seq.

Specifically, the BSA and other anti-money laundering regulations (BSA/AML) require financial institutions to, among other things, keep records of cash purchases of negotiable instruments and file reports of cash transactions exceeding $10,000 (daily aggregate amount).[11]

Under the BSA/AML laws, financial institutions must also:

- establish effective BSA compliance programs;
- establish effective customer due diligence systems and monitoring programs;
- screen against Office of Foreign Assets Control lists and other government lists;
- establish an effective suspicious activity monitoring and reporting process; and
- develop risk-based anti-money laundering programs.[12]

The U.S. Office of the Comptroller of Currency regularly conducts examinations of national banks, federal branches, federal savings associations, and agencies of foreign banks in the U.S. to determine compliance with BSA/AML laws.[13]

SUSPICIOUS ACTIVITY REPORTS

In addition to the other requirements under the BSA/AML laws, financial institutions are also required to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.[14] These types of reports are known as "suspicious activity reports" (SAR) and are filed with the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury, using FinCEN's BSA E-filing system.[15]

Under this requirement, a financial institution is required to file an SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing an SAR.[16] For instances where no suspect was identified on the date of the incident requiring the filing, a financial institution may delay filing an SAR for an additional 30 calendar days to identify a suspect.[17] However, in no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.[18]

Federal Trade Commission Act

Section 5 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 45, prohibits "unfair or deceptive acts or practices in or affecting commerce."[19] The prohibition applies to all persons engaged in commerce, including state-chartered banks.[20] The Board of Governors of the Federal Reserve System have authority under federal law[21] to take appropriate action when unfair or deceptive acts or

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[9] *See*, 12 C.F.R. § 326.8 (sets forth requirements for state-chartered banks to establish and maintain procedures to ensure and monitor their compliance with the BSA). *See also*, 12 C.F.R. § 353 (establishes requirements for state-chartered banks to file a suspicious activity report under certain circumstances).
[10] U.S. Treasury Financial Crimes Enforcement Network, *FinCEN's Legal Authorities*, https://www.fincen.gov/resources/fincens-legal-authorities (last visited Dec. 6, 2023).
[11] *Id.*
[12] U.S. Office of the Comptroller of the Currency, *Bank Secrecy Act*, https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html (last visited Dec. 5, 2023).
[13] *Id.*
[14] U.S. Treasury Financial Crimes Enforcement Network, *supra* note 10.
[15] U.S. Office of the Comptroller of the Currency, *Suspicious Activity Report Program*, https://www.occ.treas.gov/publications-and-resources/forms/sar-program/index-sar-program.html (last visited Dec. 5, 2023).
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *Federal Trade Commission Act* (last updated Dec. 2016), p. 1, https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf (last visited Feb. 6, 2024).
[20] *Id.*
[21] Section 8 of the Federal Deposit Insurance Act, 12 U.S.C.A. § 1811, et seq.

practices are discovered, regardless of state authorities having primary responsibility for enforcing state statutes against unfair or deceptive acts or practices.[22]

Under the FTC Act, an act or practice is considered unfair if it:
- Causes or is likely to cause substantial injury to consumers;
- Cannot be reasonably avoided by consumers; and
- Is not outweighed by countervailing benefits to consumers or to competition.[23]

According to the Board of Governors of the Federal Reserve System, there may be circumstances in which an act or practice violates section 5 of the FTC Act even though the institution is in technical compliance with other applicable laws, such as the BSA/AML laws.[24] Moreover, the policies behind the BSA/AML laws could arguably outweigh a finding that a financial institution committed an unfair act under section 5 of the FTC Act.

Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act

The purpose of the Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act[25] (Act), s. 655.50, F.S., is to require submission to OFR of certain reports and the maintenance of certain records of customers, accounts, and transactions involving currency or monetary instruments or suspicious activities if:[26]
- such reports and records deter using financial institutions to conceal, move, or provide proceeds obtained from or intended for criminal or terrorist activities; or
- such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

The Act requires financial institutions to designate and retain a BSA/AML compliance officer, which is defined as an officer that is responsible for the development and implementation of the financial institution's policies and procedures for complying with the requirements of the Act and BSA/AML laws.[27] Any change in a financial institution's BSA/AML compliance officer must be reported to OFR.[28]

Additionally, the Act requires financial institutions to maintain:[29]
- full and complete records of all financial transactions, including all records required by the BSA/AML laws, for a minimum of 5 years;
- a copy of all reports filed with OFR as required under the Act for a minimum of 5 years after submission of the report; and
- a copy of all records of exemption for each qualified business customer[30] for a minimum of 5 calendar years after termination of exempt status of such customer.

The Act also requires financial institutions to keep a record of each financial transaction which involves currency or other monetary instrument that has a value greater than $10,000, involves the proceeds of

[22] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *supra* note 19, p. 1.
[23] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *supra* note 19, p. 1.
[24] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *supra* note 19, p. 7.
[25] S. 655.50, F.S.
[26] S. 655.50(2), F.S.
[27] S. 655.50(4), F.S.
[28] *Id*.
[29] S. 655.50(8), F.S.
[30] *See*, 31 U.S.C. § 5313(e), providing that the U.S. Secretary of Treasury (Secretary) may exempt a depository institution from BSA/AML reporting requirements for transactions between the institution and a "qualified business customer" (QBC) of the institution on the basis of information submitted to the Secretary. QBC is defined as a business that:
- maintains a transaction account at the depository institution;
- frequently engages in transactions with the institution which are subject to BSA/AML reporting requirements; and
- meets criteria which the Secretary determines is sufficient to ensure the purposes of the BSA/AML laws are carried out without requiring a report for such transactions.

specified unlawful activity, or is designed to evade the reporting requirements of the Act or other state or federal laws, or which the financial institution reasonably believes is suspicious activity.[31]

A financial institution, or officer, employee, or agent thereof, which files a report in good faith pursuant to the Act is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.[32]

OFR ENFORCEMENT

In addition to any other powers conferred by the Financial Institutions Codes, OFR may bring an action in court to enforce or administer the Act, as well as issue and serve upon any person an order of removal if OFR determines such person is violating, has violated, or is about to violate any provisions of the Act or any similar state or federal law.[33]

OFR may also impose and collect an administrative fine against any person found to have violated any provision of the Act or similar state or federal law in an amount up to $10,000 per day for each willful violation or $500 per day for each negligent violation.[34]

VIOLATIONS OF THE ACT

A person who willfully violates the Act commits a misdemeanor of the first degree,[35] unless the violation involves financial transactions of certain amounts, in which case the criminal penalties vary by first, second, and third-degree felonies depending on the amount and timing of such transactions.[36]
In addition to the criminal penalties, a person who violates the Act may be subject to a fine of up to $250,000 or twice the value of the financial transaction, whichever is greater, and a subsequent violation could result in a fine up to $500,000 or quintuple the value of the financial transaction, whichever is greater.[37]

A person or financial institution who violates the Act may also be liable for a civil penalty of not more than the greater of the value of the financial transaction involved or $25,000.[38]

Effects of Banks' Termination of Account Access

In 2022, banks filed over 1.8 million SARs, which is a 50% increase in two years.[39] Multiple SARs often result in a financial institution terminating, suspending, or otherwise restricting a customer's account access.[40] A New York Times study of over 500 cases of financial institutions "dropping" their customers, including interviews with current and former bank industry staffers, revealed the negative effects of a bank's decision to remove a customer's account access:

[31] S. 655.50(5), F.S.
[32] S. 655.50(5)(c), F.S.
[33] Ss. 655.50(9)(a)-(c), F.S.
[34] S. 655.50(9)(d), F.S.
[35] S. 655.50(10)(a), F.S.
[36] S. 655.50(10)(b), F.S. *See also*, s. 775.082, F.S. A person who willfully violates or knowingly causes another to violate the Act and the violation involves financial transactions of certain amounts:

- financial transactions totaling or exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree;
- financial transactions totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree; or
- financial transactions totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree.

[37] S. 655.50(10)(c), F.S.
[38] Ss. 655.50(10)(d)-(e), F.S.
[39] Ron Lieber and Tara Seigel Bernard, *Why Banks Are Suddenly Closing Down Customer Accounts*, Thomson Reuters (Nov. 5, 2023), https://www.nytimes.com/2023/11/05/business/banks-accounts-close-suddenly.html?unlocked_article_code=1.8Uw.udoQ.0cmUgCSuo6eS&smid=nytcore-android-share (last visited Dec. 5, 2023).
[40] *Id.*

> Individuals can't pay their bills on time. Banks often take weeks to send them their balances. While the institutions close their credit cards, their credit scores suffer. Upon cancellation, small businesses often struggle to make payroll – and must explain to vendors and partners that they don't have a bank account for the time being… [And] once customers have moved on, they don't know whether there is a black mark somewhere on their permanent records that will cause a repeat episode at another bank. If the bank has filed an SAR, it isn't legally allowed to tell you, and the federal government prosecutes only a small fraction of the people whom the banks document in their SARs.[41]

As a result, customers do not know why they were ever under suspicion.[42] Interviews with individuals who had lost access to their accounts revealed behaviors that may have caused their banks to "drop" them.[43] Specifically, a few of the interviews revealed the following:[44]

- Unusual Cash Deposits: When a bar owner's weekly cash deposits fell just below the federal currency reporting thresholds, the bank closed the bar's account and the personal checking and credit card accounts of the owner and his spouse.
- A Marijuana Connection: A married couple's accounts at a bank were shut down after the husband started receiving direct deposits from a cannabis company that had recently acquired his employer.
- Criminal History: A man who had served 5 years in prison for stealing a car from a dealership and using a counterfeit bill (among other crimes) had his accounts shut down at three different banks. His personal banker from the third bank hinted it was because of his criminal record.

Qualified Public Depositories

Unless a specific exemption applies, state and local governments must deposit public funds in a bank or savings association that has been designated as a qualified public depository (QPD) under the Florida Security for Public Deposits Act (FSPD).[45]

To be designated as a QPD by the CFO, a bank, savings bank, or savings association must:

- Have a federal or state charter;
- Have authority to accept deposits in Florida;
- Have its principal place of business in Florida, or a branch office in Florida;
- Have deposit insurance pursuant to the Federal Deposit Insurance Act;[46]
- Have procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- Annually attest to the CFO that the QPD has not engaged in an "unsafe and unsound practice" by denying or cancelling services based on environmental, social, or governance factors, as required by s. 280.025, F.S.; and
- Meet all the requirements of ch. 280, F.S., relating to security for public deposits.[47]

Under the FSPD, a QPD may be suspended or disqualified or both if the CFO determines that the QPD has engaged in certain activities that are listed in s. 280.051, F.S.

Additionally, if the CFO finds that one or more grounds exist for the suspension or disqualification of a QPD, the CFO may, in lieu of suspension or disqualification, impose an administrative penalty upon the QPD.[48] Specifically, with respect to any knowing and willful violation by the QPD of a lawful order or

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[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] S. 280.01, F.S. The Florida Security for Public Deposits Act is codified under ch. 280, F.S.
[46] 12 U.S.C.A. Ch. 16.
[47] S. 280.02(26), F.S.
[48] S. 280.054(1), F.S.

rule, the CFO may impose a penalty not exceeding $1,000 for each violation.[49] Currently, only failure to timely file the attestation required under s. 280.025, F.S., is deemed a knowing and willful violation by a QPD.[50]

Effect of the Bill

Termination-of-Access Reports

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

- The customer or member initiating the access change themselves;
- A lack of activity in the account; or
- The property is presumed unclaimed pursuant to ch. 717, F.S.[51]

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

OFR INVESTIGATION AND DETERMINATION

Within 90 days after receipt of a termination-of-access report, OFR must investigate the financial institution's action and determine whether the action was taken in bad faith as substantiated by competent and substantial evidence that was known or should have been known to the financial institution at the time of the termination, suspension, or similar action.

Within 30 days after making a bad faith determination, OFR must report to the AG and the CFO such bad faith termination, suspension, or similar action. The report to the AG must describe the findings of the investigation, provide a summary of the evidence, and state whether the financial institution violated the Financial Institutions Codes. Upon sending the report to the AG, OFR must also send a copy of the report to the aggrieved customer or member by certified mail, return receipt requested.

The bill provides that a financial institution's termination, suspension, or similar action restricting a customer's or member's account access in bad faith (as determined by OFR), or a financial institution's failure to timely file a termination-of-access report altogether, constitutes a violation of Florida's Financial Institutions Codes and subjects the financial institution to the applicable sanctions and penalties provided therein.

The bill requires OFR to provide any filed termination-of-access report, and any information contained therein, to any federal, state, or local law enforcement or prosecutorial agency, and any federal or state agency responsible for the regulation or supervision of financial institutions, if the provision of such report is otherwise required by law.

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[49] S. 280.054(1)(b), F.S.

[50] *Id.*

[51] Ch. 717, F.S. is the Florida Disposition of Unclaimed Property Act (FDUP Act). Unclaimed property is a financial asset that is unknown or lost, or has been left inactive, unclaimed, or abandoned by its owner. Under the FDUP Act, unclaimed property is held by business or government entities (known as "holders") for a set period of time, usually 5 years. If the holder is unable to locate the owner, re-establish contact, and return the asset, it is reported and remitted to the Florida Department of Financial Services' Division of Unclaimed Property. *See*, Florida Department of Financial Services, Division of Unclaimed Property, *About*, https://fltreasurehunt.gov/UP-Web/sitePages/About.jsp (last visited Dec. 5, 2023).

PRIVATE CAUSE OF ACTION

The bill provides a private cause of action to the aggrieved customer or member against the financial institution that, pursuant to a finding by OFR, acted in bad faith in terminating, suspending, or taking similar action restricting account access. The aggrieved customer or member may recover damages in any court of competent jurisdiction, together with costs and reasonable attorney fees to be assessed by the court.

To recover damages, however, the customer or member must establish that, beyond a reasonable doubt, the financial institution acted in bad faith in terminating, suspending, or taking similar action restricting access to the customer's or member's account.

The bill provides that a customer's or member's failure to initiate a cause of action within 12 months of OFR making a bad faith determination shall bar recovery of any filed claims thereafter.

Qualified Public Depositories

The bill also amends the list of activities that are grounds for suspension or disqualification or both for a QPD. Specifically, the bill provides that a QPD who is found by OFR to have acted in bad faith when terminating, suspending, or taking similar action restricting a customer's or member's account, or who has failed to timely file a termination-of-access report altogether, is grounds for suspension or disqualification or both.

The bill provides that, with respect to administrative penalties imposed in lieu of suspension or disqualification, a QPD's bad faith termination, suspension, or similar action restricting a customer's or member's account access (as determined by OFR), or a QPD's failure to timely file a termination-of-access report altogether, are each deemed a knowing and willful violation by the QPD.

B. SECTION DIRECTORY:

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

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

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

Section 4. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive economic impact on the private sector. The bill may lead to fewer financial institutions suspending, terminating, or taking similar action restricting customers' or members' account access in bad faith.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Not applicable.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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

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

1 A bill to be entitled
2 An act relating to access to financial institution
3 customer accounts; amending s. 280.051, F.S.;
4 providing additional grounds for qualified public
5 depositories to be suspended and disqualified;
6 amending s. 280.054, F.S.; providing additional acts
7 deemed knowing and willful violations by qualified
8 public depositors which are subject to certain
9 penalties; creating s. 655.49, F.S.; requiring
10 financial institutions that take actions to restrict
11 customers' and members' account access to file
12 termination-of-access reports with the Office of
13 Financial Regulation; providing exceptions from the
14 reporting requirements; requiring such reports to be
15 filed at such time and to contain such information as
16 required by the Financial Services Commission;
17 providing duties of the Office of Financial
18 Regulation; providing reporting requirements for the
19 office; providing violations and penalties;
20 authorizing the office to provide the reports and
21 certain information to specified entities under
22 certain circumstances; providing that the financial
23 institutions' customers and members have a cause of
24 action under certain circumstances; authorizing such
25 customers and members to recover damages, together

26 with costs and attorney fees; providing a time limit
27 for initiating causes of action; providing an
28 effective date.
29
30 Be It Enacted by the Legislature of the State of Florida:
31
32 Section 1. Subsection (16) is added to section 280.051,
33 Florida Statutes, to read:
34 280.051 Grounds for suspension or disqualification of a
35 qualified public depository.—A qualified public depository may
36 be suspended or disqualified or both if the Chief Financial
37 Officer determines that the qualified public depository has:
38 (16) Pursuant to a determination notice reported by the
39 Office of Financial Regulation under s. 655.49, acted in bad
40 faith when terminating, suspending, or taking similar action
41 restricting a customer's or member's account, or failed to
42 timely file a termination-of-access report with the office as
43 required under s. 655.49.
44 Section 2. Paragraph (b) of subsection (1) of section
45 280.054, Florida Statutes, is amended to read:
46 280.054 Administrative penalty in lieu of suspension or
47 disqualification.—
48 (1) If the Chief Financial Officer finds that one or more
49 grounds exist for the suspension or disqualification of a
50 qualified public depository, the Chief Financial Officer may, in

51 lieu of suspension or disqualification, impose an administrative
52 penalty upon the qualified public depository.
53 (b) With respect to any knowing and willful violation of a
54 lawful order or rule, the Chief Financial Officer may impose a
55 penalty upon the qualified public depository in an amount not
56 exceeding $1,000 for each violation. If restitution is due, the
57 qualified public depository shall make restitution upon the
58 order of the Chief Financial Officer and shall pay interest on
59 such amount at the legal rate. Each day a violation continues
60 constitutes a separate violation. Each of the following ~~Failure~~
61 ~~to timely file the attestation required under s. 280.025~~ is
62 deemed a knowing and willful violation by the qualified public
63 depository:
64 1. Failure to timely file the attestation required under
65 s. 280.025.
66 2. Bad faith termination, suspension, or similar action
67 restricting a customer's or member's account access, as
68 determined by the Office of Financial Regulation pursuant to s.
69 655.49.
70 3. Failure to timely file a termination-of-access report
71 required under s. 655.49.
72 Section 3. Section 655.49, Florida Statutes, is created to
73 read:
74 655.49 Termination-of-access reports by financial
75 institutions; investigations by the Office of Financial

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

76 Regulation.—
77 (1) A financial institution that terminates, suspends, or
78 takes similar action restricting a customer's or member's
79 account access must file a termination-of-access report with the
80 office, unless the termination, suspension, or similar action
81 restricting access was due to:
82 (a) The customer or member initiating the access change;
83 (b) A lack of activity in the account; or
84 (c) The account is presumed unclaimed pursuant to chapter
85 717.
86
87 The termination-of-access report shall be filed at such time and
88 must contain such information as the commission requires by
89 rule.
90 (2) The office must:
91 (a) Within 90 days after receipt of a termination-of-
92 access report, investigate the financial institution's action
93 and determine whether the action was taken in bad faith as
94 substantiated by competent and substantial evidence that was
95 known or should have been known to the financial institution at
96 the time of the termination, suspension, or similar action; and
97 (b) Within 30 days after making the determination required
98 under paragraph (a), report to the Attorney General and the
99 Chief Financial Officer a determination of a bad faith
100 termination, suspension, or similar action restricting a

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

101 customer's or member's account access. The report to the
102 Attorney General must describe the findings of the
103 investigation, provide a summary of the evidence, and state
104 whether an alleged violation of the financial institutions codes
105 by the financial institution occurred. Upon sending the report
106 to the Attorney General pursuant to this paragraph, the office
107 must send a copy of the report to the customer or member by
108 certified mail, return receipt requested.
109 (3) A financial institution's bad faith termination,
110 suspension, or similar action restricting a customer's or
111 member's account access, as determined by the office pursuant to
112 subsection (2), or a financial institution's failure to timely
113 file a termination-of-access report as required under subsection
114 (1), constitutes a violation of the financial institutions codes
115 and subjects the financial institution to the applicable
116 sanctions and penalties provided for in the financial
117 institutions codes.
118 (4) The office shall provide any report filed pursuant to
119 this section, or information contained therein, to any federal,
120 state, or local law enforcement or prosecutorial agency, and any
121 federal or state agency responsible for the regulation or
122 supervision of financial institutions, if the provision of such
123 report is otherwise required by law.
124 (5) If the office determines that a financial institution
125 has acted in bad faith pursuant to subsection (2), the aggrieved

126 customer or member of the financial institution has a cause of
127 action against such financial institution for damages and may
128 recover damages therefor in any court of competent jurisdiction,
129 together with costs and reasonable attorney fees to be assessed
130 by the court. To recover damages under this subsection, the
131 customer or member must establish that, beyond a reasonable
132 doubt, the financial institution acted in bad faith in
133 terminating, suspending, or taking similar action restricting
134 access to the customer's or member's account. A customer's or
135 member's failure to initiate a cause of action under this
136 subsection within 12 months after the office's finding of bad
137 faith pursuant to subsection (2) shall bar recovery of any filed
138 claims thereafter.
139 Section 4. This act shall take effect July 1, 2024.

COMMERCE COMMITTEE

CS/HB 585 by Rep. Rommel
Access to Financial Institution Customer Accounts

AMENDMENT SUMMARY
February 8, 2024

Amendment 1 by Rep. Rommel (Line 42): The amendment:

- Changes the obligation of a financial institution to file a termination-of-access report from upon the institution terminating or restricting access to upon the receipt of a notification from the Office of Financial Regulation (OFR) that a customer has filed a complaint regarding a termination or restriction of access; and
- Requires OFR to publish on its website the information necessary for a customer or member to file a complaint.

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

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1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative Rommel offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 42-138 and insert:
6 cooperate in an investigation conducted pursuant to s.
7 655.49(3), including, without limitation, failure to timely file
8 a termination-of-access report.
9 Section 2. Paragraph (b) of subsection (1) of section
10 280.054, Florida Statutes, is amended to read:
11 280.054 Administrative penalty in lieu of suspension or
12 disqualification.—
13 (1) If the Chief Financial Officer finds that one or more
14 grounds exist for the suspension or disqualification of a
15 qualified public depository, the Chief Financial Officer may, in

16 lieu of suspension or disqualification, impose an administrative
17 penalty upon the qualified public depository.
18 (b) With respect to any knowing and willful violation of a
19 lawful order or rule, the Chief Financial Officer may impose a
20 penalty upon the qualified public depository in an amount not
21 exceeding $1,000 for each violation. If restitution is due, the
22 qualified public depository shall make restitution upon the
23 order of the Chief Financial Officer and shall pay interest on
24 such amount at the legal rate. Each day a violation continues
25 constitutes a separate violation. Each of the following ~~Failure~~
26 ~~to timely file the attestation required under s. 280.025~~ is
27 deemed a knowing and willful violation by the qualified public
28 depository:
29 1. Failure to timely file the attestation required under
30 s. 280.025.
31 2. Bad faith termination, suspension, or similar action
32 restricting a customer's or member's account access, as
33 determined by the Office of Financial Regulation pursuant to s.
34 655.49.
35 3. Failure to cooperate in an investigation conducted
36 pursuant to s. 655.49(3), including, without limitation, failure
37 to timely file a termination-of-access report with the office.
38 Section 3. Section 655.49, Florida Statutes, is created to
39 read:

40 655.49 Bad faith termination or restriction of account
41 access; investigations by the office.—
42 (1) A customer or member of a financial institution who
43 reasonably believes that a financial institution has terminated,
44 suspended, or taken similar action restricting access to the
45 customer's or member's account in bad faith may file, within 30
46 calendar days of such termination, suspension, or similar action
47 restricting account access, a complaint with the office alleging
48 a violation of this section. Such complaint is barred if not
49 timely filed.
50 (2) This section does not apply if a financial
51 institution's termination, suspension, or similar action
52 restricting a customer's or member's account access was due to
53 one or more of the following:
54 (a) The customer or member initiated the access change;
55 (b) A lack of activity in the account; or
56 (c) The account is presumed unclaimed property pursuant to
57 chapter 717.
58 (3) For a customer's or member's complaint under
59 subsection (1):
60 (a) Within 30 calendar days, the office must notify the
61 financial institution that a complaint has been filed.
62 (b) Within 30 calendar days of receiving such notice from
63 the office, the financial institution must file with the office

64 a termination-of-access report containing such information as
65 the commission requires by rule.
66 (c) Within 90 calendar days of receipt of a termination-
67 of-access report from the financial institution, the office must
68 investigate the financial institution's action and determine
69 whether the action was taken in bad faith as substantiated by
70 competent and substantial evidence that was known or should have
71 been known to the financial institution at the time of the
72 termination, suspension, or similar action restricting a
73 customer's or member's account access.
74 (d) Within 30 calendar days of making the determination
75 required under paragraph (c), the office must report to the
76 Attorney General and the Chief Financial Officer a determination
77 of a bad faith termination, suspension, or similar action
78 restricting a customer's or member's account access. The report
79 to the Attorney General must describe the findings of the
80 investigation, provide a summary of the evidence, and state
81 whether an alleged violation of the financial institutions codes
82 by the financial institution occurred. Upon sending the report
83 to the Attorney General pursuant to this paragraph, the office
84 must send a copy of the report to the customer or member by
85 certified mail, return receipt requested.
86 (4) A financial institution's bad faith termination,
87 suspension, or similar action restricting access to a customer's
88 or member's account, as determined by the office pursuant to

89 subsection (3), or a financial institution's failure to
90 cooperate in an investigation conducted pursuant to subsection
91 (3), including, without limitation, failure to timely file a
92 termination-of-access report with the office, constitutes a
93 violation of the financial institutions codes and subjects the
94 financial institution to the applicable sanctions and penalties
95 provided for in the financial institutions codes.
96 (5) The office shall provide any report filed pursuant to
97 this section, or information contained therein, to any federal,
98 state, or local law enforcement or prosecutorial agency, and any
99 federal or state agency responsible for the regulation or
100 supervision of financial institutions, if the provision of such
101 report is otherwise required by law.
102 (6) If the office determines under subsection (3), that a
103 financial institution has acted in bad faith, the aggrieved
104 customer or member of the financial institution has a cause of
105 action against such financial institution for damages and may
106 recover damages therefor in any court of competent jurisdiction,
107 together with costs and reasonable attorney fees to be assessed
108 by the court. To recover damages under this subsection, the
109 customer or member must establish that, beyond a reasonable
110 doubt, the financial institution acted in bad faith in
111 terminating, suspending, or taking similar action restricting
112 access to a customer's or member's account; provided, however,
113 that the office's determination that a financial institution has

114 acted in bad faith pursuant to subsection (3) shall not, in and
115 of itself, establish beyond a reasonable doubt that the
116 financial institution acted in bad faith in the termination,
117 suspension, or similar action restricting access to the
118 customer's or member's account. A customer's or member's failure
119 to initiate a cause of action under this subsection within 12
120 months after the office's finding of bad faith pursuant to
121 subsection (3) shall bar recovery of any filed claims
122 thereafter.
123 (7) By July 1, 2024, the office shall publish and make
124 available on its website the information necessary for a
125 customer or member of a financial institution to file a
126 complaint with the office under subsection (1).
127
128 ---
129 **T I T L E A M E N D M E N T**
130 Remove lines 9-27 and insert:
131 penalties; creating s. 655.49, F.S.; authorizing the office
132 to receive complaints from a customer or member who
133 reasonably believes that a financial institution has acted
134 in bad faith in terminating, suspending, or taking similar
135 action restricting access to such customer's or member's
136 account; providing a time limit for a customer or member to
137 file a complaint; providing exceptions from applicability;
138 providing duties of the Office of Financial Regulation upon

139 receipt of a complaint; providing duties of a financial
140 institution upon receipt of notification that a complaint
141 has been filed; providing violations and penalties;
142 authorizing the office to provide the reports and certain
143 information to specified entities under certain
144 circumstances; providing that the financial institutions'
145 customers and members have a cause of action under certain
146 circumstances; authorizing such customers and members to
147 recover damages, together with costs and attorney fees;
148 providing a time limit for initiating causes of action;
149 requiring the office to post information necessary for
150 filing complaints on its website; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 587 Pub. Rec./Access to Financial Institution Customer Accounts
SPONSOR(S): Rommel
TIED BILLS: CS/HB 585 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N	Fletcher	Lloyd
2) Ethics, Elections & Open Government Subcommittee	14 Y, 0 N	Rando	Toliver
3) Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

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

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

CS/HB 585, to which this bill is linked, requires financial institutions to file a report with OFR whenever the financial institution suspends, terminates, or takes similar action restricting access to a customer’s or member’s account. CS/HB 585 also requires, among other things, OFR to investigate the termination-of-access report to determine whether the financial institution’s action was made in bad faith, and report a bad faith determination to the Department of Financial Services, the Attorney General, and the customer or member.

The bill, which is linked to the passage of CS/HB 585, creates a public record exemption for certain information received by OFR in a termination-of-access report, including information received by OFR as part of its investigations or examinations of such reports.

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

The bill is effective upon the same date that CS/HB 585 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes 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

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]

Financial Institutions Codes

Florida's Financial Institutions Codes are codified under Title XXXVIII of the Florida Statutes.[9] The Financial Institutions Codes apply to all state-authorized and state-chartered financial institutions and to the enforcement of all laws relating to state-authorized and state-chartered financial institutions.[10] The Financial Institutions Codes define the term "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service

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[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. 655.005(1)(k), F.S.
[10] S. 655.001(1), F.S.

affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.[11]

A primary purpose of the Financial Institutions Codes is to provide for and promote the safe and sound conduct of the financial services industry in Florida.[12] The specific chapters under the Financial Institutions Codes are:

- Ch. 655, F.S. – Financial Institutions Generally
- Ch. 657, F.S. – Credit Unions
- Ch. 658, F.S. – Banks and Trust Companies
- Ch. 660, F.S. – Trust Business
- Ch. 662, F.S. – Family Trust Companies
- Ch. 663, F.S. – International Banking
- Ch. 665, F.S. – Capital Stock Associations
- Ch. 667, F.S. – Savings Banks

Office of Financial Regulation

The Office of Financial Regulation (OFR) is the regulatory authority for Florida's financial services industry.[13] OFR reports to the Financial Services Commission (Commission), which is made up of the Governor and the members of the Florida Cabinet: the Chief Financial Officer (CFO), Attorney General (AG), and Agriculture Commissioner.[14] OFR enforces and administers the Financial Institutions Codes; is responsible for supervising banks, credit unions, savings associations, and international bank agencies; and licenses and regulates non-depository finance companies and the securities industry.[15]

Bank Secrecy Act

The federal Bank Secrecy Act (BSA)[16] establishes reporting, recordkeeping, and related requirements for federal and state-chartered[17] financial institutions to help detect and prevent money laundering.[18] Specifically, the BSA and other anti-money laundering regulations (BSA/AML) require financial institutions to, among other things, keep records of cash purchases of negotiable instruments and file reports of cash transactions exceeding $10,000 (daily aggregate amount).[19]

Under the BSA/AML laws, financial institutions must also:

- Establish effective BSA compliance programs;
- Establish effective customer due diligence systems and monitoring programs;
- Screen against Office of Foreign Assets Control lists and other government lists;
- Establish an effective suspicious activity monitoring and reporting process; and
- Develop risk-based anti-money laundering programs.[20]

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[11] S. 655.005(i), F.S.
[12] S. 655.001(2), F.S.
[13] Florida Office of Financial Regulation, *About Our Agency*, https://flofr.gov/sitePages/AboutOFR.htm (last visited Jan. 20, 2024).
[14] *Id.*
[15] Florida Department of Financial Services, *Financial Services Commission*, https://www.myfloridacfo.com/about/about-dfs/commission (last visited Jan. 20, 2024). *See also*, s. 655.012, F.S.
[16] 31 U.S.C. § 5311 et seq.
[17] *See*, 12 C.F.R. § 326.8 (sets forth requirements for state-chartered banks to establish and maintain procedures to ensure and monitor their compliance with the BSA). *See also*, 12 C.F.R. § 353 (establishes requirements for state-chartered banks to file a suspicious activity report under certain circumstances).
[18] U.S. Treasury Financial Crimes Enforcement Network, *FinCEN's Legal Authorities*, https://www.fincen.gov/resources/fincens-legal-authorities (last visited Jan 20, 2024).
[19] *Id.*
[20] U.S. Office of the Comptroller of the Currency, *Bank Secrecy Act*, https://www.occ.treas.gov/topics/supervision-and-examination/bsa/index-bsa.html (last visited Jan 20, 2024).

The U.S. Office of the Comptroller of Currency regularly conducts examinations of national banks, federal branches, federal savings associations, and agencies of foreign banks in the U.S. to determine compliance with BSA/AML laws.[21]

SUSPICIOUS ACTIVITY REPORTS

In addition to the other requirements under the BSA/AML laws, financial institutions are also required to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.[22] These types of reports are known as “suspicious activity reports” (SAR) and are filed with the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury, using FinCEN’s BSA E-filing system.[23]

Under this requirement, a financial institution is required to file an SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing an SAR.[24] For instances where no suspect was identified on the date of the incident requiring the filing, a financial institution may delay filing an SAR for an additional 30 calendar days to identify a suspect.[25] However, in no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.[26]

Federal Trade Commission Act

Section 5 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 45, prohibits “unfair or deceptive acts or practices in or affecting commerce.”[27] The prohibition applies to all persons engaged in commerce, including state-chartered banks.[28] The Board of Governors of the Federal Reserve System have authority under federal law[29] to take appropriate action when unfair or deceptive acts or practices are discovered, regardless of state authorities having primary responsibility for enforcing state statutes against unfair or deceptive acts or practices.[30]

Under the FTC Act, an act or practice is considered unfair if it:

- Causes or is likely to cause substantial injury to consumers;
- Cannot be reasonably avoided by consumers; and
- Is not outweighed by countervailing benefits to consumers or to competition.[31]

According to the Board of Governors of the Federal Reserve System, there may be circumstances in which an act or practice violates section 5 of the FTC Act even though the institution is in technical compliance with other applicable laws, such as the BSA/AML laws.[32] Moreover, the policies behind the BSA/AML laws could arguably outweigh a finding that a financial institution committed an unfair act under section 5 of the FTC Act.

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[21] *Id.*
[22] U.S. Treasury Financial Crimes Enforcement Network, *supra* note 18.
[23] U.S. Office of the Comptroller of the Currency, *Suspicious Activity Report Program*, https://www.occ.treas.gov/publications-and-resources/forms/sar-program/index-sar-program.html (last visited Jan. 20, 2024).
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *Federal Trade Commission Act* (last updated Dec. 2016), p. 1, https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf (last visited Feb. 6, 2024).
[28] *Id.*
[29] Section 8 of the Federal Deposit Insurance Act, 12 U.S.C.A. § 1811, et seq.
[30] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *supra* note 27, p. 1.
[31] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *supra* note 27, p. 1.
[32] Board of Governors of the Federal Reserve System, Division of Consumer and Community Affairs, *supra* note 27, p. 7.

Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act

The purpose of the Florida Control of Money-Laundering and Terrorist Financing in Financial Institutions Act[33] (Act), s. 655.50, F.S., is to require submission to OFR of certain reports and the maintenance of certain records of customers, accounts, and transactions involving currency or monetary instruments or suspicious activities if:[34]

- such reports and records deter using financial institutions to conceal, move, or provide proceeds obtained from or intended for criminal or terrorist activities; or
- such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

The Act requires financial institutions to designate and retain a BSA/AML compliance officer, which is defined as an officer that is responsible for the development and implementation of the financial institution's policies and procedures for complying with the requirements of the Act and BSA/AML laws.[35] Any change in a financial institution's BSA/AML compliance officer must be reported to OFR.[36] Additionally, the Act requires financial institutions to maintain:[37]

- full and complete records of all financial transactions, including all records required by the BSA/AML laws, for a minimum of 5 years;
- a copy of all reports filed with OFR as required under the Act for a minimum of 5 years after submission of the report;
- a copy of all records of exemption for each qualified business customer[38] for a minimum of 5 calendar years after termination of exempt status of such customer.

The Act also requires financial institutions to keep a record of each financial transaction which involves currency or other monetary instrument that has a value greater than $10,000, involves the proceeds of specified unlawful activity, or is designed to evade the reporting requirements of the Act or other state or federal laws, or which the financial institution reasonably believes is suspicious activity.[39]

A financial institution, or officer, employee, or agent thereof, which files a report in good faith pursuant to the Act is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.[40]

OFR ENFORCEMENT

In addition to any other powers conferred by the Financial Institutions Codes, OFR may bring an action in court to enforce or administer the Act, as well as issue and serve upon any person an order of removal if OFR determines such person is violating, has violated, or is about to violate any provisions of the Act or any similar state or federal law.[41]

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[33] S. 655.50, F.S.
[34] S. 655.50(2), F.S.
[35] S. 655.50(4), F.S.
[36] *Id.*
[37] S. 655.50(8), F.S.
[38] *See*, 31 U.S.C. § 5313(e), providing that the U.S. Secretary of Treasury (Secretary) may exempt a depository institution from BSA/AML reporting requirements for transactions between the institution and a "qualified business customer" (QBC) of the institution on the basis of information submitted to the Secretary. QBC is defined as a business that:

- maintains a transaction account at the depository institution;
- frequently engages in transactions with the institution which are subject to BSA/AML reporting requirements; and
- meets criteria which the Secretary determines is sufficient to ensure the purposes of the BSA/AML laws are carried out without requiring a report for such transactions.

[39] S. 655.50(5), F.S.
[40] S. 655.50(5)(c), F.S.
[41] Ss. 655.50(9)(a)-(c), F.S.

OFR may also impose and collect an administrative fine against any person found to have violated any provision of the Act or similar state or federal law in an amount up to $10,000 per day for each willful violation or $500 per day for each negligent violation.[42]

VIOLATIONS OF THE ACT

A person who willfully violates the Act commits a misdemeanor of the first degree,[43] unless the violation involves financial transactions of certain amounts, in which case the criminal penalties vary by first, second, and third-degree felonies depending on the amount and timing of such transactions.[44] In addition to the criminal penalties, a person who violates the Act may be subject to a fine of up to $250,000 or twice the value of the financial transaction, whichever is greater, and a subsequent violation could result in a fine up to $500,000 or quintuple the value of the financial transaction, whichever is greater.[45]

A person or financial institution who violates the Act may also be liable for a civil penalty of not more than the greater of the value of the financial transaction involved or $25,000.[46]

Effects of Banks' Termination of Account Access

In 2022, banks filed over 1.8 million SARs, which is a 50% increase in two years.[47] Multiple SARs often result in a financial institution terminating, suspending, or otherwise restricting a customer's account access.[48] A New York Times study of over 500 cases of financial institutions "dropping" their customers, including interviews with current and former bank industry staffers, revealed the negative effects of a bank's decision to remove a customer's account access:

> Individuals can't pay their bills on time. Banks often take weeks to send them their balances. While the institutions close their credit cards, their credit scores suffer. Upon cancellation, small businesses often struggle to make payroll – and must explain to vendors and partners that they don't have a bank account for the time being… [And] once customers have moved on, they don't know whether there is a black mark somewhere on their permanent records that will cause a repeat episode at another bank. If the bank has filed an SAR, it isn't legally allowed to tell you, and the federal government prosecutes only a small fraction of the people whom the banks document in their SARs.[49]

As a result, customers do not know why they were ever under suspicion.[50] Interviews with individuals who had lost access to their accounts revealed behaviors that may have caused their banks to "drop" them.[51] Specifically, a few of the interviews revealed the following:[52]

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[42] S. 655.50(9)(d), F.S.
[43] S. 655.50(10)(a), F.S.
[44] S. 655.50(10)(b), F.S. A person who willfully violates or knowingly causes another to violate the Act and the violation involves financial transactions of certain amounts:

- financial transactions totaling or exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree;
- financial transactions totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree; or
- financial transactions totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree.

[45] S. 655.50(10)(c), F.S.
[46] Ss. 655.50(10)(d)-(e), F.S.
[47] Ron Lieber and Tara Seigel Bernard, *Why Banks Are Suddenly Closing Down Customer Accounts*, Thomson Reuters (Nov. 5, 2023), https://www.nytimes.com/2023/11/05/business/banks-accounts-close-suddenly.html?unlocked_article_code=1.8Uw.udoQ.0cmUgCSuo6eS&smid=nytcore-android-share (last visited Jan 20. , 2024).
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*

- Unusual Cash Deposits: When a bar owner's weekly cash deposits fell just below the federal currency reporting thresholds, the bank closed the bar's account and the personal checking and credit card accounts of the owner and his spouse.
- A Marijuana Connection: A married couple's accounts at a bank were shut down after the husband started receiving direct deposits from a cannabis company that had recently acquired his employer.
- Criminal History: A man who had served 5 years in prison for stealing a car from a dealership and using a counterfeit bill (among other crimes) had his accounts shut down at three different banks. His personal banker from the third bank hinted it was because of his criminal record.

CS/HB 585

CS/HB 585, to which this bill is linked, amends Florida's Financial Institutions Codes to require a financial institution that terminates, suspends, or takes similar action restricting a customer's or member's account to file a termination-of-access report with OFR, unless such termination, suspension, or similar action was due to:

- The customer or member initiating the access change themselves;
- A lack of activity in the account; or
- The property is presumed unclaimed pursuant to ch. 717, F.S.[53]

CS/HB 585 also provides that the termination-of-access report shall be filed at such time and must contain such information as the Commission requires by rule.

OFR INVESTIGATION AND DETERMINATION

Within 90 days after receipt of a termination-of-access report, OFR must investigate the financial institution's action and determine whether the action was taken in bad faith as substantiated by competent and substantial evidence that was known or should have been known to the financial institution at the time of the termination, suspension, or similar action.

Within 30 days after making a bad faith determination, OFR must report to the AG and the CFO such bad faith termination, suspension, or similar action. The report to the AG must describe the findings of the investigation, provide a summary of the evidence, and state whether the financial institution violated the Financial Institutions Codes. Upon sending the report to the AG, OFR must also send a copy of the report to the aggrieved customer or member by certified mail, return receipt requested.

CS/HB 585, among other things, also:

- provides that a financial institution's termination, suspension, or similar action restricting a customer's or member's account access in bad faith (as determined by OFR), or a financial institution's failure to timely file a termination-of-access report altogether, constitutes a violation of Florida's Financial Institutions Codes and subjects the financial institution to the applicable sanctions and penalties provided therein; and
- requires OFR to provide any filed termination-of-access report, and any information contained therein, to any federal, state, or local law enforcement or prosecutorial agency, and any federal or state agency responsible for the regulation or supervision of financial institutions, if the provision of such report is otherwise required by law.

Effect of the Bill

[53] Ch. 717, F.S., is the Florida Disposition of Unclaimed Property Act (FDUP Act). Unclaimed property is a financial asset that is unknown or lost, or has been left inactive, unclaimed, or abandoned by its owner. Under the FDUP Act, unclaimed property is held by business or government entities (known as "holders") for a set period of time, usually 5 years. If the holder is unable to locate the owner, re-establish contact, and return the asset, it is reported and remitted to the Florida Department of Financial Services' Division of Unclaimed Property. *See*, Florida Department of Financial Services, Division of Unclaimed Property, *About*, https://fltreasurehunt.gov/UP-Web/sitePages/About.jsp (last visited Jan 20, 2024).

The bill, which is linked to the passage of CS/HB 585, creates a public record exemption for certain information received by OFR in a termination-of-access report, including information received by OFR as part of its investigations or examinations of such reports, and provides that such information is confidential and exempt from public record requirements.[54]

The bill contains a statement of public necessity, as required by Article I, Section 24(c) of the Florida Constitution. Specifically, the release of information contained in a termination-of-access report, including information received by OFR in connection with its investigations and examinations of such reports, could injure a financial institution in the marketplace by providing its competitors with detailed insight into its business operations, thereby diminishing the advantage the institution maintains over its competitors that do not possess such information.

Additionally, OFR may receive sensitive financial and personal information of customers or members in filed termination-of-access reports, the release of which could defame or jeopardize the personal and financial of such individuals and their family members. An exemption from public record requirements is necessary to ensure OFR's ability to administer its regulatory duties while preventing unwarranted damage to a financial institution or a customer or member thereof.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2029, unless reviewed and saved from repeal by the Legislature.

The bill is effective upon the same date that CS/HB 585 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1. Amends s. 655.49, F.S., as created by CS/HB 585 (2024), relating to termination-of-access reports filed by financial institutions; investigations by the Office of Financial Regulation.

Section 2. Provides a statement of public necessity.

Section 3. Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   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.

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[54] 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).

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:

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 provides that the Legislature finds, in part, that the release of information contained in a termination-of-access report, including information received by OFR in connection with its investigations and examinations of such reports, could injure a financial institution in the marketplace by providing its competitors with detailed insight into its business operations, thereby diminishing the advantage the institution maintains over its competitors that do not possess such information.

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 OFR pursuant to a termination-of-access report filed by a financial institution. The purpose of the exemption is to protect sensitive personal, financial, and business information that OFR receives in conjunction with its duties related to receiving a termination-of-access report and investigating and examination such reports. As such, the bill appears to be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None. 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

1 A bill to be entitled
2 An act relating to public records; amending s. 655.49,
3 F.S.; providing a public records exemption for
4 termination-of-access reports filed by financial
5 institutions with the Office of Financial Regulation
6 and for information contained in such reports;
7 providing for future legislative review and repeal of
8 the exemption; providing statements of public
9 necessity; providing a contingent effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Subsection (4) of section 655.49, Florida
14 Statutes, as created by HB 585, 2024 Regular Session, is amended
15 to read:
16 655.49 Termination-of-access reports by financial
17 institutions; investigations by the Office of Financial
18 Regulation.—
19 (4)(a) All reports filed pursuant to this section, and any
20 information contained therein, are confidential and exempt from
21 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
22 This paragraph is subject to the Open Government Sunset Review
23 Act in accordance with s. 119.15 and shall stand repealed on
24 October 2, 2029, unless reviewed and saved from repeal through
25 reenactment by the Legislature.

26 (b) The office shall provide any report filed pursuant to
27 this section, or information contained therein, to any federal,
28 state, or local law enforcement or prosecutorial agency, and any
29 federal or state agency responsible for the regulation or
30 supervision of financial institutions, if the provision of such
31 report is otherwise required by law.
32 Section 2. (1) The Legislature finds that it is a public
33 necessity that a termination-of-access report filed with the
34 Office of Financial Regulation pursuant to s. 655.49, Florida
35 Statutes, by a financial institution that terminates, suspends,
36 or takes similar action restricting a customer's or member's
37 account access and any information obtained by the office in the
38 report or as the result of the office's investigation and
39 examination duties under s. 655.49, Florida Statutes, be made
40 confidential and exempt from s. 119.07(1), Florida Statutes, and
41 s. 24(a), Article I of the State Constitution. The disclosure of
42 such report and information could injure a financial institution
43 in the marketplace by providing its competitors with detailed
44 insight into its business operations, thereby diminishing the
45 advantage that the institution maintains over its competitors
46 that do not possess such information. Proprietary business
47 information derives actual or potential independent economic
48 value from not being generally known to, and not being readily
49 ascertainable by proper means by, other persons who can derive
50 economic value from its disclosure or use. The Office of

51 Financial Regulation, in performing its duties and
52 responsibilities, may need to obtain proprietary business
53 information from financial institutions. Without an exemption
54 from public records requirements for proprietary business
55 information provided to the office, such information becomes a
56 public record when received and must be divulged upon request.
57 Release of proprietary business information would give business
58 competitors an unfair advantage and weaken the position in the
59 marketplace of the proprietor that owns or controls the business
60 information.
61 (2) Furthermore, the office may receive sensitive
62 financial and personal information of customers or members in
63 the termination-of-access reports filed by financial
64 institutions, the release of which could defame or jeopardize
65 the personal and financial safety of such individuals and their
66 family members. Placing within the public domain the financial
67 and personal identifying information of the customers or members
68 of the financial institutions would increase the security risk
69 for these customers or members, who could become the target of
70 criminal activity. An exemption from public records requirements
71 is necessary to ensure the office's ability to administer its
72 regulatory duties while preventing unwarranted damage to a
73 financial institution or a customer or member of a financial
74 institution.
75 Section 3. This act shall take effect on the same date

76 that HB 585 or similar legislation takes effect, if such
77 legislation is adopted in the same legislative session or an
78 extension thereof and becomes a law.

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

COMMERCE COMMITTEE

HB 587 by Rep. Rommel
Pub. Rec./Access to Financial Institution Customer Accounts

AMENDMENT SUMMARY
February 8, 2024

Amendment 1 by Rep. Rommel (Line 13): The amendment adds clarifying language to conform to the changes proposed to CS/HB 585.

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

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1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative Rommel offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 13-64 and insert:
6 Section 1. Subsection (5) of section 655.49, Florida
7 Statutes, as created by HB 585, 2024 Regular Session, is amended
8 to read:
9 655.49 Bad faith termination or restriction of account
10 access; investigations by the office.—
11 (5)(a) All reports, and any information contained therein,
12 and personally identifying or personal financial information
13 contained in a complaint filed or a determination issued
14 pursuant to this section are confidential and exempt from s.
15 119.07(1) and s. 24(a), Art. I of the State Constitution. This
16 paragraph is subject to the Open Government Sunset Review Act in

17 accordance with s. 119.15 and shall stand repealed on October 2,
18 2029, unless reviewed and saved from repeal through reenactment
19 by the Legislature.
20 (b) The office shall provide any report filed pursuant to
21 this section, or information contained therein, to any federal,
22 state, or local law enforcement or prosecutorial agency, and any
23 federal or state agency responsible for the regulation or
24 supervision of financial institutions, if the provision of such
25 report is otherwise required by law.
26 Section 2. (1) The Legislature finds that it is a public
27 necessity that personally identifying or personal financial
28 information contained in a complaint filed by a customer or
29 member or a determination issued by the Office of Financial
30 Regulation alleging a violation of s. 655.49, Florida Statutes,
31 and a termination-of-access report filed with the office
32 pursuant to s. 655.49, Florida Statutes, by a financial
33 institution that terminates, suspends, or takes similar action
34 restricting a customer's or member's account access, and any
35 information obtained by the office in the report or as the
36 result of the office's investigation and examination duties
37 under s. 655.49, Florida Statutes, be made confidential and
38 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
39 Article I of the State Constitution. The disclosure of such
40 report and such personally identifying or personal financial
41 information could injure a financial institution in the

42 marketplace by providing its competitors with detailed insight
43 into its business operations, thereby diminishing the advantage
44 that the institution maintains over its competitors that do not
45 possess such information. Proprietary business information
46 derives actual or potential independent economic value from not
47 being generally known to, and not being readily ascertainable by
48 proper means by, other persons who can derive economic value
49 from its disclosure or use. The office, in performing its duties
50 and responsibilities, may need to obtain proprietary business
51 information from financial institutions. Without an exemption
52 from public records requirements for proprietary business
53 information provided to the office, such information becomes a
54 public record when received and must be divulged upon request.
55 Release of proprietary business information would give business
56 competitors an unfair advantage and weaken the position in the
57 marketplace of the proprietor that owns or controls the business
58 information.
59 (2) Furthermore, the office may receive sensitive
60 financial and personal information of customers or members in
61 complaints filed by a customer or member or in termination-of-
62 access reports filed by financial institutions and may restate
63 such information in its determination, the release of which
64 could defame or jeopardize
65
66 ---

67 **T I T L E   A M E N D M E N T**
68 Remove lines 4-6 and insert:
69 termination-of-access reports filed by financial
70 institutions with the Office of Financial Regulation and
71 for information contained in such reports and personally
72 identifying and personal financial information contained in
73 complaints filed by customers or members alleging a
74 violation of s. 655.49, F.S., and determinations issued by
75 the Office related to such complaints and reports;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 593 Misdescription of Beneficiaries and Banks
SPONSOR(S): Insurance & Banking Subcommittee, Beltran
TIED BILLS: **IDEN./SIM. BILLS:** SB 772

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

Florida's Uniform Commercial Code (UCC), chs. 670-680, F.S., regulates commercial and secured transactions in the state. Chapter 670, F.S., of the UCC applies to funds transfers. "Funds transfers" refers to the series of transactions, beginning with an originator's payment order, that is made for the purpose of making payment to the beneficiary of the order (i.e., a person or business issuing a payment to another through the payment system of banks).

The UCC currently provides that if the name, bank account number, or other identification of a beneficiary in a payment order refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur at the beneficiary's bank. However, if a payment order received by the beneficiary's bank identifies the beneficiary both by name and an identifying or bank account number and the name and number identify different persons, then certain rules apply.

The UCC also currently provides that if a payment order identifies an intermediary bank or the beneficiary's bank only by an identifying number, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank. However, the sender must compensate the receiving bank for any loss and expense incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order. Certain rules also apply to a payment order that identifies an intermediary bank or the beneficiary's bank both by name and an identifying number, but the name and number identify different persons.

According to the Federal Bureau of Investigation, consumers in America lost more than $220 million in 2020 from fraudulent schemes known as real estate wire fraud. In these schemes, hackers infiltrate legitimate email conversations between consumers and real estate title companies and send fraudulent wiring instructions.

The bill amends the chapter of the UCC relating to funds transfers to require that:

- A payment order must accurately identify the beneficiary both by name and by an identifying or bank account number;
- A beneficiary's bank must determine in good faith, and using reasonable care, whether the name and number refer to the same person;
- A bank accepting orders at a location in Florida, or from a customer who resides in Florida, must comply with certain verification, acceptance, and indemnification requirements; and
- A payment order identifying an intermediary bank or the beneficiary's bank must accurately use both an identifying number and a name, in addition to other requirements of the receiving bank.

The bill has no impact on state government nor local government revenues and expenses. It may have an indeterminate positive and negative impact on consumers in Florida and an indeterminable negative impact on financial institutions operating in Florida.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Uniform Commercial Code

The model Uniform Commercial Code (Model Code) is a comprehensive set of laws governing all commercial transactions in the United States.[1] It is not a federal law, but a uniformly adopted state law.[2] The Model Code is a joint project of the Uniform Law Commission (ULC) and the American Law Institute (ALI).[3] In 1951, the ULC and ALI first offered the Model Code to the states for their consideration.[4] Pennsylvania was the first state to adopt the Model Code in 1953, and every other state followed suit over the next twenty years.[5]

Florida's Uniform Commercial Code

Florida's Uniform Commercial Code (UCC)[6] regulates commercial and secured transactions in the state. The UCC contains the following chapters:

- Ch. 670: Funds Transfers
- Ch. 671: General Provisions
- Ch. 672: Sales
- Ch. 673: Negotiable Instruments
- Ch. 674: Bank Deposits and Collections
- Ch. 675: Letters of Credit
- Ch. 677: Documents of Title
- Ch. 678: Investment Securities
- Ch. 679: Secured Transactions
- Ch. 680: Leases

Funds Transfers

Chapter 670, F.S., of the UCC applies to funds transfers. "Funds transfers" refers to the series of transactions, beginning with an originator's payment order, that is made for the purpose of making payment to the beneficiary of the order.[7] The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the order.[8] A funds transfer is completed by acceptance of the beneficiary's bank of a payment order for the benefit of the beneficiary.[9]

[1] Uniform Law Commission, *Uniform Commercial Code*, https://www.uniformlaws.org/acts/ucc (last visited Jan. 18, 2024).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] Chapters 670-680, F.S., codifies Florida's UCC. *See* s. 671.101, F.S.
[7] S. 670.104(1), F.S.
[8] *Id.*
[9] *Id.*

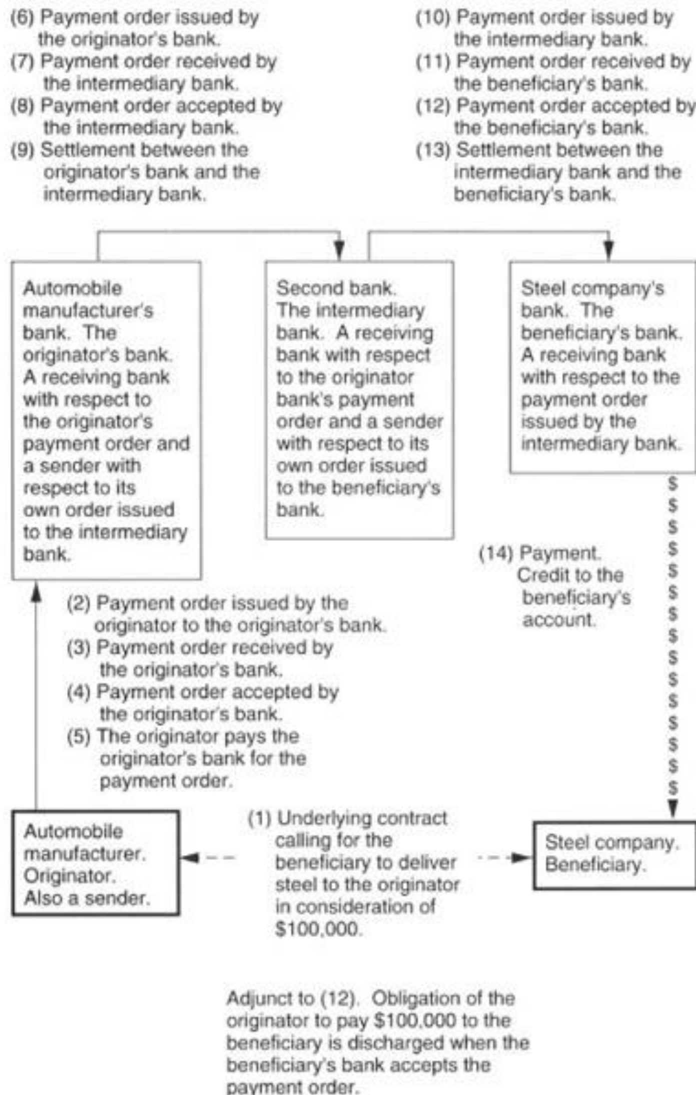
For purposes of ch. 670, F.S., (including for purposes of the definition of "funds transfers"), the terms below have the following definitions:

- "Beneficiary" means the person to be paid by the beneficiary's bank.[10]
- "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.[11]
- "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.[12]
- "Originator" means the sender of the first payment order in a funds transfer.[13]
- "Originator's bank" means:
    - The receiving bank to which the payment order of the originator is issued if the originator is not a bank; or
    - The originator if the originator is a bank.[14]
- "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay (or to cause another bank to pay) a fixed or determinable amount of money if:
    - The instruction does not state a condition to payment to the beneficiary other than time of payment;
    - The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and
    - The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.[15]
- "Receiving bank" means the bank to which the sender's instruction is addressed.[16]
- "Sender" means the person giving the instruction to the receiving bank.[17]

The law governing funds transfers should "serve the interests of commercial parties that look to large-value credit transfer systems to settle their payment obligations and facilitate growth in domestic and international transactions."[18] The International Monetary Fund claims that with so much money transferred by wire each day, and with the average value of each transfer so high, the potential for large losses is great.[19] Therefore, commercial parties making and receiving such payments require a clear, comprehensible, and sensible legal framework.[20]

[10] S. 670.103(1)(a), F.S.
[11] S. 670.103(1)(b), F.S.
[12] S. 670.104(2), F.S.
[13] S. 670.104(3), F.S.
[14] S. 670.104(4), F.S.
[15] S. 670.103(1)(c), F.S.
[16] S. 670.103(1)(d), F.S.
[17] S. 670.103(1)(e), F.S.
[18] Bruce J. Summers, *The Payment System: Design, Management, and Supervision* (Dec. 15, 1994), International Monetary Fund (Dec. 1994), https://www.elibrary.imf.org/display/book/9781557753861/ch05.xml (last visited Jan. 21, 2024).
[19] *Id.*
[20] *Id.*

An example of a funds transfer is illustrated in the hypothetical transaction below:[21]



Misdescription of Beneficiary

The UCC provides that if the name, bank account number, or other identification of a beneficiary in a payment order refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.[22]

However, if a payment order received by the beneficiary's bank identifies the beneficiary both by name and an identifying or bank account number and the name and number identify different persons, the following rules currently apply:

- If the beneficiary's bank does not know that the name and number refer to different persons, the bank may rely on the number as the proper identification of the beneficiary of the order, and the bank need not determine whether the name and number refer to the same person.[23]

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[21] Bruce J. Summers, *The Payment System: Design, Management, and Supervision* (Dec. 15, 1994), International Monetary Fund (Dec. 1994), https://www.elibrary.imf.org/display/book/9781557753861/ch05.xml (last visited Jan. 21, 2024).

[22] S. 670.207(1), F.S.

[23] Section 670.207(4), F.S., provides that in a case such as this, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order because the originator is a bank, the originator has the right to recover.

- If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.[24]

If a payment order is accepted, the originator's order described the beneficiary inconsistently by name and number, and the beneficiary's bank pays the person identified by number, the originator is obliged to pay its order *if the originator is a bank*.[25]

However, if the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not required to pay its order *unless* the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number, even if it identifies a person different from the named beneficiary.[26]

Misdescription of Intermediary Bank or Beneficiary's Bank

The UCC currently provides that if a payment order identifies an intermediary bank or the beneficiary's bank only by an identifying number, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.[27] However, the sender must compensate the receiving bank for any loss and expense incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.[28]

The following rules apply to a payment order that identifies an intermediary bank or the beneficiary's bank both by name and an identifying number, but the name and number identify different persons:

- If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is required to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.
- If the sender is *not* a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are treated as if the sender were a bank.[29]

Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons.[30] The receiving bank need not determine whether the name and number refer to the same person.[31]

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

[24] S. 670.207(2), F.S.

[25] S. 670.207(3)(a), F.S.

[26] Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates. S. 670.207(3)(b), F.S.

[27] S. 670.208(1)(a), F.S.

[28] S. 670.208(1)(b), F.S.

[29] S. 670.208(2)(a)-(b), F.S.

[30] S. 670.208(2)(c), F.S.

[31] *Id.*

Moreover, if the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the receiving bank's obligation to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning any intermediary bank or funds-transfer system to be used in carrying out the funds transfer.[32]

Wire Fraud

According to the Federal Bureau of Investigation (FBI), consumers in America lost more than $220 million in 2020 from fraudulent schemes known as real estate wire fraud.[33] In these growing schemes, hackers infiltrate legitimate email conversations between consumers and real estate title companies and send fraudulent wiring instructions that divert the money to the fraudsters and their accomplices.[34] Real estate wire fraud has become increasingly common, and the fraudsters are targeting expensive markets, such as New York, Los Angeles, and Palm Beach.[35]

In California, a husband and wife wired over $900,000 to a Wells Fargo account for the down payment on a home, only to later discover the money was sent to criminals as part of a wire transfer fraud scheme.[36] Using spoofed email addresses, the hackers infiltrated an email thread between the couple and their real estate agent.[37] The fraudsters then sent digital copies of the actual closing documents and wire transfer instructions, but swapped out the money transfer's destination for their own.[38]

A couple in Florida were victims of a similar crime when they were trying to close on a retirement home in Naples.[39] The couple is now out nearly $1 million after being tricked into wiring money to a fraudulent account, falling victim to the same scheme used by the fraudsters in California.[40] The couple filed a lawsuit in Collier County against the title company that the couple thought they were wiring money to and Truist Bank, which accepted the fraudulent wire transfer and later allowed it to be withdrawn by the fraudsters.[41]

Effect of the Bill

Misdescription of Beneficiary

The bill amends the UCC to provide that a payment order received by a beneficiary's bank *must* identify the beneficiary both by name and by an identifying or bank account number. If the name and number identify different persons, the bill provides that no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

The bill requires the beneficiary's bank to determine in good faith, and using reasonable care, whether the name and number refer to the same person. The duty of reasonable care must include, at a minimum, an automated system for name and number match which escalates any transaction with any discrepancy to a human reviewer.

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[32] If the originator's bank issues a payment order to an intermediary bank, the originator's bank is required to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts. S. 670.302(1)(a), F.S. *See also*, s. 670.208(2)(d), F.S.

[33] CNBC, *How one family's nightmare illustrates the growing threat of real estate wire fraud* (Oct. 15, 2020), https://www.cnbc.com/2020/10/15/how-one-familys-nightmare-illustrates-the-growing-threat-of-real-estate-wire-fraud.html (last visited Jan. 19, 2024).

[34] *Id.*

[35] *Id.*

[36] Aura, *The 9 Worst Wire Transfer Scams (and How to Avoid Them)* (Jul. 11, 2023), https://www.aura.com/learn/wire-transfer-scams (last visited Jan. 19, 2024).

[37] *Id.*

[38] *Id.*

[39] Wink News, *Truist troubles persist: Family files lawsuit; out nearly $1 Million (Dec. 8, 2023)*, https://winknews.com/2023/12/08/truist-troubles-persist-million-dollar-lawsuit/ (last visited Jan. 19, 2024).

[40] *Id.*

[41] *Id.*

If the receiving bank cannot reasonably verify that the name and number refer to the same person, acceptance of the order cannot occur until the bank has certified with the originator or the receiving bank that the payment order should be processed and any discrepancy is corrected.

The bill provides that:

- If a payment order is accepted, the originator's payment order described the beneficiary inconsistently by name and number and the beneficiary's bank pays any person who the originator did not intend to pay, then the originator is not required to pay its order, unless the originator was grossly negligent in sending the original instructions, and the beneficiary's bank was diligent in ascertaining whether the number and name referred to the same person.
- However, if the beneficiary's bank improperly pays any person not entitled or intended to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution.

The bill requires that a bank accepting orders at a location in Florida, or from a customer who resides in Florida, must comply with the requirements described above. The bill also requires that the bank must enter into an agreement with any counterparty bank requiring name and account number identification as described above and, if any beneficiary bank does not engage in name identification and any loss occurs, the receiving bank must indemnify the originator.

Misdescription of Intermediary Bank or Beneficiary's Bank

The bill revises the provisions of the UCC relating to misdescription of an intermediary bank or beneficiary's bank to require that:

- A payment order identifying an intermediary bank or the beneficiary's bank must use both an identifying number and a name;
- The receiving bank must determine whether the number identifies a bank and whether the bank identified by number matches the number provided; and
- The receiving bank must also determine whether the name and number refer to the same intermediary or beneficiary's bank.

If the receiving bank determines that the name and number identify different banks, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning any intermediary bank or funds-transfer system to be used in carrying out the funds transfer or the means by which payment orders are to be transmitted in the funds transfer.

B. SECTION DIRECTORY:

Section 1. Amends s. 670.207, F.S., relating to misdescription of beneficiary.

Section 2. Amends s. 670.208, F.S., relating to misdescription of intermediary bank or beneficiary's bank.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate positive impact on consumers to the extent that it strengthens safeguards in Florida law relating to wire fraud. However, the bill also has an indeterminate negative impact on the private sector to the extent that transactions are rejected more often due to enhanced verification and non-acceptance requirements. Further, some transactions may be delayed due to the enhanced requirements to verify or reject such transactions, whereas before a beneficiary's bank could solely rely on an identifying bank account number to verify such transactions.

The bill has an indeterminable negative impact on financial institutions because of the duty to have an automated system for name and number match, to the extent that such institutions do not already have systems in place for those purposes. Additionally, the requirement for a financial institution to enter into an agreement with any counterparty bank (i.e., any other bank party to a funds transfer transaction with the originator's bank) requiring name identification may require additional labor to draft the agreements, thus increasing overhead costs, and may prove impractical for financial institutions.[42]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[42] Email from Ash Mason, Legislative & Cabinet Affairs Director, Office of Financial Regulation, Re: HB 593 No Impact (Jan. 5, 2024).

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 removes language relating to gross negligence on behalf of an originator in a funds transfer transaction.

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

1 A bill to be entitled
2 An act relating to misdescription of beneficiaries and
3 banks; amending s. 670.207, F.S.; revising
4 requirements for rights as a beneficiary of the order
5 and acceptance of the order when the beneficiary is a
6 nonexistent or unidentifiable person or account;
7 removing rules relating to accepted payment orders;
8 amending s. 670.208, F.S.; revising requirements
9 relating to the misdescription of banks for
10 intermediaries and beneficiaries; providing an
11 effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Section 670.207, Florida Statutes, is amended
16 to read:
17 670.207 Misdescription of beneficiary.—
18 (1)(a) Subject to subsection (2), if, in a payment order
19 received by the beneficiary's bank, the name, bank account
20 number, or other identification of the beneficiary refers to a
21 nonexistent or unidentifiable person or account, no person has
22 rights as a beneficiary of the order and acceptance of the order
23 cannot occur.
24 (b) ~~(2)~~ ~~If~~ A payment order received by the beneficiary's
25 bank must identify ~~identifies~~ the beneficiary both by name and

26 by an identifying or bank account number. If ~~and~~ the name and
27 number identify different persons, no person has rights as a ~~the~~
28 ~~following rules apply:~~
29 ~~(a) Except as otherwise provided in subsection (3), if the~~
30 ~~beneficiary's bank does not know that the name and number refer~~
31 ~~to different persons, it may rely on the number as the proper~~
32 ~~identification of the~~ beneficiary of the order and acceptance of
33 the order cannot occur.
34 (2)(a) The beneficiary's bank must ~~need not~~ determine in
35 good faith, and using reasonable care, whether the name and
36 number refer to the same person. The duty of reasonable care
37 must include, at a minimum, an automated system for name and
38 number match which escalates any transaction with any
39 discrepancy to a human reviewer.
40 (b) If the bank cannot reasonably verify ~~beneficiary's~~
41 ~~bank pays the person identified by name or knows~~ that the name
42 and number refer to the same person ~~identify different persons,~~
43 ~~no person has rights as beneficiary except the person paid by~~
44 ~~the beneficiary's bank if that person was entitled to receive~~
45 ~~payment from the originator of the funds transfer. If no person~~
46 ~~has rights as beneficiary~~, acceptance of the order cannot occur
47 until the bank has verified with the originator or the receiving
48 bank that the payment order should be processed and any
49 discrepancy is corrected.
50 (3) If a payment order described in subsection (2) is

51 accepted, the originator's payment order described the
52 beneficiary inconsistently by name and number, and the
53 beneficiary's bank pays any person who the originator did not
54 intend to pay, then the originator is not obliged to pay its
55 order ~~the person identified by number as permitted by paragraph~~
56 ~~(2)(a), the following rules apply:~~
57 ~~(a) If the originator is a bank, the originator is obliged~~
58 ~~to pay its order.~~
59 ~~(b) If the originator is not a bank and proves that the~~
60 ~~person identified by number was not entitled to receive payment~~
61 ~~from the originator, the originator is not obliged to pay its~~
62 ~~order unless the originator's bank proves that the originator,~~
63 ~~before acceptance of the originator's order, had notice that~~
64 ~~payment of a payment order issued by the originator might be~~
65 ~~made by the beneficiary's bank on the basis of an identifying or~~
66 ~~bank account number even if it identifies a person different~~
67 ~~from the named beneficiary. Proof of notice may be made by any~~
68 ~~admissible evidence. The originator's bank satisfies the burden~~
69 ~~of proof if it proves that the originator, before the payment~~
70 ~~order was accepted, signed a writing stating the information to~~
71 ~~which the notice relates~~.
72 (4) ~~In a case governed by paragraph (2)(a),~~ If the
73 beneficiary's bank improperly ~~rightfully~~ pays any ~~the~~ person
74 ~~identified by number and that person was~~ not entitled or
75 intended to receive payment from the originator, the amount paid

76 may be recovered from that person to the extent allowed by the
77 law governing mistake and restitution. ~~as follows:~~
78 ~~(a) If the originator is obliged to pay its payment order~~
79 ~~as stated in subsection (3), the originator has the right to~~
80 ~~recover.~~
81 ~~(b) If the originator is not a bank and is not obliged to~~
82 ~~pay its payment order, the originator's bank has the right to~~
83 ~~recover.~~
84 (5)(a) A bank accepting orders at a location in this
85 state, or from a customer whose resides in this state, must
86 comply with this section.
87 (b) The bank shall enter into an agreement with any
88 counterparty bank requiring name identification as described in
89 this section and, if any beneficiary bank does not engage in
90 name identification and any loss occurs, the receiving bank
91 shall indemnify the originator.
92 Section 2. Section 670.208, Florida Statutes, is amended
93 to read:
94 670.208 Misdescription of intermediary bank or
95 beneficiary's bank.—
96 ~~(1) This subsection applies to a~~ Any payment order
97 identifying an intermediary bank or the beneficiary's bank must
98 use both ~~only by~~ an identifying number and a name.
99 ~~(a)~~ The receiving bank must ~~may rely on the number as the~~
100 ~~proper identification of the intermediary or beneficiary's bank~~

101 ~~and need not~~ determine whether the number identifies a bank <u>and</u>
102 <u>whether the bank identified by number matches the name provided</u>.
103 ~~(b) The sender is obliged to compensate the receiving bank~~
104 ~~for any loss and expenses incurred by the receiving bank as a~~
105 ~~result of its reliance on the number in executing or attempting~~
106 ~~to execute the order.~~
107 ~~(2) This subsection applies to a payment order identifying~~
108 ~~an intermediary bank or the beneficiary's bank both by name and~~
109 ~~an identifying number if the name and number identify different~~
110 ~~persons.~~
111 ~~(a) If the sender is a bank, the receiving bank may rely~~
112 ~~on the number as the proper identification of the intermediary~~
113 ~~or beneficiary's bank if the receiving bank, when it executes~~
114 ~~the sender's order, does not know that the name and number~~
115 ~~identify different persons. The receiving bank need not~~
116 ~~determine whether the name and number refer to the same person~~
117 ~~or whether the number refers to a bank. The sender is obliged to~~
118 ~~compensate the receiving bank for any loss and expenses incurred~~
119 ~~by the receiving bank as a result of its reliance on the number~~
120 ~~in executing or attempting to execute the order.~~
121 ~~(b) If the sender is not a bank and the receiving bank~~
122 ~~proves that the sender, before the payment order was accepted,~~
123 ~~had notice that the receiving bank might rely on the number as~~
124 ~~the proper identification of the intermediary or beneficiary's~~
125 ~~bank even if it identifies a person different from the bank~~

126 ~~identified by name, the rights and obligations of the sender and~~
127 ~~the receiving bank are governed by paragraph (a), as though the~~
128 ~~sender were a bank. Proof of notice may be made by any~~
129 ~~admissible evidence. The receiving bank satisfies the burden of~~
130 ~~proof if it proves that the sender, before the payment order was~~
131 ~~accepted, signed a writing stating the information to which the~~
132 ~~notice relates.~~
133 ~~(c) Regardless of whether the sender is a bank, the~~
134 ~~receiving bank may rely on the name as the proper identification~~
135 ~~of the intermediary or beneficiary's bank if the receiving bank,~~
136 ~~at the time it executes the sender's order, does not know that~~
137 ~~the name and number identify different persons.~~ The receiving
138 bank must ~~need not~~ determine whether the name and number refer
139 to the same intermediary or beneficiary bank ~~person~~.
140 ~~(d)~~ If the receiving bank determines ~~knows~~ that the name
141 and number identify different banks ~~persons~~, reliance on either
142 the name or the number in executing the sender's payment order
143 is a breach of the obligation stated in s. 670.302(1)(a).
144 Section 3. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 665 Expedited Approval of Residential Building Permits
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 812

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 2 N, As CS	Wright	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	10 Y, 5 N	Mwakyanjala	Darden
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The Florida Building Code (Building Code) must be applied and enforced uniformly and consistently across the state. Local governments are required to enforce the Building Code and are responsible for issuing building permits.

In Florida law, “plat” means a map or delineated representation of the subdivision of lands, and is generally required whenever a developer wishes to subdivide a large piece of property into smaller parcels and tracts. Generally, a preliminary plat approval is approval of the development plan, and a final plat approval is approval of a finalized development plan; engineering plans, if required; and documents confirming the parties with a property interest; which is then recorded with the clerk of the circuit court.

Some local governments allow a developer to commence construction and issue building permits after a preliminary plat has been issued, but before the plat is finalized.

The bill:

- Requires certain local governments to create a process to expedite the issuance of building permits based on a preliminary plat and to issue the number or percentage of building permits requested by an applicant, if:
  - The governing body has approved a preliminary plat for each residential building or structure.
  - The applicant provides proof to the governing body that the applicant has provided a copy of the approved preliminary plat, along with the approved plans, to the relevant electric, gas, water, and wastewater utilities.
  - The applicant holds a valid performance bond for up to 130 percent of the necessary improvements that have not been completed upon submission of the application.
- Provides that vested rights may be formed in a preliminary plat, under certain circumstances.
- Allows such applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the preliminary plat before the final plat is approved.
- Requires all local governments to create a master building permit process for residential subdivisions and planned communities.

The bill may have an indeterminate fiscal impact on state and local government.

The bill provides an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Plats

In Florida law, “plat” means a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable state requirements and of any local ordinances.[1] Generally, platting is required whenever a developer wishes to subdivide a large piece of property into smaller parcels and tracts. These smaller areas become the residential lots, streets, and parks of a new residential sub-division.[2]

State law establishes consistent minimum requirements for the establishment of plats, and local governing bodies have the power to regulate and control the platting of lands.[3] Prior to approval by the appropriate governing body, the plat must be reviewed for conformity with state and local law and sealed by a professional surveyor and mapper who is either employed by or under contract to the local governing body.[4]

Before a plat is offered for recording with the clerk of the circuit court, it must be approved by the appropriate governing body, and evidence of such approval must be placed on the plat. If not approved, the governing body must return the plat to the professional surveyor and mapper or the legal entity offering the plat for recordation.[5]

Jurisdiction over plat approval is as follows:[6]

- When the plat to be submitted for approval is located wholly within the boundaries of a municipality, the governing body of the municipality has exclusive jurisdiction to approve the plat.
- When a plat lies wholly within the unincorporated areas of a county, the governing body of the county has exclusive jurisdiction to approve the plat.
- When a plat lies within the boundaries of more than one governing body, two plats must be prepared and each governing body has exclusive jurisdiction to approve the plat within its boundaries, unless the governing bodies having said jurisdiction agree that one plat is mutually acceptable.

Every plat of a subdivision offered for recording must have certain information, including providing:[7]

- The name of the plat in bold legible letters, and the name of the subdivision, professional surveyor and mapper or legal entity, and street and mailing address on each sheet.
- The section, township, and range immediately under the name of the plat on each sheet included, along with the name of the city, town, village, county, and state in which the land being platted is situated.
- The dedications and approvals by the surveyor and mapper and local governing body, and the circuit court clerk’s certificate and the professional surveyor and mapper’s seal and statement.
- All section lines and quarter section lines occurring within the subdivision. If the description is by metes and bounds, all information called for, such as the point of commencement, course

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[1] S. 177.031(14), F.S.
[2] Harry W. Carls, Florida Condo & HOA Law Blog, May 17, 2018, *Why is a Plat so Important?*, https://www.floridacondohoalawblog.com/2018/05/17/why-is-a-plat-so-important/ (last visited Jan, 11, 2024).
[3] S. 177.011, F.S.
[4] S. 177.081(1), F.S.
[5] S. 177.071(1), F.S.
[6] *Id.*
[7] S. 177.091, F.S.

bearings and distances, and the point of beginning. If the platted lands are in a land grant or are not included in the subdivision of government surveys, then the boundaries are to be defined by metes and bounds and courses.
- Location, width, and names of all streets, waterways, or other rights-of-way.
- Location and width of proposed easements and existing easements identified in the title opinion or property information report must be shown on the plat or in the notes or legend, and their intended use.
- All lots numbered either by progressive numbers or, if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name may be numbered consecutively throughout the several additions.
- Sufficient survey data to positively describe the bounds of every lot, block, street easement, and all other areas shown on the plat.
- Designated park and recreation parcels.
- All interior excepted parcels clearly indicated and labeled “Not a part of this plat.”
- The purpose of all areas dedicated clearly indicated or stated on the plat.
- That all platted utility easements must provide that such easements are also easements for the construction, installation, maintenance, and operation of cable television services; provided, however, no such construction, installation, maintenance, and operation of cable television services interferes with the facilities and services of an electric, telephone, gas, or other public utility.

Preliminary Plat Approval

Many local governments around the state have a process to approve a preliminary plat before approving a final plat. Generally, a preliminary plat is a technical, graphic representation of a proposed development, including plans for streets, utilities, drainage, easements, and lot lines, for a proposed subdivision. If a preliminary plat is required, it is generally a prerequisite for a final plat approval and the submission of any property improvement plans or permit applications.[8]

Generally, a preliminary plat approval is approval of the development plan, and a final plat approval is approval of a finalized development plan; engineering plans, if required; and documents confirming the parties with a property interest; which is then recorded with the clerk of the circuit court.[9]

Based on a preliminary plat approval, some local governments allow a developer to commence construction before the plat is finalized. For example, the City of Jacksonville, Village of Royal Palm Beach, and the City of Tallahassee allow for a preliminary plat approval process.[10]

In Jacksonville, the Planning and Development Department (Department) of the City of Jacksonville, upon request of an applicant, may allow up to 50 percent of the lots within a proposed subdivision to be developed, but not occupied, based on a preliminary plat approval so long as the developer or owner meets the following conditions for construction:[11]
- Prior to Civil Plans submittal to the Department, the developer must submit the development proposal to Jacksonville Electric Authority (JEA) for review.
- Once JEA has granted preliminary approval, the Department will review the preliminary site plan, the preliminary and final engineering plans for the required improvements, and the sheet identifying the lots being requested for home construction prior to platting as approved by JEA.

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[8] For examples, *see* City of Zephyrhills Code of Ordinances s. 11.03.02.01; Palm Beach County Code of Ordinances Art. 11., Ch. A.; Seminole County, SEMINOLE COUNTY PLANNING & DEVELOPMENT DIVISION, Subdivision Application, https://www.seminolecountyfl.gov/core/fileparse.php/3307/urlt/SUBDIVISION-05-2023.ADA.pdf (last visited Jan, 11, 2024).
[9] Advance Surveying & Engineering, *An In-Depth Look At Preliminary and Final Plats*, https://www.advsur.com/2019/07/an-in-depth-look-at-preliminary-and-final-plats/ (last visited Jan, 11, 2024).
[10] City of Jacksonville Code of Ordinances s. 654-109, Village of Royal Palm Beach Code of Ordinances s. 22-22, City of Tallahassee Code of Ordinances s. 9-92.
[11] City of Jacksonville Code of Ordinances s. 654-139(d).

The Department reserves the right to deny authorization for development on a specific lot or lots to protect City interests.

- The developer or owner must provide a guarantee for required improvements and warranty of title.
- A Certificate of Occupancy may not be issued until the final plat is approved by JEA and the Department and recorded in the current public records of Duval County, Florida.
- Approval of the preliminary plat and required supplemental material are valid for 12 months from the date of approval. If the final plat is not submitted to and approved during the 12-month period, the conditional approvals are null and void.[12]

Vested Rights in Property Based on a Plat

In general, vested rights[13] form when a property owner or developer acquires real property rights that cannot be taken by governmental regulation.[14] Property owners or developers who do not have vested rights will be subject to subsequently enacted land regulations, while subsequently enacted land regulations do not apply to the property owners or developers who are determined to have vested rights.[15]

Florida common law provides that vested rights in a property may be established if a property owner or developer has:[16]

- In good faith reliance,
- Upon some act or omission of government,
- Made such a substantial change in position or has incurred such extensive obligations and expenses,
- That it would make it highly inequitable to interfere with the acquired right.

Recordation of a final plat with the clerk of the circuit court alone is not sufficient to establish vested rights[17] in the land development regulations in existence at that time.[18] Instead, the property owner or developer must take meaningful steps towards development of the property, such as applying for development permits or expending certain monies,[19] to constitute a substantial change in position or be considered extensive obligations and expenses towards development of the property in reliance on some action by the local government.[20]

Additionally, a property owner or developer may obtain vested rights in both a local government-approved preliminary plat and a final plat, as long as expenditures or a substantial change have been made by the property owner or developer based on such preliminary plat or plat.[21]

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[12] City of Jacksonville Code of Ordinances s. 654-109(b).

[13] Florida courts have used the concepts of vested rights and equitable estoppel interchangeably in deciding fault in property rights cases. Equitable estoppel, in this instance, means focusing on whether it would be inequitable or fair to allow a local government to deny prior conduct or position on building or development decisions. Robert M. Rhodes and Cathy M. Sellers, *Equitable Estoppel and Vested Rights in Land Use*, The Florida Bar, II Florida Environmental and Land Use Law 8, (1994).

[14] *Id.*; Heeter, *Zoning Estoppel: Application of the Principles of Equitable Estoppel and Vested Rights to Zoning Disputes*, Urb.L.Ann. 63, 64-65 (1971).

[15] *Monroe County v. Ambrose*, 866 So.2d 707, 712 (Fla. 3d DCA 2003); Kristin Melton, de la Parte & Gilbert P.A., *When are Rights Vested in a Platted Development?*, 2016, https://www.dgfirm.com/email/2016summer/article2.html#:~:text=Florida%20common%20law%20provides%20that,it%20would%20make%20it%20highly (last visited Jan, 11, 2024).

[16] *Monroe County*, 866 So.2d at 710.

[17] *Id.*

[18] Melton, *supra* note 16.

[19] *Town of Largo v. Imperial Homes Corp.*, 309 So.2d 571, 573 (Fla. 2d DCA 1975).

[20] *Id.*; Melton, *supra* note 16.

[21] *The Florida Companies v. Orange County*, 411 So.2d 1008, 1011 (Fla. 5th DCA 1982)

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[22]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study's commission recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[23] The current edition of the Building Code is the eighth edition, which is referred to as the 2023 Florida Building Code.[24]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[25]

The Florida Building Commission (Commission) was created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,[26] the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[27]

Building Permits

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[28] Every local government must enforce the Building Code and issue building permits.[29]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[30] Any construction work that requires a building permit also requires plan reviews and inspections by the building official, inspector, or plans examiner to ensure the work complies with the Building Code.[31]

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as

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[22] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan, 11, 2024).
[23] *Id.*
[24] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Jan, 11, 2024).
[25] *See* s. 553.72(1), F.S.
[26] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Jan. 11, 2024).
[27] S. 553.73(7)(a), F.S.
[28] S. 553.72, F.S.
[29] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[30] S. 468.603(2), F.S; § 202, FBC, Building, 7th Ed., (2020).
[31] §§ 107, 110.1, and 110.3, FBC, Building, 7th Ed., (2020).

may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[32] A building permit is not valid until the fees for the permit have been paid.[33]

To obtain a permit, an applicant must complete an application for the proposed work on the form furnished by the local enforcing agency, which must be posted on its website.[34] An application for a permit must include building plans.[35] A local enforcing agency may not issue a permit until the building official or plans reviewer has reviewed the building plans and determined that they comply with the Building Code.[36]

Building Permit Delays

Any delays in obtaining a building permit can delay the completion of a construction project. For example, delays in the completion of a construction project may:[37]

- Lead to increased costs for construction projects, which may be passed onto occupants of a completed project;
- Discourage construction, which can reduce the total supply of buildings in a community and may lead to higher rents in the community;
- Reduce property tax revenue to a local government and other taxing jurisdictions resulting from the delayed start and completion of a construction project; and
- Result in delayed occupancy of a project, including single-family residences and multi-family residences.

Streamlining the process to obtain a building permit can accelerate the completion of construction projects. The goal of streamlining is to remove overlap and duplication and create more efficient administrative procedures while not reducing a building department's ability to enforce the applicable construction codes. Streamlining the building permit process may:[38]

- Increase local government revenues by accelerating completion of a project and thus accelerating property tax collection;
- Create local construction jobs and other indirect jobs supported by local construction jobs, such as jobs at a material supplier, which may increase local tax revenue; and
- Encourage economic development by having an efficient permit system.

Master Building Permit Program

A master building permit program is a streamlined permitting process created by a local government to help builders who expect to construct identical single-family or two-family dwellings or townhomes on a repetitive basis. Such program must be designed to achieve standardization and consistency during the permitting process and to reduce the time spent by local building departments during the site-specific building permit application process.[39]

If a local building code administrator receives a written request from a licensed contractor for the creation of a master building permit program, the local government must create such program within 6 months after receipt.[40]

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[32] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[33] § 109.1 , FBC, Building, 7th Ed., (2020).
[34] Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.
[35] Ss. 468.603(8), and 553.79(2), F.S.
[36] S. 553.79(2), F.S.
[37] City of Austin Development Services Department, *A Program for Expedited Permitting*, http://austintexas.gov/sites/default/files/files/8-9-2016_Report_on_Expedited_Permitting_Program.pdf (last visited Jan. 11, 2024); PricewaterhouseCoopers, *The Economic Impact of Accelerating Permit Processes on Local Development and Government Revenues*, (Dec. 7, 2005).
[38] *Id.*; Institute for Market Transformation, *Streamlining Compliance Processes*, (Winter 2012) https://www.imt.org/wp-content/uploads/2018/02/CaseStudy5.pdf (last visited Jan. 11, 2024).
[39] S. 553.794(1), F.S.
[40] *Id.*

To obtain a master building permit after a program has been implemented, a builder must submit the following information to the local building department:[41]

- A completed master building permit application.
- A general construction plan with:
    - All of the plan pages, documents, and drawings; signed and sealed by the design professional of record;[42] and
    - A written acknowledgment from the design professional that the plan pages, documents, and drawings will be used for future site-specific building permit applications.
    - A model design, which may include up to four alternate exterior elevations, each containing the same living space footprint.[43]
- Truss specifications.
- Energy performance calculations for all building orientations.

Once a master building permit application is approved, the local building department may only require the builder to submit the following documents for each site-specific building permit application:[44]

- A completed site-specific building permit application that includes the master building permit number and identifies the model design to be built, including elevation and garage style.
- Three signed and sealed copies of the lot or parcel survey or site plan.
- An affidavit by the design professional of record affirming that the attached master building permit is a true and correct copy.
- Complete mechanical drawings of the model design.

An approved master building permit remains valid until the Florida Building Code is updated,[45] which is every 3 years.[46]

Effect of the Bill

The bill requires a governing body to create:

- A two-step application process for the adoption of a preliminary plat, inclusive of any plans, in order to expedite the issuance of building permits related to such plats. The application must allow an applicant to identify the percentage of planned homes, or the number of building permits, that the governing body must issue for the residential subdivision or planned community indicated in the preliminary plat.
- A master building permit process consistent with existing master building permit application requirements for applicants seeking multiple building permits for residential subdivisions or planned communities.
    - The bill provides that a master building permit issued pursuant to this requirement is valid for 3 consecutive years after its issuance or until the adoption of a new Building Code, whichever is earlier. After a new Building Code is adopted, the applicant may apply for a new master building permit, which, upon approval, is valid for 3 consecutive years.

By **October 1, 2024**, the bill requires a governing body of a county that has 75,000 residents or more and a governing body of a municipality that has 30,000 residents or more to create a program to expedite the process for issuing building permits for residential subdivisions or planned communities before a final plat is recorded with the clerk of the circuit court.

- Such expedited process must include an application for an applicant to identify **up to 50 percent** of planned homes, or the number of building permits, that the governing body **must** issue for the residential subdivision or planned community. However, such a local government

[41] S. 553.794(3), F.S
[42] The design professional must be a licensed engineer or architect.
[43] S. 553.794(4)(c), F.S
[44] S. 553.794(6), F.S.
[45] S. 553.794(5)(e), F.S.
[46] S. 553.73(7)(a), F.S.

may issue building permits that exceed 50 percent of the residential subdivision or planned community.

By **December 31, 2027**, the bill requires such a governing body to update its expedited process to contain an application that allows an applicant to request an **increased percentage of up to 75 percent** of building permits for planned homes that the local governing body must issue for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 75 percent of the residential subdivision or planned community.

The timelines for creating such applications do not apply to a county subject to the designation of the Florida Keys as an area of critical state concern in s. 380.0552, F.S., which is Monroe County.

If a governing body had a program in place **before July 1, 2023**, to expedite the building permit process, the bill requires such governing body to only update their program to approve an applicant's written application to issue up to 50 percent of the building permits for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 50 percent of the residential subdivision or planned community.

In accordance with the timelines above, the bill requires the governing body to issue the number or percentage of building permits requested by an applicant, provided the residential buildings or structures are unoccupied and all of the following conditions are met:

- The governing body has approved a preliminary plat for each residential subdivision or planned community.
- The applicant provides proof to the governing body that the applicant has provided a copy of the approved preliminary plat, along with the approved plans, to the relevant electric, gas, water, and wastewater utilities.
- The applicant holds a valid performance bond for up to 130 percent of the necessary improvements[47] that have not been completed upon submission of the application. For purposes of a master planned community,[48] a valid performance bond is required on a phase-by-phase basis.

The bill allows an applicant to use a **private provider** to expedite the application process detailed above.

The bill allows a governing body to work with appropriate local government agencies to issue an address and a temporary parcel identification number for lot lines and lot sizes based on the metes and bounds of the plat contained in an application.

The bill allows an applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the residential subdivision or planned community until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

The bill prohibits an applicant from obtaining a final certificate of occupancy for each residential structure or building for which a building permit is issued until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

The bill provides that an applicant has a vested right in a preliminary plat that has been approved by a governing body if all of the following conditions are met:

- The applicant relies in good faith on the approved preliminary plat or any amendments thereto.

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[47] As defined in s. 177.031(9), F.S., improvements include, but are not limited to, street pavements, curbs and gutters, sidewalks, alley pavements, walkway pavements, water mains, sanitary sewers, storm sewers or drains, street names, signs, landscaping, permanent reference monuments (P.R.M.s), permanent control points (P.C.P.s), monuments, or any other improvement required by a governing body.

[48] "Planned unit development" or "master planned community" means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots. S. 163.3203(5)(b), F.S.

- The applicant incurs obligations and expenses, commences construction of the residential subdivision or planned community, and is continuing in good faith with the development of the property.

The bill provides that upon the establishment of an applicant's vested rights, a governing body may not make substantive changes to the preliminary plat without the applicant's written consent.

The bill requires an applicant to indemnify and hold harmless the local government, its governing body, its agents, and its employees from:

- Liability or damages resulting from the issuance of a building permit or the construction, reconstruction, or improvement or repair of a residential building or structure, including any associated utilities, located in the residential subdivision or planned community.
- Liability or disputes resulting from the issuance of a certificate of occupancy for a residential building or structure that is constructed, reconstructed, improved, or repaired before the approval and recordation of the final plat of the qualified project.

This indemnification includes, but is not limited to, any liability and damage resulting from wind, fire, flood, construction defects, bodily injury, and any actions, issues, or disputes arising out of a contract or other agreement between the developer and a utility operating in the residential subdivision or planned community.

However, this indemnification does not extend to governmental actions that infringe on the applicant's vested rights.

The bill provides the following definitions:

- "Applicant" means a homebuilder or developer that files an application with the local governing body to identify the percentage of planned homes, or the number of building permits, that the local governing body must issue for a residential subdivision or planned community.
- "Final plat" means the final tracing, map, or site plan presented by the subdivider to a governing body for final approval, and, upon approval by the appropriate governing body, is submitted to the clerk of the circuit court for recording.
- "Preliminary plat" means a map or delineated representation of the subdivision of lands that is a complete and exact representation of the residential subdivision or planned community and contains required land boundary information.

Provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Creates s. 177.073, F.S.; relating to approval of certain building permits pursuant to a preliminary plat.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

   This bill may impact local governments because they may have to hire more employees to meet the prescribed timeframes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The streamlined permitting and development processes in the bill may expedite development across the state. However, permit fees may be raised by local governments in order to meet timing requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 17, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that an applicant must commence construction and continue to develop the property in good faith in order to obtain vested rights.
- Requires the governing body to obtain written consent of the applicant before it may make substantive changes to the preliminary plat.
- Requires the applicant to indemnify and hold harmless the local government, governing body, its agents, and its employees, from certain liability related to the improvement of the property, including to any associated utilities, and from certain disputes related to obtaining a certificate of occupancy.
  - However, such indemnification does not extend to governmental action that infringe on the applicant's vested rights.
- Changes the date by which a governing body must allow an applicant to obtain:
  - Up to 50 percent of permits pursuant to a preliminary plat, to October 1, 2024, from August 1, 2024.
  - Up to 75 percent of permits pursuant to a preliminary plat, to December 1, 2027, from December 1, 2028.

- Exempts Monroe County from the provisions which require the governing body to issue a certain percentage of permits pursuant to a preliminary plat.
- Provides that a master building permit is valid for 3 consecutive years after its issuance or until the adoption of a new Florida Building Code, whichever is earlier, instead of later.
- Requires an applicant for permits pursuant to a preliminary plat to provide a copy of the approved plat to relevant gas utilities.
- Removes provisions requiring certain reporting to the Department of Business and Professional Regulation and the Department of Commerce.
- Clarifies language and corrects grammatical errors.

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

1 A bill to be entitled
2 An act relating to expedited approval of residential
3 building permits; creating s. 177.073, F.S.; providing
4 definitions; requiring certain governing bodies, by a
5 date certain, to create a program to expedite the
6 process for issuing residential building permits
7 before a final plat is recorded; requiring the
8 expedited process to include a certain application;
9 requiring certain governing bodies to update its
10 program in a specified manner; providing
11 applicability; requiring a governing body to create
12 certain processes for purposes of the program;
13 authorizing applicants to use a private provider to
14 expedite the process for certain building permits;
15 authorizing a governing body to issue addresses and
16 temporary parcel identification numbers for specified
17 purposes; requiring a governing body to issue a
18 specified number or percentage of building permits
19 requested in an application when certain conditions
20 are met; setting forth certain conditions for
21 applicants who apply to the program; providing that an
22 applicant has a vested right in an approved
23 preliminary plat when certain conditions are met;
24 prohibiting a governing body from making substantive
25 changes to a preliminary plat without written consent;

26 requiring an applicant to indemnify and hold harmless
27 certain entities and persons; providing an exception;
28 providing an effective date.
29
30 Be It Enacted by the Legislature of the State of Florida:
31
32 Section 1. Section 177.073, Florida Statutes, is created
33 to read:
34 177.073 Expedited approval of residential building permits
35 before a final plat is recorded.—
36 (1) As used in this section, the term:
37 (a) "Applicant" means a homebuilder or developer who files
38 an application with the local governing body to identify the
39 percentage of planned homes, or the number of building permits,
40 that the local governing body must issue for a residential
41 subdivision or planned community.
42 (b) "Final plat" means the final tracing, map, or site
43 plan presented by the subdivider to a governing body for final
44 approval, and, upon approval by the appropriate governing body,
45 is submitted to the clerk of the circuit court for recording.
46 (c) "Local building official" has the same meaning as in
47 s. 553.791(1).
48 (d) "Plans" means any building plans, construction plans,
49 engineering plans, or site plans, or their functional
50 equivalent, submitted by an applicant for a building permit.

51 (e) "Preliminary plat" means a map or delineated
52 representation of the subdivision of lands that is a complete
53 and exact representation of the residential subdivision or
54 planned community and contains any additional information needed
55 to be in compliance with the requirements of this chapter.
56 (2)(a) By October 1, 2024, the governing body of a county
57 that has 75,000 residents or more and the governing body of a
58 municipality that has 30,000 residents or more shall create a
59 program to expedite the process for issuing building permits for
60 residential subdivisions or planned communities in accordance
61 with the Florida Building Code and this section before a final
62 plat is recorded with the clerk of the circuit court. The
63 expedited process must include an application for an applicant
64 to identify the percentage of planned homes, not to exceed 50
65 percent of the residential subdivision or planned community, or
66 the number of building permits that the governing body must
67 issue for the residential subdivision or planned community. This
68 paragraph does not:
69 1. Restrict the governing body from issuing more than 50
70 percent of the building permits for the residential subdivision
71 or planned community.
72 2. Apply to a county subject to s. 380.0552.
73 (b) A governing body that had a program in place before
74 July 1, 2023, to expedite the building permit process, need only
75 update their program to approve an applicant's written

76 application to issue up to 50 percent of the building permits
77 for the residential subdivision or planned community in order to
78 comply with this section. This paragraph does not restrict a
79 governing body from issuing more than 50 percent of the building
80 permits for the residential subdivision or planned community.
81 (c) By December 31, 2027, the governing body of a county
82 that has 75,000 residents or more and the governing body of a
83 municipality that has 30,000 residents or more shall update its
84 program to expedite the process for issuing building permits for
85 residential subdivisions or planned communities in accordance
86 with the Florida Building Code and this section before a final
87 plat is recorded with the clerk of the circuit court. The
88 expedited process must include an application for an applicant
89 to identify the percentage of planned homes, not to exceed 75
90 percent of the residential subdivision or planned community, or
91 the number of building permits that the governing body must
92 issue for the residential subdivision or planned community. This
93 paragraph does not:
94 1. Restrict the governing body from issuing more than 75
95 percent of the building permits for the residential subdivision
96 or planned community.
97 2. Apply to a county subject to s. 380.0552.
98 (3) A governing body shall create:
99 (a) A two-step application process for the adoption of a
100 preliminary plat, inclusive of any plans, in order to expedite

101 the issuance of building permits under this section. The
102 application must allow an applicant to identify the percentage
103 of planned homes or the number of building permits that the
104 governing body must issue for the residential subdivision or
105 planned community.
106 (b) A master building permit process consistent with s.
107 553.794 for applicants seeking multiple building permits for
108 residential subdivisions or planned communities. For purposes of
109 this paragraph, a master building permit is valid for 3
110 consecutive years after its issuance or until the adoption of a
111 new Florida Building Code, whichever is earlier. After a new
112 Florida Building Code is adopted, the applicant may apply for a
113 new master building permit, which, upon approval, is valid for 3
114 consecutive years.
115 (4) An applicant may use a private provider consistent
116 with s. 553.791 to expedite the application process as described
117 in this section.
118 (5) A governing body may work with appropriate local
119 government agencies to issue an address and a temporary parcel
120 identification number for lot lines and lot sizes based on the
121 metes and bounds of the plat contained in the application.
122 (6) The governing body must issue the number or percentage
123 of building permits requested by an applicant in accordance with
124 the Florida Building Code and this section, provided the
125 residential buildings or structures are unoccupied and all of

126 the following conditions are met:
127 (a) The governing body has approved a preliminary plat for
128 each residential subdivision or planned community.
129 (b) The applicant provides proof to the governing body
130 that the applicant has provided a copy of the approved
131 preliminary plat, along with the approved plans, to the relevant
132 electric, gas, water, and wastewater utilities.
133 (c) The applicant holds a valid performance bond for up to
134 130 percent of the necessary improvements, as defined in s.
135 177.031(9), that have not been completed upon submission of the
136 application under this section. For purposes of a master planned
137 community as defined in s. 163.3202(5)(b), a valid performance
138 bond is required on a phase-by-phase basis.
139 (7)(a) An applicant may contract to sell, but may not
140 transfer ownership of, a residential structure or building
141 located in the residential subdivision or planned community
142 until the final plat is approved by the governing body and
143 recorded in the public records by the clerk of the circuit
144 court.
145 (b) An applicant may not obtain a final certificate of
146 occupancy for each residential structure or building for which a
147 building permit is issued until the final plat is approved by
148 the governing body and recorded in the public records by the
149 clerk of the circuit court.
150 (8) For purposes of this section, an applicant has a

151 vested right in a preliminary plat that has been approved by a
152 governing body if all of the following conditions are met:
153 (a) The applicant relies in good faith on the approved
154 preliminary plat or any amendments thereto.
155 (b) The applicant incurs obligations and expenses,
156 commences construction of the residential subdivision or planned
157 community, and is continuing in good faith with the development
158 of the property.
159 (9) Upon the establishment of an applicant's vested rights
160 in accordance with subsection (8), a governing body may not make
161 substantive changes to the preliminary plat without the
162 applicant's written consent.
163 (10) An applicant must indemnify and hold harmless the
164 local government, its governing body, its employees, and its
165 agents from liability or damages resulting from the issuance of
166 a building permit or the construction, reconstruction, or
167 improvement or repair of a residential building or structure,
168 including any associated utilities, located in the residential
169 subdivision or planned community. Additionally, an applicant
170 must indemnify and hold harmless the local government, its
171 governing body, its employees, and its agents from liability or
172 disputes resulting from the issuance of a certificate of
173 occupancy for a residential building or structure that is
174 constructed, reconstructed, improved, or repaired before the
175 approval and recordation of the final plat of the qualified

176 project. This indemnification includes, but is not limited to,
177 any liability and damage resulting from wind, fire, flood,
178 construction defects, bodily injury, and any actions, issues, or
179 disputes arising out of a contract or other agreement between
180 the developer and a utility operating in the residential
181 subdivision or planned community. However, this indemnification
182 does not extend to governmental actions that infringe on the
183 applicant's vested rights.
184 Section 2. This act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/HB 665 by Rep. McClain
Expedited Approval of Residential Building Permits

AMENDMENT SUMMARY
February 8, 2024

Amendment 1 by Rep. McClain (line 56-145):

- Clarifies that, related to an application for building permits under a preliminary plat, if the applicant requests, the local government cannot give less than the requested amount of permits if the request does not exceed 50 percent.
- Provides that any city that does not have 25 acres of contiguous land designated by the local government for residential development or agricultural purposes does not have to create the new preliminary plat process (currently exempts those cities with under 30,000 residents).
- Clarifies that a developer may not receive a temporary or final certificate of occupancy based on a preliminary plat.
- Requires a local governing body to publish a list of at least 3 qualified contractors they may use to help with staffing to review and approve an expedited application for a preliminary plat.
- Provides that a qualified contractor is:
    - A licensed an engineer or engineering firm;
    - A licensed surveyor or mapper or a surveyor's or mapper's firm;
    - A licensed architect or architecture firm;
    - A registered landscape architect or landscape architecture firm; or
    - Any other qualified professional who is certified in urban planning or environmental management.

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

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1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative McClain offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 56-145 and insert:
6 (f) "Qualified contractor" includes, but is not limited
7 to, an engineer or engineering firm licensed under chapter 471;
8 a surveyor or mapper or a surveyor's or mapper's firm licensed
9 under chapter 472; an architect or architecture firm licensed
10 under part I of chapter 481; a landscape architect or landscape
11 architecture firm registered under part II of chapter 481; or
12 any other qualified professional who is certified in urban
13 planning or environmental management.
14 (2)(a) By October 1, 2024, any governing body of a county
15 that has 75,000 residents or more and any governing body of a
16 municipality that has 25 acres or more of contiguous land that

17 the local government has designated in the local government's
18 comprehensive plan and future land use map as land that is
19 agricultural or to be developed for residential purposes shall
20 create a program to expedite the process for issuing building
21 permits for residential subdivisions or planned communities in
22 accordance with the Florida Building Code and this section
23 before a final plat is recorded with the clerk of the circuit
24 court. The expedited process must include an application for an
25 applicant to identify the percentage of planned homes, not to
26 exceed 50 percent of the residential subdivision or planned
27 community, or the number of building permits that the governing
28 body must issue for the residential subdivision or planned
29 community. The application or the local government’s final
30 approval may not alter or restrict the applicant from receiving
31 the number of building permits requested, so long as the request
32 does not exceed 50 percent of the planned homes of the
33 residential subdivision or planned community or the number of
34 building permits. This paragraph does not:
35 1. Restrict the governing body from issuing more than 50
36 percent of the building permits for the residential subdivision
37 or planned community.
38 2. Apply to a county subject to s. 380.0552.
39 (b) A governing body that had a program in place before
40 July 1, 2023, to expedite the building permit process, need only
41 update their program to approve an applicant's written

42 application to issue up to 50 percent of the building permits
43 for the residential subdivision or planned community in order to
44 comply with this section. This paragraph does not restrict a
45 governing body from issuing more than 50 percent of the building
46 permits for the residential subdivision or planned community.
47 (c) By December 31, 2027, any governing body of a county
48 that has 75,000 residents or more and any governing body of a
49 municipality that has 25 acres or more of contiguous land that
50 the local government has designated in the local government's
51 comprehensive plan and future land use map as land that is
52 agricultural or to be developed for residential purposes shall
53 update its program to expedite the process for issuing building
54 permits for residential subdivisions or planned communities in
55 accordance with the Florida Building Code and this section
56 before a final plat is recorded with the clerk of the circuit
57 court. The expedited process must include an application for an
58 applicant to identify the percentage of planned homes, not to
59 exceed 75 percent of the residential subdivision or planned
60 community, or the number of building permits that the governing
61 body must issue for the residential subdivision or planned
62 community. This paragraph does not:
63 1. Restrict the governing body from issuing more than 75
64 percent of the building permits for the residential subdivision
65 or planned community.
66 2. Apply to a county subject to s. 380.0552.

67 (3) A governing body shall create:
68 (a) A two-step application process for the adoption of a
69 preliminary plat, inclusive of any plans, in order to expedite
70 the issuance of building permits under this section. The
71 application must allow an applicant to identify the percentage
72 of planned homes or the number of building permits that the
73 governing body must issue for the residential subdivision or
74 planned community.
75 (b) A master building permit process consistent with s.
76 553.794 for applicants seeking multiple building permits for
77 residential subdivisions or planned communities. For purposes of
78 this paragraph, a master building permit is valid for 3
79 consecutive years after its issuance or until the adoption of a
80 new Florida Building Code, whichever is earlier. After a new
81 Florida Building Code is adopted, the applicant may apply for a
82 new master building permit, which, upon approval, is valid for 3
83 consecutive years.
84 (4)(a) An applicant may use a private provider pursuant to
85 s. 553.791 to expedite the application process for building
86 permits after a preliminary plat is approved under this section.
87 (b) A governing body must establish a registry of at least
88 three qualified contractors who the governing body may use to
89 supplement staff resources in ways determined by the governing
90 body for processing and expediting the review of an application
91 for a preliminary plat or any plans related to such application.

92 A qualified contractor on the registry who is hired pursuant to
93 this section to review an application, or any part thereof, for
94 a preliminary plat, or any part thereof, may not have a conflict
95 of interest with the applicant. For purposes of this paragraph,
96 the term "conflict of interest" has the same meaning as in s.
97 112.312.
98 (5) A governing body may work with appropriate local
99 government agencies to issue an address and a temporary parcel
100 identification number for lot lines and lot sizes based on the
101 metes and bounds of the plat contained in the application.
102 (6) The governing body must issue the number or percentage
103 of building permits requested by an applicant in accordance with
104 the Florida Building Code and this section, provided the
105 residential buildings or structures are unoccupied and all of
106 the following conditions are met:
107 (a) The governing body has approved a preliminary plat for
108 each residential subdivision or planned community.
109 (b) The applicant provides proof to the governing body
110 that the applicant has provided a copy of the approved
111 preliminary plat, along with the approved plans, to the relevant
112 electric, gas, water, and wastewater utilities.
113 (c) The applicant holds a valid performance bond for up to
114 130 percent of the necessary improvements, as defined in s.
115 177.031(9), that have not been completed upon submission of the
116 application under this section. For purposes of a master planned

117 community as defined in s. 163.3202(5)(b), a valid performance
118 bond is required on a phase-by-phase basis.
119 (7)(a) An applicant may contract to sell, but may not
120 transfer ownership of, a residential structure or building
121 located in the residential subdivision or planned community
122 until the final plat is approved by the governing body and
123 recorded in the public records by the clerk of the circuit
124 court.
125 (b) An applicant may not obtain a temporary or final
126 certificate of
127
128 ---
129 **T I T L E A M E N D M E N T**
130 Between lines 14 and 15, insert:
131 requiring a governing body to include in its program a
132 registry of qualified contractors for a specified
133 purpose; specifying that the registry must include a
134 minimum number of qualified contractors; prohibiting a
135 qualified contractor from having certain conflicts of
136 interest; defining the term "conflict of interest";

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 709 In-store Servicing of Alcoholic Beverages
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Rizo
TIED BILLS: **IDEN./SIM. BILLS:** SB 574

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N, As CS	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Regulation of alcohol in Florida is based upon the “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, the distributor obtains the beverages from the manufacturer and then delivers to the vendor, and the vendor makes the ultimate sale to the consumer.

Currently, distributors of wine and beer may provide certain quality control services, or “in-store servicing,” for the products they sell to a vendor, as an exception to the three-tier system, without violating the Beverage Law. However, distributors of liquor may not provide such in-store servicing.

The bill allows distributors of liquor products, to perform in-store servicing for the products they sell to a vendor.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages.[4] The manufacturer creates the beverages, the distributor obtains the beverages from the manufacturer and then delivers to the vendor, and the vendor makes the ultimate sale to the consumer.[5]

The license and registration classifications used in the Beverage Law include the following:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."[6]

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers and distributors are generally prohibited from holding a vendor's license.[7] Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier. Limited exceptions, subject to certain conditions, include the ability for a craft brewery to hold a vendor's license (tap room), a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.[8]

Liquor

"Liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.[9]

Every manufacturer and distributor of liquor beverages:[10]

- Containing 17.259 percent or more of alcohol by volume and not more than 55.780 percent of alcohol by volume, except wines, must pay a tax at the rate of $6.50 per gallon.

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[1] Section 561.01(6), F.S., provides that the "The Beverage Law" includes chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] S. 561.02, F.S.
[4] Section 561.01, F.S., defines "alcoholic beverages" as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume."
[5] S. 561.14, F.S.
[6] S. 561.14, F.S.
[7] Ss. 561.22(1), 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[8] *See* ss. 561.22, 561.24, 561.14(1), and 563.022(14), F.S.
[9] S. 565.01, F.S.
[10] S. 565.12, F.S.

- Containing less than 17.259 percent of alcohol by volume, must pay a tax at the rate provided in Chapter 564, F.S., which outlines tax rates for wine.

In-store Servicing

Distributors of wine and beer or malt beverages may provide certain quality control servicing, or "in-store servicing," of such products sold by the distributor to a vendor, as an exception to the three-tier system, without violating the Beverage Law.

"In-store servicing" for wine means:

- Placing the wine on the vendor's shelves and maintaining the appearance and display of said wine on the vendor's shelves in the vendor's licensed premises;
- Placing the wine in a storage area designated by the vendor, which is located in the vendor's licensed premises;
- Rotation of vinous beverages; and
- Price stamping of vinous beverages in the vendor's licensed premises.[11]

The in-store servicing allowance for wine distributors specifically states that the exception does not apply to liquor.[12]

"In-store servicing" for beer or malt beverages includes, but is not limited to:

- Rotation of malt beverages on the vendor's shelves,
- Rotation and placing of malt beverages in the vendor's coolers,
- Proper stacking and maintenance of appearance and display of malt beverages on vendor's shelves,
- Price-stamping of malt beverages in the vendor's licensed premises, and
- Moving or resetting any product or display in order to display a distributor's own product when authorized by the vendor.[13]

Distributors of liquor may not provide in-store servicing, as there is no provision under the Beverage Law allowing it, and s. 561.42, F.S., prohibits financial aid and assistance of any kind from a distributor to a vendor.

RTD Alcohol Products

Ready-to-drink alcohol products (RTDs) are generally premixed drinks that are ready to be consumed immediately, and typically have a lower alcoholic content compared to traditional liquors.[14] There are generally three categories of RTDs:[15]

- Malt-based. For example:
  - Hard seltzers.
  - Hard tea.
  - Hard kombucha.
- Wine-based. For example:
  - Wines in cans.
  - Wine cocktails in tetra packs.
- Liquor-based. For example:
  - Ready-to-drink cocktails.
  - Seltzers with a spirits spike.

[11] S. 561.424(2), F.S.
[12] *Id.*
[13] S. 561.423, F.S.
[14] Wildpack Beverage, *RTD Alcohol: How It's Changed The Beverage Industry*, https://wildpackbev.com/rtd-alcohol-how-its-changed-the-beverage-industry/ (last visited Jan. 26, 2024).
[15] Kate Dingwall, *Where Is The Ready-To-Drink Category Headed?*, Forbes, Jul. 27, 2022, https://www.forbes.com/sites/katedingwall/2022/07/27/where-is-the-ready-to-drink-category-headed/?sh=4d07808b4bd1 (last visited Jan. 26, 2024).

- Shooters.

Vendors with beer and wine licenses are allowed to sell liquor-based products, including RTDs, that have less than 6 percent alcohol by volume. Specifically, s. 564.06(5)(b), F.S., provides that all alcohol products, however derived, distilled, mixed, or fermented, and which contain **less than 6 percent** alcohol by volume which are taxed under Chapter 564, F.S.,[16] must be available for purchase and sale[17] by **any licensee** holding a valid license to sell alcoholic beverages for consumption either on or off premises, and nothing contained in the Beverage Law may be construed to prevent such sales.[18]

In 2021, DBPR issued an informational bulletin addressing confusion regarding whether a liquor distributor may provide in-store servicing of RTDs which contain liquor, stating that: [19]

> Despite being classified as liquor under the Beverage Law, many [RTDs] are available for sale in locations authorized to sell beer and wine only, pursuant to…s. 564.06(5)(b), F.S.… The sale of these products in locations not authorized to sell [other] liquor appears to have caused some confusion in the marketplace regarding whether these RTD items are able to be serviced by distributors. Liquor-based RTDs and other [liquor] items…are not eligible for in-store servicing by distributors…. The in-store servicing of such items would be considered a violation of s. 561.42, F.S. As such, it will be necessary for distributors to make a determination based on the product formulation as to whether the product is eligible for instore servicing, or whether servicing of such products could potentially be a violation of the Beverage Law.

The bulletin states that in-store servicing of liquor-based products by the distributor is a violation of the Beverage Law, despite the ability of certain vendors to sell liquor products or RTDs with less than 6 percent alcohol.[20]

<u>Effect of the Bill</u>

The bill provides that the beverage law does not prohibit a distributor of liquor from providing in-store servicing of any liquor sold by the distributor to a vendor.

The bill provides that "in-store servicing" of liquor products means:
- Placing liquor, including liquor products located in a storage area designated by the vendor, on the vendor's shelves and maintaining the appearance and display of the liquor products on the vendor's shelves in the vendor's licensed premises.
- Placing the liquor products in displays.
- Placing the liquor products that are not shelved or displayed in a storage area designated by the vendor, which is located in the vendor's licensed premises.
- Rotating liquor.
- Price stamping liquor products in the vendor's licensed premises.

The bill removes the provision in the wine in-store servicing statute that prohibits in-store servicing of liquor.

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

[16] This includes all wine, wine products, and beverages containing less than 17.259 percent of alcohol by volume. Ss. 564.06 and 565.12, F.S.
[17] As provided in ss. 563.02 and 564.02, F.S.
[18] S. 564.06(5)(b), F.S.
[19] Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, Informational Bulletin 2021-003, http://www.myfloridalicense.com/dbpr/abt/informational_bulletins/2021-003_RTDandInStoreServicing.pdf (last visited Jan. 26, 2024).
[20] *Id.*

B. SECTION DIRECTORY:

Section 1: Amends s. 561.424, F.S.; relating to in-store servicing of wine products.
Section 2: Creates 561.425, F.S.; relating to in-store servicing of liquor products
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow liquor distributors to ensure that liquor-based RTDs are well maintained in retail locations.

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 allows DBPR to adopt rules to implement the bill. DBPR may need to amend rule 61A-3.050, F.A.C., relating to special low-proof products.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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

- Removes the in-store servicing allowance for liquor products with less than 6% alcohol by volume from the wine provision.
- Creates a new provision to allow in-store servicing for any liquor product.

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

1 A bill to be entitled
2 An act relating to in-store servicing of alcoholic
3 beverages; amending s. 561.424, F.S.; conforming
4 provisions to changes made by the act; creating s.
5 561.425, F.S.; authorizing the in-store servicing of
6 distilled spirits sold by a distributor to a vendor;
7 defining the term "in-store servicing"; providing an
8 effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Subsection (2) of section 561.424, Florida
13 Statutes, is amended, and subsection (3) is added to that
14 section, to read:
15 561.424 Vinous beverages; in-store servicing authorized.—
16 (2) Nothing in s. 561.42 or any other provision of the
17 alcoholic beverage law prohibits ~~shall prohibit~~ a distributor of
18 wine from providing in-store servicing of wine sold by the ~~such~~
19 distributor to a vendor.
20 (3) As used in this section, the term "in-store servicing"
21 ~~as used herein~~ means:
22 (a) Placing ~~the~~ wine on the vendor's shelves and
23 maintaining the appearance and display of the ~~said~~ wine on the
24 vendor's shelves in the vendor's licensed premises.~~;~~
25 (b) Placing the wine that is not ~~so~~ shelved or displayed

26 in a storage area designated by the vendor, which is located in
27 the vendor's licensed premises.;
28 (c) Rotating rotation of vinous beverages.; and
29 (d) Price stamping of vinous beverages in the vendor's
30 licensed premises. This section shall not apply to distilled
31 spirits.
32 Section 2. Section 561.425, Florida Statutes, is created
33 to read:
34 561.425 Distilled spirits; in-store servicing authorized.-
35 (1) Nothing in s. 561.42 or any other provision of the
36 alcoholic beverage law prohibits a distributor of distilled
37 spirits from providing in-store servicing of distilled spirits
38 sold by the distributor to a vendor.
39 (2) As used in this section, the term "in-store servicing"
40 means:
41 (a) Placing distilled spirits, including distilled spirits
42 located in a storage area designated by the vendor, on the
43 vendor's shelves and maintaining the appearance and display of
44 the distilled spirits on the vendor's shelves in the vendor's
45 licensed premises.
46 (b) Placing the distilled spirits in displays.
47 (c) Placing the distilled spirits that are not shelved or
48 displayed in a storage area designated by the vendor, which is
49 located in the vendor's licensed premises.
50 (d) Rotating distilled spirits.

51 (e) Price stamping distilled spirits in the vendor's
52 licensed premises.
53 Section 3. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 791 Development Permits and Orders
SPONSOR(S): Overdorf and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1150

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	14 Y, 0 N	Mwakyanjala	Darden
2) Commerce Committee		Larkin	Hamon
3) State Affairs Committee			

SUMMARY ANALYSIS

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans. Each county and municipality must maintain a comprehensive plan to guide future development.

A development permit is any official action of a local government that has the effect of permitting the development of land including, but not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances. A development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit. Counties and municipalities must approve, approve with conditions, or deny applications with a development order within timeframes established by statute.

The bill revises procedures for counties and municipalities to issue development permits and orders by requiring counties and municipalities to:

- Specify in writing the minimum information that must be submitted in certain development applications;
- Confirm receipt of an application within five business days; and
- Issue a refund of application fees if certain deadlines are not met.

The bill provides that timeframes for processing an application for a development permit or order restart if the applicant makes a substantive change and provides a definition of that term. The bill requires any extension of deadlines for processing an application for a development permit or order must be in writing. The bill provides that a county or municipality is not required to issue a refund of application fees if the parties have agreed to an extension of time, the delay in meeting the deadline is caused by the applicant, or if the delay is attributable to a force majeure or other extraordinary circumstance.

The bill does not appear to have a fiscal impact on state government and may have an indeterminate negative fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Comprehensive Planning

The Community Planning Act[1] provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.[2] Each county and municipality must maintain a comprehensive plan to guide future development and growth.[3]

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.[4] A comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of 10 required elements, each laying out regulations for a different facet of development.[5] Local governments may also include optional elements in their comprehensive plan. The 10 required elements are:

- Capital improvements;
- Future land use plan;
- Transportation;
- General sanitary sewer, solid waste, drainage, potable water and natural groundwater aquifer recharge;
- Conservation;
- Recreation and open space;
- Housing;
- Coastal management;
- Intergovernmental coordination; and
- Property rights.[6]

Development Permits and Orders

Under the Community Planning Act, a development permit is any official action of a local government permitting the development of land.[7] Development plans include, but are not limited to, building permits, zoning permits, subdivision approval, rezoning, certifications, special exceptions, and variances. A development order is issued by a local government and grants, denies, or grants with conditions an application for a development permit.[8]

Within 30 days after receiving an application for approval of a development permit or development order, a county or municipality must review the application for completeness and issue a letter indicating that all required information is submitted or specify any areas that are deficient.[9] If the application is deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information.

[1] Ch. 163, part II, F.S.
[2] S. 163.3167(1), F.S.
[3] S. 163.3167(2), F.S.
[4] S. 163.3194(1)(a), F.S
[5] S. 163.3177(6), F.S.
[6] *Id.*
[7] S. 163.3164(16), F.S.
[8] *See* ss. 125.022, 163.3164(15), and 166.033, F.S.
[9] Ss. 125.022(1) and 166.033(1), F.S.

Within 120 days after the county or municipality has deemed the application complete, or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing, the county or municipality must approve, approve with conditions, or deny the application for a development permit or development order.[10] Both the applicant and the local government may agree to a reasonable request for an extension of time, particularly in the event of a force majeure or other extraordinary circumstance. An approval, approval with conditions, or denial of the application for a development permit or development order must include written findings supporting the county's decision. These timeframes do not apply in an area of critical state concern.

When reviewing an application for a development permit or development order, **not including building permit applications**, a county or municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing.[11]

If a county or municipality makes a request for additional information from the applicant and the applicant provides the information within 30 days of receiving the request, the county or the municipality must:

- Review the additional information and issue a letter to the applicant indicating that the application is complete or specify the remaining deficiencies within 30 days of receiving the information, if the request is the county or municipality's first request.[12]
- Review the additional information and issue a letter to the applicant indicating that the application is complete or specify the remaining deficiencies within 10 days of receiving the additional information, if the request is the county or municipality's second request.[13]
- Deem the application complete within 10 days of receiving the additional information or proceed to process the application for approval or denial unless the applicant waived the county or municipality's time limitations in writing, if the request is the county or municipality's third request.[14]

Before a third request for information, the applicant must be offered a meeting to attempt to resolve outstanding issues. If the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the applicant can request the county or municipality proceed to process the application for approval or denial.[15]

If a development permit or order is denied, the county or municipality is required to give written notice to the applicant and must provide reference to the applicable legal authority for the denial of the permit.[16]

Effect of Proposed Changes

The bill requires counties and municipalities to specify in writing the minimum information that must be submitted in an application for a zoning approval, rezoning approval, subdivision approval, certification, special exception, or variance. A municipality or county must make the minimum information available for inspection and copying at the location where the local government receives applications for development permits and orders, and provide the information to the applicant at a pre-application meeting, or post the information on the local government's website

The bill requires counties and municipalities to confirm receipt of the application for a development permit or order within 5 business days of receipt using contact information provided by the applicant. Within 30 days after receiving an application for approval of a development permit or development order, a county or municipality must review the application for completeness and issue a written notice

[10] *Id.*
[11] Ss. 125.022(2)(a) and 166.033(2)(a), F.S.
[12] Ss. 25.022(2)(b) and 166.033(2)(b), F.S.
[13] Ss.125.022(2)(c) and 166.033(2)(c), F.S.
[14] Ss. 125.022(2)(d) and 166.033(2)(d), F.S.
[15] Ss. 125.022(2)(e) and 166.033(2)(e), F.S.
[16] Ss. 125.022(3) and 166.033(3), F.S.

to the applicant indicating that all required information is submitted or specify any areas that are deficient.

The bill specifies that applications that do not require final action through a quasi-judicial hearing or a public hearing, counties and municipalities must be approved, approved with conditions, or denied the application within 120 days.

The bill requires any extensions in time agreed upon by an applicant and a county or municipality to be in writing.

The bill specifies that all timeframes related to issuing development permits and orders restart if an applicant makes a “substantive change” to the application, defined as “an applicant-initiated change of 15 percent or more in the proposed density, intensity, or square footage of a parcel.”

The bill provides that a county or municipality must issue a refund to an applicant equal to:

- 10 percent of the application fee if the county fails to issue written notification of completeness or written specification of areas of deficiency within 30 days after receiving the application.
- 10 percent of the application fee if the county fails to issue written notification of completeness or written specification of areas of deficiency within 30 days after receiving the additional information upon an initial request.
- 20 percent of the application fee if the county fails to issue written notification of completeness or written specification of areas of deficiency within 10 days after receiving the additional information upon a second request.
- 50 percent of the application fee if the county fails to approve, approve with conditions, or deny the application within 30 days after conclusion of the 120-day or 180-day application completion timeline.
- 100 percent of the application fee if the county fails to approve, approve with conditions, or deny an application 31 days or more after conclusion of the 120-day or 180-day application completion timeline.

The bill provides that a municipality or county is not required to issue a refund if the county or municipality agree to an extension of time, the delay is caused by the applicant, or the delay is attributable to a force majeure or other extraordinary circumstance.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.022, F.S., relating to county development permits and orders.

Section 2: Amends s. 166.033, F.S., relating to municipal development permits and orders.

Section 3: Amends s 163.3164, F.S., adding a definition.

Section 4: Provides an effective date of October 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:

   The bill may have an indeterminately negative fiscal impact on local governments to the extent those governments must issue refunds for failure to meet statutory deadlines for development order issuance.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminately positive fiscal impact to the extent applicants who receive refunds from counties and municipalities that fail to meet statutory deadlines for development order issuance.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to development permits and orders;
3 amending ss. 125.022 and 166.033, F.S.; requiring
4 counties and municipalities, respectively, to meet
5 specified requirements regarding the minimum
6 information necessary for certain zoning applications;
7 revising timeframes for processing applications for
8 approvals of development permits or development
9 orders; providing refund parameters in situations
10 where the county or municipality, respectively, fails
11 to meet certain timeframes; providing exceptions;
12 amending s. 163.3164, F.S.; defining the term
13 "substantive change"; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Section 125.022, Florida Statutes, is amended
18 to read:
19 125.022 Development permits and orders.—
20 (1) A county must specify in writing the minimum
21 information that must be submitted in an application for a
22 zoning approval, rezoning approval, subdivision approval,
23 certification, special exception, or variance. A county must
24 make the minimum information available for inspection and
25 copying at the location where the county receives applications

26 for development permits and orders, provide the information to
27 the applicant at a preapplication meeting, or post the
28 information on the county's website.
29 (2) Within 5 business days after receiving an application
30 for approval of a development permit or development order, a
31 county shall confirm receipt of the application using contact
32 information provided by the applicant. Within 30 days after
33 receiving an application for approval of a development permit or
34 development order, a county must review the application for
35 completeness and issue a written notification to the applicant
36 ~~letter~~ indicating that all required information is submitted or
37 specify ~~specifying~~ with particularity any areas that are
38 deficient. If the application is deficient, the applicant has 30
39 days to address the deficiencies by submitting the required
40 additional information. For applications that do not require
41 final action through a quasi-judicial hearing or a public
42 hearing, the county must approve, approve with conditions, or
43 deny the application for a development permit or development
44 order within 120 days after the county has deemed the
45 application complete. ~~, or 180 days~~ For applications that require
46 final action through a quasi-judicial hearing or a public
47 hearing, the county must approve, approve with conditions, or
48 deny the application for a development permit or development
49 order within 180 days after the county has deemed the
50 application complete. Both parties may agree in writing to ~~a~~

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

51 ~~reasonable request for~~ an extension of time, particularly in the
52 event of a force majeure or other extraordinary circumstance. An
53 approval, approval with conditions, or denial of the application
54 for a development permit or development order must include
55 written findings supporting the county's decision. The
56 timeframes contained in this subsection do not apply in an area
57 of critical state concern, as designated in s. 380.0552. The
58 timeframes contained in this subsection restart if an applicant
59 makes a substantive change, as defined in s. 163.3164, to the
60 application.
61 (3) ~~(2)~~(a) When reviewing an application for a development
62 permit or development order that is certified by a professional
63 listed in s. 403.0877, a county may not request additional
64 information from the applicant more than three times, unless the
65 applicant waives the limitation in writing.
66 (b) If a county makes a request for additional information
67 and the applicant submits the required additional information
68 within 30 days after receiving the request, the county must
69 review the application for completeness and issue a letter
70 indicating that all required information has been submitted or
71 specify with particularity any areas that are deficient within
72 30 days after receiving the additional information.
73 (c) If a county makes a second request for additional
74 information and the applicant submits the required additional
75 information within 30 days after receiving the request, the

76 county must review the application for completeness and issue a
77 letter indicating that all required information has been
78 submitted or specify with particularity any areas that are
79 deficient within 10 days after receiving the additional
80 information.
81 (d) Before a third request for additional information, the
82 applicant must be offered a meeting to attempt to resolve
83 outstanding issues. If a county makes a third request for
84 additional information and the applicant submits the required
85 additional information within 30 days after receiving the
86 request, the county must deem the application complete within 10
87 days after receiving the additional information or proceed to
88 process the application for approval or denial unless the
89 applicant waived the county's limitation in writing as described
90 in paragraph (a).
91 (e) Except as provided in subsection (7) ~~(5)~~, if the
92 applicant believes the request for additional information is not
93 authorized by ordinance, rule, statute, or other legal
94 authority, the county, at the applicant's request, shall proceed
95 to process the application for approval or denial.
96 (4) A county must issue a refund to an applicant equal to:
97 (a) Ten percent of the application fee if the county fails
98 to issue written notification of completeness or written
99 specification of areas of deficiency within 30 days after
100 receiving the application.

101 (b) Ten percent of the application fee if the county fails
102 to issue a written notification of completeness or written
103 specification of areas of deficiency within 30 days after
104 receiving the additional information pursuant to paragraph
105 (3)(b).
106 (c) Twenty percent of the application fee if the county
107 fails to issue a written notification of completeness or written
108 specification of areas of deficiency within 10 days after
109 receiving the additional information pursuant to paragraph
110 (3)(c).
111 (d) Fifty percent of the application fee if the county
112 fails to approve, approves with conditions, or denies the
113 application within 30 days after conclusion of the 120-day or
114 180-day timeframe specified in subsection (2).
115 (e) One hundred percent of the application fee if the
116 county fails to approve, approves with conditions, or denies an
117 application 31 days or more after conclusion of the 120-day or
118 180-day timeframe specified in subsection (2).
119
120 A county is not required to issue a refund if the applicant and
121 the county agree to an extension of time, the delay is caused by
122 the applicant, or the delay is attributable to a force majeure
123 or other extraordinary circumstance.
124 (5) ~~(3)~~ When a county denies an application for a
125 development permit or development order, the county shall give

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126 written notice to the applicant. The notice must include a
127 citation to the applicable portions of an ordinance, rule,
128 statute, or other legal authority for the denial of the permit
129 or order.
130 (6) ~~(4)~~ As used in this section, the terms "development
131 permit" and "development order" have the same meaning as in s.
132 163.3164, but do not include building permits.
133 (7) ~~(5)~~ For any development permit application filed with
134 the county after July 1, 2012, a county may not require as a
135 condition of processing or issuing a development permit or
136 development order that an applicant obtain a permit or approval
137 from any state or federal agency unless the agency has issued a
138 final agency action that denies the federal or state permit
139 before the county action on the local development permit.
140 (8) ~~(6)~~ Issuance of a development permit or development
141 order by a county does not in any way create any rights on the
142 part of the applicant to obtain a permit from a state or federal
143 agency and does not create any liability on the part of the
144 county for issuance of the permit if the applicant fails to
145 obtain requisite approvals or fulfill the obligations imposed by
146 a state or federal agency or undertakes actions that result in a
147 violation of state or federal law. A county shall attach such a
148 disclaimer to the issuance of a development permit and shall
149 include a permit condition that all other applicable state or
150 federal permits be obtained before commencement of the

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151 development.
152 (9) ~~(7)~~ This section does not prohibit a county from
153 providing information to an applicant regarding what other state
154 or federal permits may apply.
155 Section 2. Section 166.033, Florida Statutes, is amended
156 to read:
157 166.033 Development permits and orders.—
158 (1) A municipality must specify in writing the minimum
159 information that must be submitted for an application for a
160 zoning approval, rezoning approval, subdivision approval,
161 certification, special exception, or variance. A municipality
162 must make the minimum information available for inspection and
163 copying at the location where the municipality receives
164 applications for development permits and orders, provide the
165 information to the applicant at a preapplication meeting, or
166 post the information on the municipality's website.
167 (2) Within 5 business days after receiving an application
168 for approval of a development permit or development order, a
169 municipality shall confirm receipt of the application using
170 contact information provided by the applicant. Within 30 days
171 after receiving an application for approval of a development
172 permit or development order, a municipality must review the
173 application for completeness and issue a written notification to
174 the applicant ~~letter~~ indicating that all required information is
175 submitted or specify ~~specifying~~ with particularity any areas

176 that are deficient. If the application is deficient, the
177 applicant has 30 days to address the deficiencies by submitting
178 the required additional information. For applications that do
179 not require final action through a quasi-judicial hearing or a
180 public hearing, the municipality must approve, approve with
181 conditions, or deny the application for a development permit or
182 development order within 120 days after the municipality has
183 deemed the application complete., or 180 days For applications
184 that require final action through a quasi-judicial hearing or a
185 public hearing, the municipality must approve, approve with
186 conditions, or deny the application for a development permit or
187 development order within 180 days after the municipality has
188 deemed the application complete. Both parties may agree in
189 writing to a reasonable request for an extension of time,
190 particularly in the event of a force majeure or other
191 extraordinary circumstance. An approval, approval with
192 conditions, or denial of the application for a development
193 permit or development order must include written findings
194 supporting the municipality's decision. The timeframes contained
195 in this subsection do not apply in an area of critical state
196 concern, as designated in s. 380.0552 or chapter 28-36, Florida
197 Administrative Code. The timeframes contained in this subsection
198 restart if an applicant makes a substantive change, as defined
199 in s. 163.3164, to the application.
200 (3)(2)(a) When reviewing an application for a development

201 permit or development order that is certified by a professional
202 listed in s. 403.0877, a municipality may not request additional
203 information from the applicant more than three times, unless the
204 applicant waives the limitation in writing.
205 (b) If a municipality makes a request for additional
206 information and the applicant submits the required additional
207 information within 30 days after receiving the request, the
208 municipality must review the application for completeness and
209 issue a letter indicating that all required information has been
210 submitted or specify with particularity any areas that are
211 deficient within 30 days after receiving the additional
212 information.
213 (c) If a municipality makes a second request for
214 additional information and the applicant submits the required
215 additional information within 30 days after receiving the
216 request, the municipality must review the application for
217 completeness and issue a letter indicating that all required
218 information has been submitted or specify with particularity any
219 areas that are deficient within 10 days after receiving the
220 additional information.
221 (d) Before a third request for additional information, the
222 applicant must be offered a meeting to attempt to resolve
223 outstanding issues. If a municipality makes a third request for
224 additional information and the applicant submits the required
225 additional information within 30 days after receiving the

226 request, the municipality must deem the application complete
227 within 10 days after receiving the additional information or
228 proceed to process the application for approval or denial unless
229 the applicant waived the municipality's limitation in writing as
230 described in paragraph (a).
231 (e) Except as provided in subsection (7) ~~(5)~~, if the
232 applicant believes the request for additional information is not
233 authorized by ordinance, rule, statute, or other legal
234 authority, the municipality, at the applicant's request, shall
235 proceed to process the application for approval or denial.
236 (4) A municipality must issue a refund to an applicant
237 equal to:
238 (a) Ten percent of the application fee if the municipality
239 fails to issue written notification of completeness or written
240 specification of areas of deficiency within 30 days after
241 receiving the application.
242 (b) Ten percent of the application fee if the municipality
243 fails to issue written notification of completeness or written
244 specification of areas of deficiency within 30 days after
245 receiving the additional information pursuant to paragraph
246 (3)(b).
247 (c) Twenty percent of the application fee if the
248 municipality fails to issue written notification of completeness
249 or written specification of areas of deficiency within 10 days
250 after receiving the additional information pursuant to paragraph

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251 (3)(c).
252 (d) Fifty percent of the application fee if the
253 municipality fails to approve, approves with conditions, or
254 denies the application within 30 days after conclusion of the
255 120-day or 180-day timeframe specified in subsection (2).
256 (e) One hundred percent of the application fee if the
257 municipality fails to approve, approves with conditions, or
258 denies an application 31 days or more after conclusion of the
259 120-day or 180-day timeframe specified in subsection (2).
260
261 A municipality is not required to issue a refund if the
262 applicant and the municipality agree to an extension of time,
263 the delay is caused by the applicant, or the delay is
264 attributable to a force majeure or other extraordinary
265 circumstance.
266 (5)~~(3)~~ When a municipality denies an application for a
267 development permit or development order, the municipality shall
268 give written notice to the applicant. The notice must include a
269 citation to the applicable portions of an ordinance, rule,
270 statute, or other legal authority for the denial of the permit
271 or order.
272 (6)~~(4)~~ As used in this section, the terms "development
273 permit" and "development order" have the same meaning as in s.
274 163.3164, but do not include building permits.
275 (7)~~(5)~~ For any development permit application filed with

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

276 the municipality after July 1, 2012, a municipality may not
277 require as a condition of processing or issuing a development
278 permit or development order that an applicant obtain a permit or
279 approval from any state or federal agency unless the agency has
280 issued a final agency action that denies the federal or state
281 permit before the municipal action on the local development
282 permit.
283 (8) ~~(6)~~ Issuance of a development permit or development
284 order by a municipality does not create any right on the part of
285 an applicant to obtain a permit from a state or federal agency
286 and does not create any liability on the part of the
287 municipality for issuance of the permit if the applicant fails
288 to obtain requisite approvals or fulfill the obligations imposed
289 by a state or federal agency or undertakes actions that result
290 in a violation of state or federal law. A municipality shall
291 attach such a disclaimer to the issuance of development permits
292 and shall include a permit condition that all other applicable
293 state or federal permits be obtained before commencement of the
294 development.
295 (9) ~~(7)~~ This section does not prohibit a municipality from
296 providing information to an applicant regarding what other state
297 or federal permits may apply.
298 Section 3. Subsections (46) through (52) of section
299 163.3164, Florida Statutes, are renumbered as subsections (47)
300 through (53), respectively, and a new subsection (46) is added

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301 to that section to read:
302 163.3164 Community Planning Act; definitions.—As used in
303 this act:
304 (46) "Substantive change" means an applicant initiated
305 change of 15 percent or more in the proposed density, intensity,
306 or square footage of a parcel.
307 Section 4. This act shall take effect October 1, 2024.

COMMERCE COMMITTEE

HB 791 by Rep. Overdorf and Esposito
Development Permits and Orders

AMENDMENT SUMMARY
February 8, 2023

Amendment 1 by Rep. Overdorf (lines 59-306):

- Defines substantive change in applicable sections for development permits and orders and removes the definition of substantive change in the Community Planning Act.

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	______	

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1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative Overdorf offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 59-306 and insert:
6 makes a substantive change to the application. “Substantive
7 change” in this paragraph means an applicant-initiated change of
8 15 percent or more in the proposed density, intensity, or square
9 footage of a parcel.
10 (3) ~~(2)~~ (a) When reviewing an application for a development
11 permit or development order that is certified by a professional
12 listed in s. 403.0877, a county may not request additional
13 information from the applicant more than three times, unless the
14 applicant waives the limitation in writing.
15 (b) If a county makes a request for additional information
16 and the applicant submits the required additional information

17 within 30 days after receiving the request, the county must
18 review the application for completeness and issue a letter
19 indicating that all required information has been submitted or
20 specify with particularity any areas that are deficient within
21 30 days after receiving the additional information.
22 (c) If a county makes a second request for additional
23 information and the applicant submits the required additional
24 information within 30 days after receiving the request, the
25 county must review the application for completeness and issue a
26 letter indicating that all required information has been
27 submitted or specify with particularity any areas that are
28 deficient within 10 days after receiving the additional
29 information.
30 (d) Before a third request for additional information, the
31 applicant must be offered a meeting to attempt to resolve
32 outstanding issues. If a county makes a third request for
33 additional information and the applicant submits the required
34 additional information within 30 days after receiving the
35 request, the county must deem the application complete within 10
36 days after receiving the additional information or proceed to
37 process the application for approval or denial unless the
38 applicant waived the county's limitation in writing as described
39 in paragraph (a).
40 (e) Except as provided in subsection (7) ~~(5)~~, if the
41 applicant believes the request for additional information is not

42 authorized by ordinance, rule, statute, or other legal
43 authority, the county, at the applicant's request, shall proceed
44 to process the application for approval or denial.
45 (4) A county must issue a refund to an applicant equal to:
46 (a) Ten percent of the application fee if the county fails
47 to issue written notification of completeness or written
48 specification of areas of deficiency within 30 days after
49 receiving the application.
50 (b) Ten percent of the application fee if the county fails
51 to issue a written notification of completeness or written
52 specification of areas of deficiency within 30 days after
53 receiving the additional information pursuant to paragraph
54 (3)(b).
55 (c) Twenty percent of the application fee if the county
56 fails to issue a written notification of completeness or written
57 specification of areas of deficiency within 10 days after
58 receiving the additional information pursuant to paragraph
59 (3)(c).
60 (d) Fifty percent of the application fee if the county
61 fails to approve, approves with conditions, or denies the
62 application within 30 days after conclusion of the 120-day or
63 180-day timeframe specified in subsection (2).
64 (e) One hundred percent of the application fee if the
65 county fails to approve, approves with conditions, or denies an

66 application 31 days or more after conclusion of the 120-day or
67 180-day timeframe specified in subsection (2).
68
69 A county is not required to issue a refund if the applicant and
70 the county agree to an extension of time, the delay is caused by
71 the applicant, or the delay is attributable to a force majeure
72 or other extraordinary circumstance.
73 (5) ~~(3)~~ When a county denies an application for a
74 development permit or development order, the county shall give
75 written notice to the applicant. The notice must include a
76 citation to the applicable portions of an ordinance, rule,
77 statute, or other legal authority for the denial of the permit
78 or order.
79 (6) ~~(4)~~ As used in this section, the terms "development
80 permit" and "development order" have the same meaning as in s.
81 163.3164, but do not include building permits.
82 (7) ~~(5)~~ For any development permit application filed with
83 the county after July 1, 2012, a county may not require as a
84 condition of processing or issuing a development permit or
85 development order that an applicant obtain a permit or approval
86 from any state or federal agency unless the agency has issued a
87 final agency action that denies the federal or state permit
88 before the county action on the local development permit.
89 (8) ~~(6)~~ Issuance of a development permit or development
90 order by a county does not in any way create any rights on the

91 part of the applicant to obtain a permit from a state or federal
92 agency and does not create any liability on the part of the
93 county for issuance of the permit if the applicant fails to
94 obtain requisite approvals or fulfill the obligations imposed by
95 a state or federal agency or undertakes actions that result in a
96 violation of state or federal law. A county shall attach such a
97 disclaimer to the issuance of a development permit and shall
98 include a permit condition that all other applicable state or
99 federal permits be obtained before commencement of the
100 development.
101 (9) ~~(7)~~ This section does not prohibit a county from
102 providing information to an applicant regarding what other state
103 or federal permits may apply.
104 Section 2. Section 166.033, Florida Statutes, is amended
105 to read:
106 166.033 Development permits and orders.—
107 (1) A municipality must specify in writing the minimum
108 information that must be submitted for an application for a
109 zoning approval, rezoning approval, subdivision approval,
110 certification, special exception, or variance. A municipality
111 must make the minimum information available for inspection and
112 copying at the location where the municipality receives
113 applications for development permits and orders, provide the
114 information to the applicant at a preapplication meeting, or
115 post the information on the municipality's website.

116 (2) Within 5 business days after receiving an application
117 for approval of a development permit or development order, a
118 municipality shall confirm receipt of the application using
119 contact information provided by the applicant. Within 30 days
120 after receiving an application for approval of a development
121 permit or development order, a municipality must review the
122 application for completeness and issue a written notification to
123 the applicant ~~letter~~ indicating that all required information is
124 submitted or specify ~~specifying~~ with particularity any areas
125 that are deficient. If the application is deficient, the
126 applicant has 30 days to address the deficiencies by submitting
127 the required additional information. For applications that do
128 not require final action through a quasi-judicial hearing or a
129 public hearing, the municipality must approve, approve with
130 conditions, or deny the application for a development permit or
131 development order within 120 days after the municipality has
132 deemed the application complete.~~, or 180 days~~ For applications
133 that require final action through a quasi-judicial hearing or a
134 public hearing, the municipality must approve, approve with
135 conditions, or deny the application for a development permit or
136 development order within 180 days after the municipality has
137 deemed the application complete. Both parties may agree in
138 writing to ~~a reasonable request for~~ an extension of time,
139 particularly in the event of a force majeure or other
140 extraordinary circumstance. An approval, approval with

141 conditions, or denial of the application for a development
142 permit or development order must include written findings
143 supporting the municipality's decision. The timeframes contained
144 in this subsection do not apply in an area of critical state
145 concern, as designated in s. 380.0552 or chapter 28-36, Florida
146 Administrative Code. The timeframes contained in this subsection
147 restart if an applicant makes a substantive change to the
148 application. “Substantive change” in this paragraph means an
149 applicant-initiated change of 15 percent or more in the proposed
150 density, intensity, or square footage of a parcel.
151 (3) ~~(2)~~(a) When reviewing an application for a development
152 permit or development order that is certified by a professional
153 listed in s. 403.0877, a municipality may not request additional
154 information from the applicant more than three times, unless the
155 applicant waives the limitation in writing.
156 (b) If a municipality makes a request for additional
157 information and the applicant submits the required additional
158 information within 30 days after receiving the request, the
159 municipality must review the application for completeness and
160 issue a letter indicating that all required information has been
161 submitted or specify with particularity any areas that are
162 deficient within 30 days after receiving the additional
163 information.
164 (c) If a municipality makes a second request for
165 additional information and the applicant submits the required

166 additional information within 30 days after receiving the
167 request, the municipality must review the application for
168 completeness and issue a letter indicating that all required
169 information has been submitted or specify with particularity any
170 areas that are deficient within 10 days after receiving the
171 additional information.
172 (d) Before a third request for additional information, the
173 applicant must be offered a meeting to attempt to resolve
174 outstanding issues. If a municipality makes a third request for
175 additional information and the applicant submits the required
176 additional information within 30 days after receiving the
177 request, the municipality must deem the application complete
178 within 10 days after receiving the additional information or
179 proceed to process the application for approval or denial unless
180 the applicant waived the municipality's limitation in writing as
181 described in paragraph (a).
182 (e) Except as provided in subsection (7) ~~(5)~~, if the
183 applicant believes the request for additional information is not
184 authorized by ordinance, rule, statute, or other legal
185 authority, the municipality, at the applicant's request, shall
186 proceed to process the application for approval or denial.
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188 equal to:
189 (a) Ten percent of the application fee if the municipality
190 fails to issue written notification of completeness or written

191 specification of areas of deficiency within 30 days after
192 receiving the application.
193 (b) Ten percent of the application fee if the municipality
194 fails to issue written notification of completeness or written
195 specification of areas of deficiency within 30 days after
196 receiving the additional information pursuant to paragraph
197 (3)(b).
198 (c) Twenty percent of the application fee if the
199 municipality fails to issue written notification of completeness
200 or written specification of areas of deficiency within 10 days
201 after receiving the additional information pursuant to paragraph
202 (3)(c).
203 (d) Fifty percent of the application fee if the
204 municipality fails to approve, approves with conditions, or
205 denies the application within 30 days after conclusion of the
206 120-day or 180-day timeframe specified in subsection (2).
207 (e) One hundred percent of the application fee if the
208 municipality fails to approve, approves with conditions, or
209 denies an application 31 days or more after conclusion of the
210 120-day or 180-day timeframe specified in subsection (2).
211
212 A municipality is not required to issue a refund if the
213 applicant and the municipality agree to an extension of time,
214 the delay is caused by the applicant, or the delay is

215 attributable to a force majeure or other extraordinary
216 circumstance.
217 (5)~~(3)~~ When a municipality denies an application for a
218 development permit or development order, the municipality shall
219 give written notice to the applicant. The notice must include a
220 citation to the applicable portions of an ordinance, rule,
221 statute, or other legal authority for the denial of the permit
222 or order.
223 (6)~~(4)~~ As used in this section, the terms "development
224 permit" and "development order" have the same meaning as in s.
225 163.3164, but do not include building permits.
226 (7)~~(5)~~ For any development permit application filed with
227 the municipality after July 1, 2012, a municipality may not
228 require as a condition of processing or issuing a development
229 permit or development order that an applicant obtain a permit or
230 approval from any state or federal agency unless the agency has
231 issued a final agency action that denies the federal or state
232 permit before the municipal action on the local development
233 permit.
234 (8)~~(6)~~ Issuance of a development permit or development
235 order by a municipality does not create any right on the part of
236 an applicant to obtain a permit from a state or federal agency
237 and does not create any liability on the part of the
238 municipality for issuance of the permit if the applicant fails
239 to obtain requisite approvals or fulfill the obligations imposed

240 by a state or federal agency or undertakes actions that result
241 in a violation of state or federal law. A municipality shall
242 attach such a disclaimer to the issuance of development permits
243 and shall include a permit condition that all other applicable
244 state or federal permits be obtained before commencement of the
245 development.
246 (9) ~~(7)~~ This section does not prohibit a municipality from
247 providing information to an applicant regarding what other state
248 or federal permits may apply.
249
250 ---
251 **T I T L E A M E N D M E N T**
252 Remove lines 12-13 and insert:
253 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 813 Certified Public Accountants
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Caruso
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	15 Y, 0 N, As CS	Larkin	Anstead
2) Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

In Florida, public accountancy is regulated by the Board of Accountancy under the Department of Business and Professional Regulation. The practice of public accountancy includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements. In order to practice public accountancy, a person must be licensed as a certified public accountant (CPA).

CPAs are allowed to request their license be placed on inactive status, or the licensee may be placed on inactive status for failing to meet the CPE requirements of 80 CPE hours every two years for license renewal. However, Florida law does not currently provide CPAs the option of placing licenses into a retired status as an alternative to an inactive status.

The bill:

- Allows a Florida-licensed CPA to submit an application to the DBPR to place a CPA license in a retired status if certain conditions are met.
- Provides that if a licensee with a retired status license reenters the workforce in a position that has an association with accounting or any of the CPA services, the licensee automatically loses the retired status.
- Provides a retired licensee may serve without compensation on a board of directors or board of trustees, provide volunteer tax preparation services, participate in government-sponsored business mentoring programs, or participate in an advisory role for a similar charitable, civic, or nonprofit organization.
- Provides that a retired licensee may reactivate a license in a conditional manner determined by the Florida Board of Accountancy, which requires the payment of fees and the completion of continuing education, which consists of 80 hours every two years.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

The Florida Board of Accounting (board) in the Department of Business and Professional Regulation (DBPR) is the agency responsible for regulating and licensing active and inactive certified public accountants (CPA) and accounting firms in Florida. The Division of Certified Public Accounting provides administrative support to the 9-member board, which consists of 7 CPAs and 2 laypersons.[1]

To engage in the practice of public accounting, an individual or firm must be licensed and business entities must meet certain formation requirements.[2]

The "practice of public accountancy" includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements.[3]

The initial licensing fee for a CPA license is $50[4], and the biennial renewal fee is $105.[5]

A person may be charged with a first-degree misdemeanor if they are not a licensed CPA and they perform: [6]

- Services involving the expression of an opinion on financial statements,
- The attestation as an expert in accountancy to the reliability or fairness of the presentation of financial information,
- The utilization of any form of opinion or financial statements that provide a level of assurance,
- The utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or
- The expression of an opinion on the reliability of an assertion by one party for the use by a third party.

Continuing Education

CPAs are required to complete 80 hours[7] of continuing professional education (CPE), which is set by the board, in public accounting subjects every 2 years to renew their license. The board sets CPE hours and has the authority to require between 48 and 80 hours every 2 years. The board has the authority to prescribe by rule additional CPE hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.[8]

The Florida Institute of Certified Public Accountants (FICPA), one of Florida's largest CPA voluntary associations, offers members 20 hours of free CPE per year. The membership fee is $295 or $395 per

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[1] S. 473.303, F.S.
[2] S. 473.302, F.S.
[3] S. 473.302(8), F.S.
[4] "Initial CPA License", Florida Department of Business and Professional Regulation, www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1035&clientCode=0101&XACT_DEFN_ID=18291 (last visited Jan .23, 2024).
[5] Email from Derek Miller, Director of Legislative Affairs, Florida Department of Business and Professional Regulation, RE: CPAs (Jan. 23, 2024).
[6] S. 473.322(1)(c), F.S.
[7] S. 473.312(1)(a), F.S. allows the board to require between 48 and 80 hours of CPE every 2 years. The board requires 80 hours in r. 61H1-33.003, F.A.C.
[8] S. 473.312(1)(a), F.S.

year depending on how many years a member has been licensed. Other organizations also offer free CPE hours. Otherwise, private companies offer courses that are available online year round for between $200 and $600 per year.

The board also requires that a specific number of hours be completed in set categories or subjects. At least 10 percent of the total hours required by the board must be in accounting-related and auditing-related subjects, as distinguished from other subjects that include federal and local taxation matters and management services.[9] Five percent of the total hours required by the board must be in ethics applicable to the practice of public accounting. This requirement must be administered by providers approved by the board and include a review of the provisions of ch. 455, F.S., ch. 473, F.S., and the related administrative rules.[10]

Inactive Licenses

A CPA may request that their license be placed on inactive status. A CPA may also be placed on inactive status for failing to meet the CPE requirements for license renewal. A CPA with an inactive license cannot use the CPA designation and cannot practice public accounting.[11] Every two years, an individual with an inactive license has to pay $105 to maintain his or her license.[12] However, CPE requirements are suspended while his or her license is inactive.[13] The board is authorized to adopt rules establishing the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license.[14]

The current fee for reactivating an inactive CPA license is $250.[15] The CPE requirements for reactivating an inactive or delinquent license are 120 hours, regardless of how long the license is inactive. These CPE requirements include:

- At least 30 hours in accounting-related and auditing-related subjects;
- Not more than 30 hours in behavioral subjects; and
- A minimum of 8 hours in ethics subjects approved by the board.

Retired Status

The American Institute of CPAs (AICPA) estimated that approximately 75 percent of its members met the retirement age in 2020. According to AICPA, "many of these retirees are well respected business leaders in their communities who would like to find ways to continue to be of service, without necessarily remaining an active CPA in practice." [16]

The AICPA provides a uniform retired CPA status in their model rules that states[17] may adopt allowing retired CPAs to offer a limited array of volunteer, uncompensated services to the public. The Model Act allows inactive CPAs, who are at least 55 years of age to refer to themselves as "Retired-CPAs" and register as such with their state board of accountancy. They are able to participate in activities such as

[9] S. 473.312(1)(b), F.S.
[10] S. 473.312(1)(c), F.S.
[11] "Request Inactive Status", The Florida Department of Business and Professional Regulation, www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=4020&clientCode=0101&XACT_DEFN_ID=2738#:~:text=Licensees%20who%20no%20longer%20wish,can%20they%20practice%20public%20accounting (last visited Jan. 28, 2024).
[12] R. 61H1-31.003, F.A.C.
[13] R. 61H1-30.040(1), F.A.C.
[14] S. 473.313, F.S.
[15] R. 61H1-31.006, F.A.C.
[16] American Institute of Certified Public Accountants, Exposure Draft: AICPA/NASBA Uniform Accountancy Act and NASBA Uniform Accountancy Act Rules (November 2015) https://www.aicpa.org/advocacy/state/retiredcpastatusexposuredraft.html, p. 3 (last visited Jan. 23, 2024).
[17] *See* some states that have adopted "retired CPA status", *i.e.*, Ohio Admin. Code 4701-7-06(c); 21 N.C. Admin. Code 8J.0112; La. Rev. Stat. § 37:76(D)(2).

volunteer tax preparation services, government-sponsored business mentoring programs, and on boards of nonprofit organizations.[18]

Florida law does not currently provide CPAs the option of placing licenses into a retired[19] status as an alternative to an inactive status.

Uniform Accountancy Act

Section 473.302(9), F.S., defines the term "Uniform Accountancy Act" to mean the Uniform Accountancy Act, Seventh Edition, dated May 2014 and published by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy. The Uniform Accountancy Act provides uniform standards for the regulation of accountancy. The current edition is the eighth edition, dated January 2018.

Effect of the Bill

Retired Status

The bill creates a "retired status" for CPA licensees. The bill defines a "retired licensee" as a licensee whose license has been placed in retired status by the department.

The bill allows a Florida-licensed CPA to submit an application to the DBPR to place a CPA license in a retired status if the licensee:

- Is at least 65 years of age;
- Holds a current active or inactive license; and
- Is in good standing and not the subject of any sanction or disciplinary action.

The bill authorizes the board to prescribe by rule the application for placing a license into retired status. The application must state that the applicant has no association with accounting or any of the services defined in s. 473.302(8), F.S.

Under the bill, a licensee in retired status who reenters the workforce in a position that has an association with accounting, or any related services defined in s. 473.302(8), F.S., automatically loses his or her retired status except as provided in s. 473.313(8)(a), F.S, relating to placing a license in an inactive status.

The bill provides that the term "retired licensee" for the purposes of a retired license status in s. 473.313(2), F.S., means a licensee whose license has been placed in a retired status by the department.

The bill authorizes a retired licensee to:

- Serve without compensation on a board of directors or board of trustees;
- Provide volunteer tax preparation services;
- Participate in government-sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance program or the Small Business's SCORE program; or
- Participate in an advisory role for a similar charitable, civic, or nonprofit organization.

The board must require retired licensees to affirm in writing their understanding of the limited types of activities allowed while in retired status and their professional duty to ensure competency to participate in the activities.

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[18] *Supra* note 11.

[19] The FICA offers membership to "retired CPAs" in Florida. "Retired" members pay $115 a year for membership and must be 55 years or older and have been licensed in the U.S. in the past 10 years. *See* "Membership Types", *Florida Institute of CPAs*, www.ficpa.org/membership/types (last visited Jan. 27, 2024).

Under the bill, a retired licensee may accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the retired licensee to cover such expenses as allowed by law.

Retired licensees are permitted to use the title of "retired CPA" on any business card or letterhead or any other printed or electronic document as long as it is used in a manner that is not confusing to the public.

A "retired CPA" title may not offer or render professional services that require her or his signature and the use of the CPA title, regardless of whether "retired" is attached to such title.

Retired licensees are not required:

- To have a certificate issued with the word "retired".
- To maintain the CPE requirements set forth in s. 473.312, F.S.

A retired licensee may reactivate his or her license in a conditional manner determined by the board. The conditions of reactivation must require the payment of fees and the completion of any continuing education requirements.

Under the bill, the CPE requirements for reactivation are those of the most recent biennium plus one-half of the continuing education requirements in s. 473.312, F.S., for each biennium or part thereof during which the license was on retired status.

Uniform Accountancy Act

The bill updates the definition of "Uniform Accountancy Act" to reference the current Eighth Edition, dated January 2018 and published by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy.

B. SECTION DIRECTORY:

Section 1: Amends s. 473.313, F.S., providing requirements for CPA retired status licenses.
Section 2: Amends s. 73.302, updating definition of Uniform Accountancy Act.
Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A retired CPA wishing to reactivate her or his license will be subject to reactivation fees in an amount determined by the board, and the expense of completing required continuing education hours.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Section 19(a), Article VII of the State Constitution limits the authority of the legislature to enact legislation that imposes a new state tax or fee by requiring such legislation to be approved by a two-thirds vote in each chamber of the legislature. Section 19(e), Article VII of the Florida Constitution provides that a state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject. The bill permits a licensed CPA in retired status to reactivate his or her license in a conditional manner determined by the Florida Board of Accountancy.

   The bill requires that the conditions for the reactivation of a license in retired status must include the payment of fees. The board currently has the authority to impose a fee for the reactivation of an inactive license. Because the bill requires the board to impose a fee of an unknown amount for the reactivation of a license in retired status, it is unclear if the voting and separate bill requirements found in the State Constitution apply to the bill.

B. RULE-MAKING AUTHORITY:

The board will need to generate rules for retired status licenses. There is sufficient rulemaking authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute makes technical changes, and clarifies continuing education requirements for retired status licensees who become active licensees.

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

1 A bill to be entitled
2 An act relating to certified public accountants;
3 amending s. 473.313, F.S.; authorizing certain
4 certified public accountants to apply to the
5 Department of Business and Professional Regulation to
6 place their licenses on retired status; authorizing
7 the Board of Accountancy to prescribe by rule a
8 certain application; providing requirements for the
9 application; providing that a licensee loses retired
10 status in certain circumstances; authorizing a retired
11 licensee to take certain actions without losing
12 retired status; requiring a certain affirmation;
13 authorizing a retired licensee to accept certain
14 reimbursements or per diem amounts; prohibiting a
15 retired licensee from offering or rendering certain
16 professional services; providing for the reactivation
17 of a retired licensee's license; providing
18 requirements for the conditions of such reactivation;
19 providing a definition; amending s. 473.302, F.S.;
20 revising a definition; providing an effective date.
21
22 Be It Enacted by the Legislature of the State of Florida:
23
24 Section 1. Section 473.313, Florida Statutes, is amended
25 to read:

26 473.313 Inactive status; retired status.—
27 (1) A Florida certified public accountant may request that
28 her or his license be placed in an inactive status by making
29 application to the department. The board may prescribe by rule
30 fees for placing a license on inactive status, renewal of
31 inactive status, and reactivation of an inactive license.
32 (a) ~~(2)~~ A license that has become inactive under this
33 subsection ~~(1)~~ or for failure to complete the requirements in s.
34 473.312 may be reactivated under s. 473.311 upon application to
35 the department. The board may prescribe by rule continuing
36 education requirements as a condition of reactivating a license.
37 The maximum continuing education requirements for reactivating a
38 license are 120 hours, including at least 30 hours in
39 accounting-related and auditing-related subjects, not more than
40 30 hours in behavioral subjects, and a minimum of 8 hours in
41 ethics subjects approved by the board, for the reactivation of a
42 license that is inactive or delinquent.
43 (b) ~~(3)~~ A license that is delinquent for failure to report
44 completion of the requirements in s. 473.312 may be reactivated
45 under s. 473.311 upon application to the department.
46 Reactivation requires the payment of an application fee as
47 determined by the board and certification by the Florida
48 certified public accountant that the applicant satisfactorily
49 completed the continuing education requirements set forth under
50 s. 473.311. If the license is delinquent on January 1 because of

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

51 failure to report completed continuing education requirements,
52 the applicant must submit a complete application to the board by
53 March 15 immediately after the delinquent period.
54 (c) ~~(4)~~ Any Florida certified public accountant holding an
55 inactive license may be permitted to reactivate such license in
56 a conditional manner. The conditions of reactivation shall
57 require the payment of fees and the completion of required
58 continuing education.
59 (d) ~~(5)~~ Notwithstanding the provisions of s. 455.271, the
60 board may, at its discretion, reinstate the license of an
61 individual whose license has become null and void if the
62 individual has made a good faith effort to comply with this
63 section but has failed to comply because of illness or unusual
64 hardship. The individual shall apply to the board for
65 reinstatement in a manner prescribed by rules of the board and
66 shall pay an application fee in an amount determined by rule of
67 the board. The board shall require that the individual meet all
68 continuing education requirements as provided in paragraph (a)
69 ~~subsection (2)~~, pay appropriate licensing fees, and otherwise be
70 eligible for renewal of licensure under this chapter.
71 (2) A Florida certified public accountant who is at least
72 65 years of age, currently holds an active or inactive license
73 in good standing under this chapter, and is not the subject of
74 any sanction or disciplinary action may request that her or his
75 license be placed on retired status by making application to the

76 department. The board may prescribe by rule the application for
77 placing a license on retired status, which must state that the
78 applicant has no association with accounting or any of the
79 services described in s. 473.302(8). If a licensee who has been
80 granted retired status reenters the workforce in a position that
81 has an association with accounting or any of the services
82 described in 473.302(8), the licensee automatically loses her or
83 his retired status.
84 (a) A retired licensee may, without losing her or his
85 retired status, serve without compensation on a board of
86 directors or board of trustees, provide volunteer tax
87 preparation services, participate in a government-sponsored
88 business mentoring program such as the Internal Revenue
89 Service's Volunteer Income Tax Assistance program or the Small
90 Business Administration's SCORE program, or participate in an
91 advisory role for a similar charitable, civic, or other non-
92 profit organization.
93 (b) The board shall require a retired licensee to affirm
94 in writing her or his understanding of the limited types of
95 activities in which she or he may engage while in retired status
96 and that she or he has a professional duty to ensure that she or
97 he holds the professional competencies necessary to participate
98 in such activities.
99 (c) A retired licensee may accept routine reimbursement
100 for actual costs of travel and meals associated with volunteer

101 services or de minimis per diem amounts paid to the licensee to
102 cover such expenses as allowed by law.
103 (d) A retired licensee may use the title of "retired CPA"
104 on any business card or letterhead or any other printed or
105 electronic document. However, such title must not be applied in
106 such a manner that could confuse the public as to the current
107 status of the licensee. The licensee is not required to have a
108 certificate issued with the word "retired" on the certificate.
109 (e) A retired licensee is not required to maintain the
110 continuing education requirements under s. 473.312.
111 (f) A retired licensee may not offer or render
112 professional services that require her or his signature and the
113 use of the CPA title, regardless of whether "retired" is
114 attached to such title.
115 (g) A retired licensee may be permitted to reactivate her
116 or his license in a conditional manner as determined by the
117 board. The conditions of reactivation must require the payment
118 of fees and the completion of required continuing education. The
119 board may prescribe by rule an application for reactivating a
120 license placed on retired status and continuing education
121 requirements as a condition of reactivating a license placed on
122 retired status. The minimum continuing education requirements
123 for reactivating a license placed on retired status are those of
124 the most recent biennium plus one-half of the requirements in s.
125 473.312 for each biennium or part thereof during which the

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126 license was on retired status.
127
128 For the purposes of this subsection, the term "retired licensee"
129 means a licensee whose license has been placed in retired status
130 by the department.
131 Section 2. Subsection (9) of section 473.302, Florida
132 Statutes, is amended to read:
133 473.302 Definitions.—As used in this chapter, the term:
134 (9) "Uniform Accountancy Act" means the Uniform
135 Accountancy Act, Eighth ~~Seventh~~ Edition, dated January 2018 ~~May~~
136 ~~2014~~ and published by the American Institute of Certified Public
137 Accountants and the National Association of State Boards of
138 Accountancy.
139
140 However, these terms shall not include services provided by the
141 American Institute of Certified Public Accountants or the
142 Florida Institute of Certified Public Accountants, or any full
143 service association of certified public accounting firms whose
144 plans of administration have been approved by the board, to
145 their members or services performed by these entities in
146 reviewing the services provided to the public by members of
147 these entities.
148 Section 3. This act shall take effect July 1, 2024.

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CS/HB 1031

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1031 Debt Relief Services
SPONSOR(S): Insurance & Banking Subcommittee, Buchanan
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1074

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

Individuals seeking to manage and reduce their debts often engage credit counseling organizations who provide debt management services and credit counseling services. "Debt management services" is defined by Florida statute as services provided to a debtor by a credit counseling organization for a fee to effect the adjustment, compromise, or discharge of any unsecured account, note, or other indebtedness of the debtor, or receive from the debtor and disburse to a creditor any money or other thing of value.

Any person engaging in debt management services or credit counseling services must comply with Part IV of ch. 817, F.S., which sets a limitation on fees; requires certain disclosures and financial reporting; sets minimum insurance requirements; specifies acts which are considered violations; and subjects the person engaging in such services to the enforcement provisions of Part IV of ch. 817, F.S.

As an alternative to debt management services, individuals who struggle to pay their credit card bills can turn to organizations that offer debt relief services. Unlike credit counseling organizations, debt relief service providers are for-profit businesses that work with credit card companies to renegotiate the amount of principal owed on an individual's debt.

Florida law does not currently define "debt relief services" nor separately regulate providers of debt relief services. However, debt relief companies that use telemarketing to contact potential customers or hire people on their behalf to do so are regulated by the federal Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act), 15 U.S.C. ss. 6101-6108.

The federal regulation under the Telemarketing Act is known as the Telemarketing Sales Rule (TSR), 16 C.F.R. s. 310.2. The TSR provides certain definitions and specifies certain acts that are considered deceptive and abusive telemarketing practices. Although Florida law does not currently regulate providers of debt relief services, the Attorney General has sufficient authority to enforce a violation of the Telemarketing Act or the TSR as an unfair or deceptive trade practice under part II of ch. 501, F.S.

The bill:

- Expands the list of exceptions to Part IV of ch. 817, F.S., relating to credit counseling services, to also exempt a telemarketer or seller who provides any debt relief services; and
- Provides that certain relevant terms have the same meanings as provided in the federal Telemarketing Sales Rule, 16 C.F.R. s. 310.2.

The bill has no fiscal impact on state government or local government. It has an indeterminate positive and negative impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Debt Management Services

Individuals seeking to manage and reduce their debts often engage credit counseling organizations who provide debt management services and credit counseling services.[1] These organizations are non-profit businesses that assist debtors with managing and reducing their debt by:

- Offering free counseling on credit practices,
- Enrolling qualifying debtors in debt management plans, and
- Providing community education to individuals and families on money management skills.[2]

"Debt management services" is defined by Florida statute as services provided to a debtor by a credit counseling organization for a fee to effect the adjustment, compromise, or discharge of any unsecured account, note, or other indebtedness of the debtor, ***or*** receive from the debtor and disburse to a creditor any money or other thing of value.[3]

Any person engaging in debt management services or credit counseling services must comply with Part IV of ch. 817, F.S., which sets a limitation on fees;[4] requires certain disclosures and financial reporting;[5] sets minimum insurance requirements;[6] specifies certain acts that are considered violations;[7] and subjects the person engaging in such services to the enforcement provisions of Part IV of ch. 817, F.S.[8]

Additionally, any person who violates Florida's laws relating to debt management services commits an unfair or deceptive trade practice as defined in Part II of ch. 501, F.S., which relates to Florida's consumer protection laws.[9] Further, any consumer injured by a violation of Part II of ch. 501, F.S., may bring an action for recovery of damages.[10] If an injured consumer does bring such an action, judgement must be entered for actual damages, but in no case less than the amount paid by the consumer to the credit counseling agency, plus reasonable attorney's fees and costs.[11]

Florida law currently provides that Part IV of ch. 501, F.S., does not apply to:

- Any debt management or credit counseling services provided in the practice of law in this state;
- Any person who engages in debt adjustment to adjust the indebtedness owed to such person; and
- The following entities and their subsidiaries:
  - The Federal National Mortgage Association;
  - The Federal Home Loan Mortgage Corporation;
  - The Florida Housing Finance Corporation;
  - A bank, bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank that is regulated and supervised by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve,

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[1] Consumer Financial Protection Bureau, *What is credit counseling?*, https://www.consumerfinance.gov/ask-cfpb/whatiscredit-counseling-en-1451/ (last visited Jan. 12, 2024).
[2] *Id.*
[3] S. 817.801(4), F.S.
[4] *See* s. 817.802, F.S.
[5] *See* s. 817.804, F.S.
[6] *See* s. 817.804(1)(b), F.S.
[7] S. 817.806, F.S.
[8] *Id.*
[9] S. 817.806(1), F.S.
[10] *Id.*
[11] *Id.*

the Federal Deposit Insurance Corporation, the National Credit Union Administration, OFR, or any state banking regulator;
  - A consumer reporting agency as defined in the Federal Fair Credit Reporting Act, 15 U.S.C. ss. 1681-1681y, as it existed on April 5, 2004; or
  - Any subsidiary or affiliate of a bank holding company, its employees and its exclusive agents acting under written agreement.[12]

Debt Relief Services

As an alternative to debt management services, individuals who struggle to pay their credit card bills can turn to organizations that offer debt relief services.[13] Unlike credit counseling organizations, debt relief service providers are for-profit businesses that work with credit card companies to renegotiate the amount of principal owed on an individual's debt.[14]

Florida law does not currently define "debt relief services" nor separately regulate providers of debt relief services. However, debt relief companies that use telemarketing to contact potential customers or hire people on their behalf to do so are regulated by the federal Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act), 15 U.S.C. ss. 6101-6108.[15]

The federal regulation under the Telemarketing Act is known as the Telemarketing Sales Rule (TSR), 16 C.F.R. s. 310.2. The TSR defines the following terms as follows:

- "Debt relief services" means any program that claims directly, or implies, that it can renegotiate, settle, or in some way change the terms of an individual's debt to an unsecured creditor or debt collector.[16] These services typically include reducing the balance, interest rates, or fees that an individual owes.[17]
- "Seller" means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.[18]
- "Telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.[19]

The TSR specifies certain acts that are considered deceptive and abusive telemarketing practices.[20] Examples of such acts include:

- Before a customer consents to pay for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, certain material information;[21]
- Misrepresenting, directly or by implication, in the sale of goods or services, certain material information;[22]
- Causing billing information to be submitted for payment, or collecting payment for goods or services, directly or indirectly, without the customer's express authorization;[23]
- Assisting or facilitating any seller or telemarketer that knows or consciously avoids knowing that they are engaged in any act or practice that violates the provisions of the regulations;[24]

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[12] S. 817.803, F.S.
[13] Federal Trade Commission, *Debt Relief Services & the Telemarketing Sales Rule: A Guide for Business*, https://www.ftc.gov/system/files/documents/plain-language/bus72-debt-relief-services-telemarketing-sales-rule-guide-business.pdf (last visited Jan. 12, 2024).
[14] *Id.*
[15] *Id.*
[16] 16 C.F.R. s. 310.2(o), F.S.
[17] *Id.*
[18] 16 C.F.R. s. 310.2(dd).
[19] 16 C.F.R. s. 310.2(ff).
[20] *See* 16 C.F.R. ss. 310.3 and 310.4.
[21] *See* 16 C.F.R. s. 310.3(a)(1)(i)-(viii).
[22] *See* 16 C.F.R. s. 310.3(a)(2).
[23] *See* 16 C.F.R. s. 310.3(a)(3).
[24] *See* 16 C.F.R. s. 310.3(b).

- Requesting or receiving payment for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until certain conditions are met;[25] and
- Requesting or receiving payment in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit.[26]

Although Florida law does not currently regulate providers of debt relief services, the Attorney General has sufficient authority to enforce a violation of the Telemarketing Act or the TSR as an unfair or deceptive trade practice under part II of ch. 501, F.S.[27]

Effect of the Bill

The bill expands the list of exceptions to Part IV of ch. 817, F.S., to any telemarketer or seller who provides any debt relief services. The bill also provides that the terms "telemarketer," "seller," and "debt relief services" have the same meanings as provided in the TSR.

B. SECTION DIRECTORY:

Section 1. Amends s. 817.803, F.S., relating to exceptions.

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.

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[25] See 16 C.F.R. s. 310.4(a)(2).

[26] See 16 C.F.R. s. 310.4(a)(4).

[27] Email from Elizabeth Guzzo, Director of Legislative Affairs, Office of the Attorney General, RE: HB 1031, Debt Relief Services (Jan. 17, 2024).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

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:

- Expanded the list of exceptions to part IV of ch. 817, F.S., relating to credit counseling services, to any telemarketer or seller who provides any debt relief services; and
- Provided that certain terms have the same meanings as provided in the TSR.

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

1 A bill to be entitled
2 An act relating to debt relief services; amending s.
3 817.803, F.S.; providing an exception from specified
4 provisions for telemarketers and sellers who provide
5 debt relief services under certain circumstances;
6 defining terms; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 817.803, Florida Statutes, is amended
11 to read:
12 817.803 Exceptions. ~~Nothing in~~ This part does not apply
13 ~~applies~~ to:
14 (1) Any debt management or credit counseling services
15 provided in the practice of law in this state.~~;~~
16 (2) Any person who engages in debt adjustment to adjust
17 the indebtedness owed to such person.~~; or~~
18 (3) Any of the following entities or their subsidiaries:
19 (a) The Federal National Mortgage Association.~~;~~
20 (b) The Federal Home Loan Mortgage Corporation.~~;~~
21 (c) The Florida Housing Finance Corporation, a public
22 corporation created in s. 420.504.~~;~~
23 (d) A bank, bank holding company, trust company, savings
24 and loan association, credit union, credit card bank, or savings
25 bank that is regulated and supervised by the Office of the

26 Comptroller of the Currency, the Office of Thrift Supervision,
27 the Federal Reserve, the Federal Deposit Insurance Corporation,
28 the National Credit Union Administration, the Office of
29 Financial Regulation of the Department of Financial Services, or
30 any state banking regulator.~~;~~
31 (e) A consumer reporting agency as defined in the Federal
32 Fair Credit Reporting Act, 15 U.S.C. ss. 1681-1681y, as it
33 existed on April 5, 2004.~~; or~~
34 (f) Any subsidiary or affiliate of a bank holding company,
35 its employees and its exclusive agents acting under written
36 agreement.
37 (4)(a) Any telemarketer or seller who provides any debt
38 relief service within the scope of the Telemarketing and
39 Consumer Fraud and Abuse Prevention Act, 15 U.S.C. ss. 6101-
40 6108, and the Telemarketing Sales Rule, 16 C.F.R. part 310, and
41 who therefore is required to comply with such federal
42 regulation, if such telemarketer or seller does not receive from
43 the debtor and disburse to a creditor any money or other thing
44 of value, in accordance with the definition of debt management
45 services under s. 817.801(4)(b).
46 (b) As used in this subsection, the terms "debt relief
47 service," "seller," and "telemarketer" have the same meaning as
48 in 16 C.F.R. s. 310.2.
49 Section 2. This act shall take effect July 1, 2024.

HB 1147

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1147 Broadband
SPONSOR(S): Tomkow
TIED BILLS: **IDEN./SIM. BILLS:** SB 1218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	13 Y, 0 N	Phelps	Keating
2) Ways & Means Committee	21 Y, 0 N	Rexford	Aldridge
3) Commerce Committee		Phelps	Hamon

SUMMARY ANALYSIS

Broadband Internet service has become an essential component of daily life, yet some parts of Florida lack access to this service. Communities that lack broadband access can have difficulty attracting new capital investment. To help address this issue, the Legislature, among other things, implemented a promotional rate for the attachment of broadband facilities to poles owned by municipal electric utilities. The promotional rate requires municipal electrical utilities to offer broadband internet service providers a discounted rate of $1 per attachment per year for any new pole attachment necessary to make broadband service available to an unserved or underserved consumer within the utility's territory. The promotional rate expires on July 1, 2024.

The bill extends the expiration date of the promotional rate from July 1, 2024, to December 31, 2028.

The bill does not appear to impact state government revenues or expenditures. The bill may have a negative impact on local government revenues as a result of the discounted pole attachment charges, though the impact will be dependent on utilization of the program by broadband providers. The discounted pole attachment charges may provide an incentive to broadband internet service providers for additional investment in broadband infrastructure to reach unserved areas and unserved customers in this state.

The bill provides an effective date of June 30, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Pole Attachments

The term "pole attachment" refers to the process by which communications services providers can place communications infrastructure on existing electric utility poles. This reduces the number of poles that must be built to accommodate utility and communications services, while reducing costs to users of both services by allowing providers to share costs. Rules governing pole attachments seek to balance the desire to maximize value for users of both electric and communications services with concerns unique to electric utility poles, such as safety and reliability.[1] The space requested for a pole attachment is typically one foot.

Pole attachments, originally by mutual agreement but later by federal statute and regulation, provide non-pole-owning cable and telecommunications service providers with access to a utility's distribution poles, conduits, and right-of-way (ROW) for:

- Installing fiber, coaxial cable or wires, and other equipment;
- Building an interconnected network; and
- Reaching customers.[2]

Congress began regulating pole attachments[3] in 1978.[4] The Telecommunications Act of 1996[5] (the Act) expanded pole attachment rights to telecommunications[6] carriers. The Act requires utilities[7] to provide nondiscriminatory access to cable television systems and telecommunications carriers. The Act also authorizes the Federal Communications Commission[8] (FCC) to regulate the rates, terms, and conditions of attachments by cable television operators to the poles, conduit, or ROW owned or controlled by utilities in the absence of parallel state regulation.[9] The Legislation withheld from FCC jurisdiction the authority to regulate attachments where the utility is a railroad, cooperatively organized, or owned by a government entity.[10] Thus, federal pole attachment regulations apply only to investor-owned electric utilities (IOUs). Municipal and cooperative electric utilities are specifically exempted from federal pole attachment regulations.

The Act permits utilities to deny access where there is insufficient capacity and for reasons of safety, reliability or generally applicable engineering purposes. In addition to establishing a right of access, the

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[1] American Public Power Association, *Issue Brief: Preserving the Municipal Exemption from Federal Pole Attachment Regulations* (June 2023) https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations (last visited Feb. 5, 2024).

[2] Evari GIS Consulting, *Joint Use Pole Audit*, *available at* https://www.evarigisconsulting.com/joint-use-pole-audit (last visited Feb. 5, 2024).

[3] 47 U.S.C. § 224(a)(4), defines ''pole attachment'' as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."

[4] The Pole Attachment Act of 1978 granted utility pole access to cable companies, and was designed to promote utility competition and service to the public. Communications Act Amendments of 1978, Pub. L. No. 95-234. (Feb. 21, 1978).

[5] Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

[6] The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(50).

[7] "Utility'' is defined as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State." 47 U.S.C. § 224(a)(1).

[8] The FCC regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the FCC is the United States' primary authority for communications law, regulation and technological innovation. FCC, *What We Do*, https://www.fcc.gov/about-fcc/what-we-do (last visited Feb. 5, 2024).

[9] 47 U.S.C. § 224.

[10] *In the Matter of Implementation of Section 224 of the Act- A Nat'l Broadband Plan for Our Future*, 26 F.C.C. Rcd. 5240, 5245–46 (2011).

Act provides a rate methodology for "attachments used by telecommunications carriers to provide telecommunications services"[11] in addition to the existing methodology for attachments "used by a cable television system solely to provide cable service."[12]

Federal law broadly preempts the regulation of telecommunications services.[13] However, federal law allows states to exercise reverse preemption over the FCC's jurisdiction of communications infrastructure access,[14] meaning that once a state adopts its own utility pole access rules, the FCC loses jurisdiction over pole attachments to the extent that the state regulates such matters.[15]

In 2021, Florida exercised its power under the Act to assert reverse preemption over the FCC's regulation of pole attachments, directing the Florida Public Service Commission (PSC) to regulate and enforce rates, charges, terms, and conditions for pole attachments, and to ensure that they are just and reasonable. In 2023, with the passage and enactment of HB 1221 (Broadband Internet Service Providers), this authority was expanded to the regulation of attachments to poles owned by rural electrical cooperatives engaged in the provision of broadband services.[16] Presently, s. 366.04(8), F.S., regulates pole attachments for public utilities and such rural electric cooperatives.[17] The PSC does not, however, regulate pole attachments for poles owned by municipal utilities.

Attachment of Broadband Facilities to Municipal Electric Utility Poles

The Legislature passed CS/CS/HB 1239 (Broadband Internet Infrastructure) in 2021, creating s. 288.9963, F.S., and providing terms for the attachment of certain broadband facilities to poles owned by municipal electric utilities.

Under this law, a broadband provider[18] is currently entitled to receive a promotional rate of $1 per wireline attachment[19] per pole per year for any new attachment necessary to make broadband service[20] available to an unserved[21] or underserved[22] end user within a municipal electric utility service territory.[23]

A broadband provider who wishes to make wireline attachments subject to this promotional rate must[24]:

- Submit an application, including a route map, to the municipal electric utility specifying which wireline attachments on which utility poles are necessary to extend broadband service to unserved and underserved end users;
- Include with this application the information necessary to identify which unserved or underserved end users within the municipal electric utility's service territory will gain access to broadband service; and
- Provide a copy of both of the above to the Florida Office of Broadband.

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[11] 47 U.S.C. § 224(e).
[12] 47 U.S.C. § 224(d).
[13] "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a).
[14] 47 U.S.C. § 224(c)(1).
[15] Catherine J.K. Sandoval, *Contested Places, Utility Pole Spaces: A Competition and Safety Framework for Analyzing Utility Pole Association Rules, Roles, and Risks*, 69 Cath. U. L. Rev. 473, 486–87 (2020).
[16] Chapter 2023-199, Laws of Fla.
[17] Section 364.391, F.S., provides that if a rural electric cooperative engages in the provision of broadband, all poles owned by that cooperative are subject to regulation under s. 366.04(8), F.S., on the same basis as if such cooperative were a public utility under that subsection. Sections 366.04(9) and 366.97, F.S., also provide pole attachment regulations relating to poles owned by public utilities.
[18] "Broadband provider" means a person or entity who provides fixed broadband Internet service. S. 288.9963(2)(a), F.S.
[19] "Wireline attachment" means a wire or cable and associated equipment affixed to a utility pole in the communications space of the pole. S. 288.9963(2)(f), F.S.
[20] "Broadband service" means a service that provides high-speed access to the Internet at a rate of at least 25 megabits per second in the downstream direction and at least 3 megabits per second in the upstream direction. S. 288.9963(2)(b), F.S.
[21] "Unserved" means that there is no retail access to the Internet at speeds of at least 10 megabits per seconds for downloading and 1 megabits per second for uploading. S. 288.9963(2)(e), F.S.
[22] "Underserved" means there is no retail access to the Internet at speeds of at least 25 megabits per seconds for downloading and 3 megabits per second for uploading. S. 288.9963(2)(d), F.S.
[23] S. 288.9963(3), F.S.
[24] S. 288.9963(3)(a), F.S.

A broadband provider making a wireline attachment application under the promotional rate must make a reasonable effort to make broadband service available to the unserved or underserved customers identified in the application. A provider who fails to do so within 12 months may be required to pay the prevailing rate for those attachments that failed to make broadband service available to the intended customers to the municipal electric utility.

The promotional rate expires on July 1, 2024.[25]

Effect of the Bill

The bill extends the expiration date of the $1 wireline attachment promotional rate from July 1, 2024, to December 31, 2028. The bill also extends the $1 wireline attachment promotional rate for any currently existing wireline attachments made under the promotional rate program from July 1, 2024, to December 31, 2028.

The bill provides an effect date of June 30, 2024.

B. SECTION DIRECTORY:

Section 1. Amends s. 288.9963(3)(e), F.S., relating to promotional rates.

Section 2. Provides an effective date of June 30, 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:

   The bill may have a negative impact on local government revenues as a result of the discounted pole attachment charges. Any impact is dependent on utilization of the program by broadband providers.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Broadband internet providers will benefit from discounted rates for certain attachments made to municipal electric utility poles over the next four years. These savings may provide incentives for additional investment in broadband infrastructure to reach unserved areas and unserved customers in this state. This may result in increased economic activity in areas that currently lack access to broadband Internet service.

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[25] S. 288.9963(3)(e), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

If the provision of the bill that provides a promotional rate for the attachment of certain new broadband facilities to municipal electric utility poles is considered to reduce the authority of municipalities to raise revenues in the aggregate, the mandates provision of Art. VII, section 18, of the Florida Constitution may apply. However, an exemption may apply if the promotional rate creates an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to broadband; amending s. 288.9963,
3 F.S.; extending the expiration date of a certain
4 promotional rate; providing an effective date.
5
6 Be It Enacted by the Legislature of the State of Florida:
7
8 Section 1. Paragraph (e) of subsection (3) of section
9 288.9963, Florida Statutes, is amended to read:
10 288.9963 Attachment of broadband facilities to municipal
11 electric utility poles.—
12 (3) Beginning July 1, 2021, a broadband provider shall
13 receive a promotional rate of $1 per wireline attachment per
14 pole per year for any new attachment necessary to make broadband
15 service available to an unserved or underserved end user within
16 a municipal electric utility service territory for the time
17 period specified in this subsection.
18 (e) The promotional rate of $1 per wireline attachment per
19 pole per year applies to all pole attachments made pursuant to
20 this subsection until December 31, 2028 ~~July 1, 2024~~.
21 Section 2. This act shall take effect June 30, 2024.

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

CS/HB 1221

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1221 Land Use and Development Regulations
SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, McClain
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	12 Y, 5 N, As CS	Mwakyanjala	Darden
2) Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans. Each county and municipality must maintain a comprehensive plan to guide future development. Local governments may enter into development agreements with developers. A local government may establish by ordinance procedures and requirements for considering and entering into a development agreement with any person having a legal or equitable interest in real property located within its jurisdiction.

The bill:

- Revises definitions within the Community Planning Act;
- Provides requirements for self-storage facility expansions;
- Establishes criteria for approval of infill residential developments;
- Revises data sources used in consideration of the comprehensive plan and plan amendments;
- Requires land development regulations adopted by a local government to establish minimum lot sizes consistent with the maximum density authorized by the comprehensive plan and to provide standards for infill residential development;
- Prohibits optional elements of a comprehensive plan from restricting the density or intensity established in the future land use element;
- Requires applications for infill development to be administratively approved in certain circumstances; and
- Revises the procedure for adoption of small-scale comprehensive plan amendments.

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

Comprehensive Plans

The Community Planning Act[1] provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.[2] Each county and municipality must maintain a comprehensive plan to guide future development.[3]

All development, both public and private, and all development orders approved by local governments must be consistent with the local government's comprehensive plan.[4] A comprehensive plan is intended to provide for the future use of land, which contemplates a gradual and ordered growth, and establishes a long-range maximum limit on the possible intensity of land use.

A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A comprehensive plan is made up of 10 required elements, each laying out regulations for a different facet of development.[5]

The 10 required elements include capital improvements; future land use plan; transportation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; housing; coastal management; intergovernmental coordination; and property rights.[6]

At least once every seven years, each local government must evaluate its comprehensive plan to determine if plan amendments are necessary to reflect changes in state requirements since the last update of the comprehensive plan and notify the state land planning agency as to its determination.[7] If the local government determines amendments to its comprehensive plan are necessary, the local government must prepare and send to the state land planning agency within one year such plan amendment or amendments for review.[8] Local governments are encouraged to evaluate and update their comprehensive plans to reflect changes in local conditions.[9] If a local government fails to submit an evaluation of its comprehensive plan at least once in seven years to the state land planning agency or update its plan as necessary in order to reflect changes in state requirements, the local government may not amend its comprehensive plan until such time the evaluation is submitted.[10]

Comprehensive plans must include at least two planning periods, one covering the first 10-year period occurring after the plan's adoption and one covering a period of at least 20 years.[11] Additional planning periods are permissible and accepted as part of the planning process.

[1] Ch. 163, part II F.S.
[2] S. 163.3167(1), F.S.
[3] S. 163.3167(2), F.S.
[4] S. 163.3194(3), F.S
[5] S. 163.3177(6), F.S.
[6] *Id.*
[7] S. 163.3191(1), F.S. The state land planning agency is the Department of Commerce pursuant to s. 163.3164(44), F.S.
[8] S. 163.3191(2), F.S.
[9] S. 163.3191(3), F.S.
[10] S. 163.3191(4), F.S.
[11] S. 163.3177(5)(a), F.S.

All elements of a plan or plan amendment must be based on relevant, appropriate data[12] and an analysis by the local government.[13] The data supporting a plan or amendment must be taken from professionally accepted sources.[14] The plan must be based on permanent and seasonal population estimates and projections published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology.[15] The analysis by the local government may include, but is not limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment.[16]

Future Land Use Element

Comprehensive plans must contain an element regarding future land use that designates proposed future general distribution, location, and extent of the uses of land for a number of uses and categories of public and private uses of land.[17] Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities.[18] The proposed distribution, location, and extent of the various categories of land use must be shown on a land use map or map series. Future land use plans and plan amendments are based on surveys, studies, and data regarding the area[19] and the future land use element must include a future land use map or map series.[20]

Small-Scale Comprehensive Plan Amendments

A small-scale comprehensive plan amendment must meet four criteria:[21]

- The proposed amendment involves a use of 50 or fewer acres of land (100 acres in a rural area of opportunity);[22]
- The changes are limited to Future Land Use Map (FLUM) changes, with no text changes to the comprehensive plan except those that relate directly to, and are adopted simultaneously with, the small scale FLUM change;
- The property is not located in an area of critical state concern, unless the project involves the construction of affordable housing units meeting statutory criteria;[23] and
- The amendment must preserve the internal consistency of the overall local comprehensive plan.

Small-scale comprehensive plan amendments require only a single hearing before the governing body of the county or municipality for approval.[24] Small-scale comprehensive plan amendments do not require review by DEO or other state agencies.[25]

Any affected person may challenge the amendment by filing a petition with the Division of Administrative Hearings.[26] The challenge must be filed within 30 days of the local government's adoption of the amendment. The challenge is heard in the affected jurisdiction by an administrative law

[12] "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.
[13] S. 163.3177(1)(f), F.S.
[14] S. 163.3177(1)(f)2., F.S.
[15] S. 163.3177(1)(f)3., F.S.
[16] S. 163.3177(1)(f), F.S.
[17] S. 163.3177(6)(a), F.S. Applicable uses and categories of public and private uses of land include, but are not limited to, residential, commercial, industrial, agricultural, recreational, conservation, educational, and public facilities. S. 163.3177(6)(a)10., F.S.
[18] S. 163.3177(6)(a)1., F.S.
[19] S. 163.3177(6)(a)2., F.S.
[20] S. 163.3177(6)(a)10., F.S.
[21] S. 163.3187(1)(a)-(d), (4), F.S., *see also* Dept. of Commerce, *Small Scale Amendments Defined; Adoption; Challenge: Effective Date*, http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/small-scale-amendments-defined-adoption-challenge-effective-date (last visited Jan. 22, 2024).
[22] S. 163.3187(3), F.S.
[23] *See* s. 420.0004(3), F.S.
[24] S. 163.3187(2), F.S.
[25] *Compare* s. 163.3187, F.S. (small-scale plan amendments are only reviewed by DEO if the plan is challenged) *with* s. 163.3184(3)-(4), F.S. (expedited state review process and state coordinated review process for comprehensive plan amendments require review by DEO and other state agencies).
[26] S. 163.3187(5)(a), F.S.

judge (ALJ) between 30 to 60 days after the petition is filed. The local government's determination that the small-scale amendment complies with the overall comprehensive plan is subject to the "fairly debatable" standard of review.[27]

If the ALJ finds that the amendment is in compliance with the comprehensive plan, the ALJ sends a recommended order to DEO. Upon receipt of the recommended order, DEO may issue a final order within 30 days or send the matter to the Administration Commission if the department determines the amendment is not in compliance.[28] If the ALJ does not find that the amendment is in compliance, the ALJ must send the recommended order directly to the Administration Commission, which has 90 days to issue a final order upon receipt.

A small-scale comprehensive plan amendment may not become effective until 31 days after adoption by the governing body of the county or municipality.[29] If the amendment is challenged, the amendment may not become effective until DEO or the Administration Commission issues a final order determining the amendment complies with the overall comprehensive plan.

Land Development Regulations

Comprehensive plans are implemented via land development regulations. Land development regulations are ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land.[30]

Each county and municipality must adopt and enforce land development regulations consistent with and that implements its adopted comprehensive plan.[31] Local governments are encouraged to use innovative land development regulations[32] and may adopt measures for the purpose of increasing affordable housing using land-use mechanisms.[33]

Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first. State law requires a proposed comprehensive plan amendment receive two public hearings, the first held by the local planning board, and subsequently by the governing board.[34] Additionally, land development regulations relating to all public and private development, including special district projects, must be consistent with the local comprehensive plan.[35]

Amendments to comprehensive plans may be initiated by any interested party, including private land owners and public parties.[36]

[27] *Id.*
[28] S. 163.3187(5)(b), F.S.
[29] S. 163.3187(5)(c), F.S.
[30] *Id.*
[31] S. 163.3202, F.S.
[32] S. 163.3202(3), F.S.
[33] S. 125.01055 and 166.04151, F.S.
[34] S. 163.3174(4)(a) and 163.3184, F.S.
[35] *See* Sections 163.3161(6) and 163.3194(1)(a), F.S.
[36] *See e.g.,* Osceola County, *Amending the Comprehensive Plan*, https://www.osceola.org/agencies-departments/community-development/offices/planning-office/comprehensive-plan/amending-comprehensive-plan.stml (last visited Jan. 21, 2023).

Effect of Proposed Changes

The bill provides a definition for “infill residential development” in the Community Planning Act. The term is defined as the expansion of an existing residential development on a contiguous vacant parcel of no more than 20 acres in size within a residential future land use category and a residential zoning district that is contiguous on the majority of all sides by residential development. For the purposes of this definition, “contiguous” is defined as the touching, bordering, or adjoining along a boundary. The bill provides that properties separated by a roadway, railroad, canal, or other public easement are considered contiguous if they would be contiguous but for the easement.

The bill also revises the following definitions in the Community Planning Act:
- “Intensity,” providing that the term shall be expressed in square feet per unit of land;
- “Urban service area,” to mean areas where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place or may be expanded through investment by the local government or the private sector as evidenced by an executed agreement with the local government to provide urban services within the local government’s 20-year planning period; and
- “Urban sprawl,” to mean an unplanned or uncontrolled development pattern.

The bill requires comprehensive plan elements and amendments to be based on relevant data, removes the consideration of community goals and vision as a separate component of a local government’s analysis, and removes a provision that allows local governments to collect and use original data in their analysis. The bill directs comprehensive plans to be based on the greater of the estimates and projections published by the Office of Economic and Demographic Research and the local government.

The bill prohibits optional elements of a comprehensive plan from restricting the density or intensity established in the future land use element portion of a comprehensive plan. The bill requires the future land use element to account for the amount of land necessary to accommodate single-family, two-family, and fee simple townhome development, the amount of land outside of the urban service area (excluding lands designated for conservation, preservation, or other public use), and to encourage the location of schools in all areas necessary to provide adequate school capacity.

The bill requires local land development regulations to contain minimum lot sizes within single-family, two-family and fee-simple, single-family townhouse zoning districts to accommodate the maximum density authorized in the comprehensive plan, net of the area required for other mandatory items, and infill development standards for single-family homes, two-family homes and fee-simple townhouse dwelling units.

The bill provides that applications for infill development must be administratively approved without the need of a comprehensive plan amendment, rezoning, or variance if the proposed infill development has the same or less gross density as the existing development and is generally consistent with the development standards of existing development. The bill provides that development orders issued pursuant to this provision are to be deemed consistent with all local comprehensive plans and land development regulations. This provision applies notwithstanding any ordinance existing on July 1, 2024.

The bill revises the procedure for adoption of small-scale comprehensive plan amendments by increasing the maximum qualifying size of land to be affected from 50 acres to 150 acres.

The bill provides that the expansion of a self-storage facility that is adjacent to and abutting an existing self-storage facility that is owned and managed by the same person or entity may not be considered a new self-storage facility for the purposes of any minimum distance requirements imposed by local ordinances or regulations. The bill requires the proposed expansion facility to be deemed an integral part of the existing facility for the purposes of satisfying any minimum distance requirements established by a local authority. The bill provides that the facility expansion is still subject to provisions

of general law related to the satisfaction of an owner's lien, notice requirements, and publication requirements, as applicable to existing self-service storage facilities.

B. SECTION DIRECTORY:

Section 1: Creates s. 83.8085, F.S., relating to self-storage facility expansion.

Section 2: Amends s. 163.3164, F.S., relating to definitions used in the Community Planning Act.

Section 3: Amends s. 163.3177, F.S., relating to required and optional elements of comprehensive plans.

Section 4: Amends s. 163.3187, F.S., relating to the process for adoption of small-scale comprehensive plan amendments.

Section 5: Amends s. 163.3202, F.S., relating to land development regulations.

Section 6: Amends s. 212.055, F.S., relating to discretionary sales surtaxes.

Section 7: Amends s. 479.01, F.S., relating to definitions used in ch. 479, F.S.

Section 8: Provides for severability.

Section 9: 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 require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Local Administration, Federal Affairs, & Special Districts Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed provisions revising the process for rezoning an agricultural enclave;
- Added a provision concerning local minimum distance requirements when expanding a self-service storage facility; and
- Provides for severability.

The analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs, & Special Districts Subcommittee.

1 A bill to be entitled
2 An act relating to land use and development
3 regulations; creating s. 83.8085, F.S.; providing
4 construction relating to the expansion of self-storage
5 facilities for purposes of certain local ordinances or
6 regulations; amending s. 163.3164, F.S.; revising and
7 providing definitions relating to the Community
8 Planning Act; amending s. 163.3177, F.S.; revising the
9 types of data that comprehensive plans and plan
10 amendments must be based on; revising means by which
11 an application of a methodology used in data
12 collection or whether a particular methodology is
13 professionally accepted and evaluated; revising the
14 elements that must be included in a comprehensive
15 plan; amending s. 163.3187, F.S.; revising criteria
16 for adopting a small scale development amendment;
17 amending s. 163.3202, F.S.; revising content
18 requirements for local land development regulations;
19 revising mechanisms by which applications for infill
20 development must be administratively approved;
21 amending ss. 212.055, and 479.01, F.S.; conforming
22 cross-references; providing severability; providing an
23 effective date.
24
25 Be It Enacted by the Legislature of the State of Florida:

26

27 Section 1. Section 83.8085, Florida Statutes, is created
28 to read:
29 83.8085 Self-storage facility expansion.—For purposes of
30 any minimum distance requirements imposed by local ordinances or
31 regulations, the expansion of a self-storage facility that is
32 adjacent to and abutting an existing self-storage facility, and
33 that is owned and managed by the same person or entity, may not
34 be considered or deemed a new self-storage facility. The
35 proposed expansion facility shall be deemed an integral part of
36 the existing facility for the purposes of satisfying any minimum
37 distance requirements established by a local authority. Any
38 expansion of such facilities is subject to the provisions of
39 general law related to the satisfaction of an owner's lien,
40 notice requirements, and publication requirements, as applicable
41 to existing self-service storage facilities.
42 Section 2. Subsections (22) through (52) of section
43 163.3164, Florida Statutes, are renumbered as subsections (23)
44 through (53), respectively, subsection (12) and present
45 subsections (22), (51), and (52) of that section are amended,
46 and a new subsection (22) is added to that section, to read:
47 163.3164 Community Planning Act; definitions.—As used in
48 this act:
49 (12) "Density" means an objective measurement of the
50 number of people or residential units allowed per unit of land,

51 such as dwelling units ~~residents or employees~~ per acre.
52 (22) "Infill residential development" means the expansion
53 of an existing residential development on a contiguous vacant
54 parcel of no more than 20 acres in size within a residential
55 future land use category and a residential zoning district that
56 is contiguous on the majority of all sides by residential
57 development. The term "contiguous" means touching, bordering, or
58 adjoining along a boundary. Properties that would be contiguous
59 if not separated by a roadway, railroad, canal, or other public
60 easement are considered contiguous.
61 (23) ~~(22)~~ "Intensity" means an objective measurement of the
62 extent to which land may be developed or used, expressed in
63 square feet per unit of land ~~including the consumption or use of~~
64 ~~the space above, on, or below ground; the measurement of the use~~
65 ~~of or demand on natural resources; and the measurement of the~~
66 ~~use of or demand on facilities and services~~.
67 (52) ~~(51)~~ "Urban service area" means areas ~~identified in~~
68 ~~the comprehensive plan~~ where public facilities and services,
69 including, but not limited to, central water and sewer capacity
70 and roads, are already in place or may be expanded through
71 investment by the ~~or are identified in the capital improvements~~
72 ~~element. The term includes any areas identified in the~~
73 ~~comprehensive plan as urban service areas, regardless of~~ local
74 government or the private sector as evidenced by an executed
75 agreement with the local government to provide urban services

76 within the local government's 20-year planning period
77 ~~limitation~~.
78 (53) ~~(52)~~ "Urban sprawl" means an unplanned or uncontrolled
79 ~~a~~ development pattern ~~characterized by low density, automobile-~~
80 ~~dependent development with either a single use or multiple uses~~
81 ~~that are not functionally related, requiring the extension of~~
82 ~~public facilities and services in an inefficient manner, and~~
83 ~~failing to provide a clear separation between urban and rural~~
84 ~~uses~~.
85 Section 3. Paragraph (f) of subsection (1), subsection
86 (2), and paragraph (a) of subsection (6) of section 163.3177,
87 Florida Statutes, are amended to read:
88 163.3177 Required and optional elements of comprehensive
89 plan; studies and surveys.—
90 (1) The comprehensive plan shall provide the principles,
91 guidelines, standards, and strategies for the orderly and
92 balanced future economic, social, physical, environmental, and
93 fiscal development of the area that reflects community
94 commitments to implement the plan and its elements. These
95 principles and strategies shall guide future decisions in a
96 consistent manner and shall contain programs and activities to
97 ensure comprehensive plans are implemented. The sections of the
98 comprehensive plan containing the principles and strategies,
99 generally provided as goals, objectives, and policies, shall
100 describe how the local government's programs, activities, and

101 land development regulations will be initiated, modified, or
102 continued to implement the comprehensive plan in a consistent
103 manner. It is not the intent of this part to require the
104 inclusion of implementing regulations in the comprehensive plan
105 but rather to require identification of those programs,
106 activities, and land development regulations that will be part
107 of the strategy for implementing the comprehensive plan and the
108 principles that describe how the programs, activities, and land
109 development regulations will be carried out. The plan shall
110 establish meaningful and predictable standards for the use and
111 development of land and provide meaningful guidelines for the
112 content of more detailed land development and use regulations.
113 (f) All required ~~mandatory~~ and optional elements of the
114 comprehensive plan and plan amendments must ~~shall~~ be based upon
115 relevant ~~and appropriate~~ data and an analysis by the local
116 government that may include, but not be limited to, surveys,
117 studies, ~~community goals and vision,~~ and other data available at
118 the time of adoption of the comprehensive plan or plan
119 amendment. To be based on data means to react to it ~~in an~~
120 ~~appropriate way and~~ to the extent necessary indicated by the
121 data available on that particular subject at the time of
122 adoption of the plan or plan amendment at issue.
123 1. Surveys, studies, and data utilized in the preparation
124 of the comprehensive plan may not be deemed a part of the
125 comprehensive plan unless adopted as a part of it. Copies of

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

126 such studies, surveys, data, and supporting documents for
127 proposed plans and plan amendments must ~~shall~~ be made available
128 for public inspection, and copies of such plans must ~~shall~~ be
129 made available to the public upon payment of reasonable charges
130 for reproduction. Support data or summaries shall be ~~are not~~
131 subject to the compliance review process.~~, but~~ The comprehensive
132 plan, the support data, and the summaries must be clearly based
133 on current ~~appropriate~~ data and analysis, which is relevant to
134 and correlates with the proposed amendment. Support data or
135 summaries may be used to aid in the determination of compliance
136 and consistency.
137 2. Data must be taken from professionally accepted
138 sources. The application of a methodology utilized in data
139 collection or whether a particular methodology is professionally
140 accepted may be evaluated. ~~However, the evaluation may not~~
141 ~~include whether one accepted methodology is better than another.~~
142 ~~Original data collection by local governments is not required.~~
143 ~~However, local governments may use original data so long as~~
144 ~~methodologies are professionally accepted.~~
145 3. The comprehensive plan must ~~shall~~ be based upon
146 permanent and seasonal population estimates and projections,
147 which must ~~shall~~ either be ~~those~~ published by the Office of
148 Economic and Demographic Research or generated by the local
149 government based upon a professionally acceptable methodology,
150 whichever is greater. The plan must be based on at least the

151 minimum amount of land required to accommodate the medium
152 projections as published by the Office of Economic and
153 Demographic Research for at least a 10-year planning period
154 unless otherwise limited under s. 380.05, including related
155 rules of the Administration Commission. Absent physical
156 limitations on population growth, population projections for
157 each municipality, and the unincorporated area within a county
158 must, at a minimum, be reflective of each area's proportional
159 share of the total county population and the total county
160 population growth.
161 (2) Coordination of the required and optional ~~several~~
162 elements of the local comprehensive plan must ~~shall~~ be a major
163 objective of the planning process. The required and optional
164 ~~several~~ elements of the comprehensive plan must ~~shall~~ be
165 consistent. Optional elements of the comprehensive plan may not
166 contain policies that restrict the density or intensity
167 established in the future land use element. Where data is
168 relevant to required and optional ~~several~~ elements, consistent
169 data must ~~shall~~ be used, including population estimates and
170 projections ~~unless alternative data can be justified for a plan~~
171 ~~amendment through new supporting data and analysis~~. Each map
172 depicting future conditions must reflect the principles,
173 guidelines, and standards within all elements, and each such map
174 must be contained within the comprehensive plan.
175 (6) In addition to the requirements of subsections (1)-

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176 (5), the comprehensive plan shall include the following
177 elements:
178 (a) A future land use plan element designating proposed
179 future general distribution, location, and extent of the uses of
180 land for residential uses, commercial uses, industry,
181 agriculture, recreation, conservation, education, public
182 facilities, and other categories of the public and private uses
183 of land. The approximate acreage and the general range of
184 density or intensity of use <u>must</u> ~~shall~~ be provided for the gross
185 land area included in each existing land use category. The
186 element <u>must</u> ~~shall~~ establish the long-term end toward which land
187 use programs and activities are ultimately directed.
188 1. Each future land use category must be defined in terms
189 of uses included, and must include standards to be followed in
190 the control and distribution of population densities and
191 building and structure intensities. The proposed distribution,
192 location, and extent of the various categories of land use <u>must</u>
193 ~~shall~~ be shown on a land use map or map series which <u>is</u> ~~shall be~~
194 supplemented by goals, policies, and measurable objectives.
195 2. The future land use plan and plan amendments <u>must</u> ~~shall~~
196 be based upon surveys, studies, and data regarding the area, as
197 applicable, including:
198 a. The amount of land required to accommodate anticipated
199 growth<u>, including the amount of land necessary to accommodate</u>
200 <u>single-family, two-family, and fee simple townhome development</u>.

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

201 b. The projected permanent and seasonal population of the
202 area.
203 c. The character of undeveloped land.
204 d. The availability of water supplies, public facilities,
205 and services.
206 e. The amount of land located outside the urban service
207 area, excluding lands designated for conservation, preservation,
208 or other public use.
209 f.e. The need for redevelopment, including the renewal of
210 blighted areas and the elimination of nonconforming uses which
211 are inconsistent with the character of the community.
212 g.f. The compatibility of uses on lands adjacent to or
213 closely proximate to military installations.
214 h.g. The compatibility of uses on lands adjacent to an
215 airport as defined in s. 330.35 and consistent with s. 333.02.
216 i.h. The discouragement of urban sprawl.
217 j.i. The need for job creation, capital investment, and
218 economic development that will strengthen and diversify the
219 community's economy.
220 k.j. The need to modify land uses and development patterns
221 within antiquated subdivisions.
222 3. The future land use plan element must shall include
223 criteria to be used to:
224 a. Achieve the compatibility of lands adjacent or closely
225 proximate to military installations, considering factors

226 identified in s. 163.3175(5).
227 b. Achieve the compatibility of lands adjacent to an
228 airport as defined in s. 330.35 and consistent with s. 333.02.
229 c. Encourage preservation of recreational and commercial
230 working waterfronts for water-dependent uses in coastal
231 communities.
232 d. Encourage the location of schools proximate to urban
233 service ~~residential~~ areas to the extent possible and encourage
234 the location of schools in all areas if necessary to provide
235 adequate school capacity to serve residential development.
236 e. Coordinate future land uses with the topography and
237 soil conditions, and the availability of facilities and
238 services.
239 f. Ensure the protection of natural and historic
240 resources.
241 g. Provide for the compatibility of adjacent land uses.
242 h. Provide guidelines for the implementation of mixed-use
243 development including the types of uses allowed, the percentage
244 distribution among the mix of uses, or other standards, and the
245 density and intensity of each use.
246 4. The amount of land designated for future planned uses
247 must ~~shall~~ provide a balance of uses that foster vibrant, viable
248 communities and economic development opportunities and address
249 outdated development patterns, such as antiquated subdivisions.
250 The amount of land designated for future land uses should allow

251 the operation of real estate markets to provide adequate choices
252 for permanent and seasonal residents and business and may not be
253 limited solely by the projected population. The element must
254 ~~shall~~ accommodate at least the minimum amount of land required
255 to accommodate the medium projections as published by the Office
256 of Economic and Demographic Research for at least a 10-year
257 planning period unless otherwise limited under s. 380.05,
258 including related rules of the Administration Commission.
259 5. The future land use plan of a county may designate
260 areas for possible future municipal incorporation.
261 6. The land use maps or map series must ~~shall~~ generally
262 identify and depict historic district boundaries and must ~~shall~~
263 designate historically significant properties meriting
264 protection.
265 7. The future land use element must clearly identify the
266 land use categories in which public schools are an allowable
267 use. When delineating the land use categories in which public
268 schools are an allowable use, a local government shall include
269 in the categories sufficient land proximate to residential
270 development to meet the projected needs for schools in
271 coordination with public school boards and may establish
272 differing criteria for schools of different type or size. Each
273 local government shall include lands contiguous to existing
274 school sites, to the maximum extent possible, within the land
275 use categories in which public schools are an allowable use.

276 8. Future land use map amendments must ~~shall~~ be based upon
277 the following analyses:
278 a. An analysis of the availability of facilities and
279 services.
280 b. An analysis of the suitability of the plan amendment
281 for its proposed use considering the character of the
282 undeveloped land, soils, topography, natural resources, and
283 historic resources on site.
284 c. An analysis of the minimum amount of land needed to
285 achieve the goals and requirements of this section.
286 9. The future land use element must ~~and any amendment to~~
287 ~~the future land use element shall~~ discourage the proliferation
288 of urban sprawl by planning for future development as provided
289 in this section.
290 a. The primary indicators that a plan or plan amendment
291 does not discourage the proliferation of urban sprawl are listed
292 below. The evaluation of the presence of these indicators shall
293 consist of an analysis of the plan or plan amendment within the
294 context of features and characteristics unique to each locality
295 in order to determine whether the plan or plan amendment:
296 (I) Promotes, allows, or designates for development
297 substantial areas of the jurisdiction to develop as low-
298 intensity, low-density, or single-use development or uses.
299 (II) Promotes, allows, or designates significant amounts
300 of urban development to occur in rural areas at substantial

301 distances from existing urban areas while not using undeveloped
302 lands that are available and suitable for development.
303 (III) Promotes, allows, or designates urban development in
304 radial, strip, isolated, or ribbon patterns generally emanating
305 from existing urban developments.
306 (IV) Fails to adequately protect and conserve natural
307 resources, such as wetlands, floodplains, native vegetation,
308 environmentally sensitive areas, natural groundwater aquifer
309 recharge areas, lakes, rivers, shorelines, beaches, bays,
310 estuarine systems, and other significant natural systems.
311 (V) Fails to adequately protect adjacent agricultural
312 areas and activities, including silviculture, active
313 agricultural and silvicultural activities, passive agricultural
314 activities, and dormant, unique, and prime farmlands and soils.
315 (VI) Fails to maximize use of existing public facilities
316 and services.
317 (VII) Fails to maximize use of future public facilities
318 and services.
319 (VIII) Allows for land use patterns or timing which
320 disproportionately increase the cost in time, money, and energy
321 of providing and maintaining facilities and services, including
322 roads, potable water, sanitary sewer, stormwater management, law
323 enforcement, education, health care, fire and emergency
324 response, and general government.
325 (IX) Fails to provide a clear separation between rural and

326 urban uses.
327 (X) Discourages or inhibits infill development or the
328 redevelopment of existing neighborhoods and communities.
329 (XI) Fails to encourage a functional mix of uses.
330 (XII) Results in poor accessibility among linked or
331 related land uses.
332 (XIII) Results in the loss of significant amounts of
333 functional open space.
334 b. The future land use element or plan amendment shall be
335 determined to discourage the proliferation of urban sprawl if it
336 incorporates a development pattern or urban form that achieves
337 four or more of the following:
338 (I) Directs or locates economic growth and associated land
339 development to geographic areas of the community in a manner
340 that does not have an adverse impact on and protects natural
341 resources and ecosystems.
342 (II) Promotes the efficient and cost-effective provision
343 or extension of public infrastructure and services.
344 (III) Promotes walkable and connected communities and
345 provides for compact development and a mix of uses at densities
346 and intensities that will support a range of housing choices and
347 a multimodal transportation system, including pedestrian,
348 bicycle, and transit, if available.
349 (IV) Promotes conservation of water and energy.
350 (V) Preserves agricultural areas and activities, including

351 silviculture, and dormant, unique, and prime farmlands and
352 soils.
353 (VI) Preserves open space and natural lands and provides
354 for public open space and recreation needs.
355 (VII) Creates a balance of land uses based upon demands of
356 the residential population for the nonresidential needs of an
357 area.
358 (VIII) Provides uses, densities, and intensities of use
359 and urban form that would remediate an existing or planned
360 development pattern in the vicinity that constitutes sprawl or
361 if it provides for an innovative development pattern such as
362 transit-oriented developments or new towns as defined in s.
363 163.3164.
364 10. The future land use element <u>must</u> ~~shall~~ include a
365 future land use map or map series.
366 a. The proposed distribution, extent, and location of the
367 following uses <u>must</u> ~~shall~~ be shown on the future land use map or
368 map series:
369 (I) Residential.
370 (II) Commercial.
371 (III) Industrial.
372 (IV) Agricultural.
373 (V) Recreational.
374 (VI) Conservation.
375 (VII) Educational.

376 (VIII) Public.
377 b. The following areas must ~~shall~~ also be shown on the
378 future land use map or map series, if applicable:
379 (I) Historic district boundaries and designated
380 historically significant properties.
381 (II) Transportation concurrency management area boundaries
382 or transportation concurrency exception area boundaries.
383 (III) Multimodal transportation district boundaries.
384 (IV) Mixed-use categories.
385 c. The following natural resources or conditions must
386 ~~shall~~ be shown on the future land use map or map series, if
387 applicable:
388 (I) Existing and planned public potable waterwells, cones
389 of influence, and wellhead protection areas.
390 (II) Beaches and shores, including estuarine systems.
391 (III) Rivers, bays, lakes, floodplains, and harbors.
392 (IV) Wetlands.
393 (V) Minerals and soils.
394 (VI) Coastal high hazard areas.
395 Section 4. Paragraph (a) of subsection (1) of section
396 163.3187, Florida Statutes, is amended to read:
397 163.3187 Process for adoption of small scale comprehensive
398 plan amendment.—
399 (1) A small scale development amendment may be adopted
400 under the following conditions:

401 (a) The proposed amendment involves a use of 150 ~~50~~ acres
402 or fewer. ~~and:~~
403 Section 5. Subsection (2) of section 163.3202, Florida
404 Statutes, is amended, and subsection (8) is added to that
405 section, to read:
406 163.3202 Land development regulations.—
407 (2) Local land development regulations shall contain
408 specific and detailed provisions necessary or desirable to
409 implement the adopted comprehensive plan and shall at a minimum:
410 (a) Regulate the subdivision of land.
411 (b) Establish minimum lot sizes within single-family, two-
412 family, and fee simple, single-family townhouse zoning districts
413 to accommodate the maximum density authorized in the
414 comprehensive plan, net of the land area required to be set
415 aside for subdivision roads, sidewalks, stormwater ponds, open
416 space, landscape buffers, and any other mandatory land
417 development regulations that require land to be set aside that
418 could otherwise be used for the development of single-family
419 homes, two-family homes, and fee simple, single-family
420 townhouses.
421 (c) ~~(b)~~ Regulate the use of land and water for those land
422 use categories included in the land use element and ensure the
423 compatibility of adjacent uses and provide for open space.
424 (d) ~~(c)~~ Provide for protection of potable water wellfields.
425 (e) ~~(d)~~ Regulate areas subject to seasonal and periodic

426 flooding and provide for drainage and stormwater management.
427 (f) ~~(e)~~ Ensure the protection of environmentally sensitive
428 lands designated in the comprehensive plan.
429 (g) ~~(f)~~ Regulate signage.
430 (h) ~~(g)~~ Provide that public facilities and services meet or
431 exceed the standards established in the capital improvements
432 element required by s. 163.3177 and are available when needed
433 for the development, or that development orders and permits are
434 conditioned on the availability of these public facilities and
435 services necessary to serve the proposed development. A local
436 government may not issue a development order or permit that
437 results in a reduction in the level of services for the affected
438 public facilities below the level of services provided in the
439 local government's comprehensive plan.
440 (i) ~~(h)~~ Ensure safe and convenient onsite traffic flow,
441 considering needed vehicle parking.
442 (j) ~~(i)~~ Maintain the existing density of residential
443 properties or recreational vehicle parks if the properties are
444 intended for residential use and are located in the
445 unincorporated areas that have sufficient infrastructure, as
446 determined by a local governing authority, and are not located
447 within a coastal high-hazard area under s. 163.3178.
448 (k) ~~(j)~~ Incorporate preexisting development orders
449 identified pursuant to s. 163.3167(3).
450 (8) Notwithstanding any ordinance existing on July 1,

451 2024, to the contrary, an application for infill development
452 shall be administratively approved and no comprehensive plan
453 amendment, rezoning, or variance shall be required if the
454 proposed infill development has the same or less gross density
455 as the existing development and is generally consistent with the
456 development standards, including lot size and setbacks, of the
457 existing development. A development order issued for development
458 authorized pursuant to this subsection is deemed consistent with
459 all applicable local government comprehensive plans and land
460 development regulations.
461 Section 6. Paragraph (d) of subsection (2) of section
462 212.055, Florida Statutes, is amended to read:
463 212.055 Discretionary sales surtaxes; legislative intent;
464 authorization and use of proceeds.—It is the legislative intent
465 that any authorization for imposition of a discretionary sales
466 surtax shall be published in the Florida Statutes as a
467 subsection of this section, irrespective of the duration of the
468 levy. Each enactment shall specify the types of counties
469 authorized to levy; the rate or rates which may be imposed; the
470 maximum length of time the surtax may be imposed, if any; the
471 procedure which must be followed to secure voter approval, if
472 required; the purpose for which the proceeds may be expended;
473 and such other requirements as the Legislature may provide.
474 Taxable transactions and administrative procedures shall be as
475 provided in s. 212.054.

476 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—
477 (d) The proceeds of the surtax authorized by this
478 subsection and any accrued interest shall be expended by the
479 school district, within the county and municipalities within the
480 county, or, in the case of a negotiated joint county agreement,
481 within another county, to finance, plan, and construct
482 infrastructure; to acquire any interest in land for public
483 recreation, conservation, or protection of natural resources or
484 to prevent or satisfy private property rights claims resulting
485 from limitations imposed by the designation of an area of
486 critical state concern; to provide loans, grants, or rebates to
487 residential or commercial property owners who make energy
488 efficiency improvements to their residential or commercial
489 property, if a local government ordinance authorizing such use
490 is approved by referendum; or to finance the closure of county-
491 owned or municipally owned solid waste landfills that have been
492 closed or are required to be closed by order of the Department
493 of Environmental Protection. Any use of the proceeds or interest
494 for purposes of landfill closure before July 1, 1993, is
495 ratified. The proceeds and any interest may not be used for the
496 operational expenses of infrastructure, except that a county
497 that has a population of fewer than 75,000 and that is required
498 to close a landfill may use the proceeds or interest for long-
499 term maintenance costs associated with landfill closure.
500 Counties, as defined in s. 125.011, and charter counties may, in

501 addition, use the proceeds or interest to retire or service
502 indebtedness incurred for bonds issued before July 1, 1987, for
503 infrastructure purposes, and for bonds subsequently issued to
504 refund such bonds. Any use of the proceeds or interest for
505 purposes of retiring or servicing indebtedness incurred for
506 refunding bonds before July 1, 1999, is ratified.
507 1. For the purposes of this paragraph, the term
508 "infrastructure" means:
509 a. Any fixed capital expenditure or fixed capital outlay
510 associated with the construction, reconstruction, or improvement
511 of public facilities that have a life expectancy of 5 or more
512 years, any related land acquisition, land improvement, design,
513 and engineering costs, and all other professional and related
514 costs required to bring the public facilities into service. For
515 purposes of this sub-subparagraph, the term "public facilities"
516 means facilities as defined in s. 163.3164(40) ~~163.3164(39)~~, s.
517 163.3221(13), or s. 189.012(5), and includes facilities that are
518 necessary to carry out governmental purposes, including, but not
519 limited to, fire stations, general governmental office
520 buildings, and animal shelters, regardless of whether the
521 facilities are owned by the local taxing authority or another
522 governmental entity.
523 b. A fire department vehicle, an emergency medical service
524 vehicle, a sheriff's office vehicle, a police department
525 vehicle, or any other vehicle, and the equipment necessary to

526 outfit the vehicle for its official use or equipment that has a
527 life expectancy of at least 5 years.
528 c. Any expenditure for the construction, lease, or
529 maintenance of, or provision of utilities or security for,
530 facilities, as defined in s. 29.008.
531 d. Any fixed capital expenditure or fixed capital outlay
532 associated with the improvement of private facilities that have
533 a life expectancy of 5 or more years and that the owner agrees
534 to make available for use on a temporary basis as needed by a
535 local government as a public emergency shelter or a staging area
536 for emergency response equipment during an emergency officially
537 declared by the state or by the local government under s.
538 252.38. Such improvements are limited to those necessary to
539 comply with current standards for public emergency evacuation
540 shelters. The owner must enter into a written contract with the
541 local government providing the improvement funding to make the
542 private facility available to the public for purposes of
543 emergency shelter at no cost to the local government for a
544 minimum of 10 years after completion of the improvement, with
545 the provision that the obligation will transfer to any
546 subsequent owner until the end of the minimum period.
547 e. Any land acquisition expenditure for a residential
548 housing project in which at least 30 percent of the units are
549 affordable to individuals or families whose total annual
550 household income does not exceed 120 percent of the area median

551 income adjusted for household size, if the land is owned by a
552 local government or by a special district that enters into a
553 written agreement with the local government to provide such
554 housing. The local government or special district may enter into
555 a ground lease with a public or private person or entity for
556 nominal or other consideration for the construction of the
557 residential housing project on land acquired pursuant to this
558 sub-subparagraph.

559 f. Instructional technology used solely in a school
560 district's classrooms. As used in this sub-subparagraph, the
561 term "instructional technology" means an interactive device that
562 assists a teacher in instructing a class or a group of students
563 and includes the necessary hardware and software to operate the
564 interactive device. The term also includes support systems in
565 which an interactive device may mount and is not required to be
566 affixed to the facilities.

567 2. For the purposes of this paragraph, the term "energy
568 efficiency improvement" means any energy conservation and
569 efficiency improvement that reduces consumption through
570 conservation or a more efficient use of electricity, natural
571 gas, propane, or other forms of energy on the property,
572 including, but not limited to, air sealing; installation of
573 insulation; installation of energy-efficient heating, cooling,
574 or ventilation systems; installation of solar panels; building
575 modifications to increase the use of daylight or shade;

576 replacement of windows; installation of energy controls or
577 energy recovery systems; installation of electric vehicle
578 charging equipment; installation of systems for natural gas fuel
579 as defined in s. 206.9951; and installation of efficient
580 lighting equipment.
581 3. Notwithstanding any other provision of this subsection,
582 a local government infrastructure surtax imposed or extended
583 after July 1, 1998, may allocate up to 15 percent of the surtax
584 proceeds for deposit into a trust fund within the county's
585 accounts created for the purpose of funding economic development
586 projects having a general public purpose of improving local
587 economies, including the funding of operational costs and
588 incentives related to economic development. The ballot statement
589 must indicate the intention to make an allocation under the
590 authority of this subparagraph.
591 Section 7. Subsection (29) of section 479.01, Florida
592 Statutes, is amended to read:
593 479.01 Definitions.—As used in this chapter, the term:
594 (29) "Zoning category" means the designation under the
595 land development regulations or other similar ordinance enacted
596 to regulate the use of land as provided in s. 163.3202(2) ~~s.~~
597 ~~163.3202(2)(b)~~, which designation sets forth the allowable uses,
598 restrictions, and limitations on use applicable to properties
599 within the category.
600 Section 8. If any provision of this act is held invalid

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

601 with respect to any person or circumstance, the invalidity does
602 not affect other provisions or applications of the act which can
603 be given effect without the invalid provision or application,
604 and to this end the provisions of this act are severable.
605 Section 9. This act shall take effect July 1, 2024.

COMMERCE COMMITTEE

CS/HB 1221 by Rep. McClain
Land Use and Development Regulations

AMENDMENT SUMMARY
February 8, 2023

Amendment 1 by Rep. McCain (between lines 599-600):

- Allows a final order or decision regarding historically significant property made by a local historic preservation board or commission to be appealed to the applicable board of county commissioners.
- Provides if such order or decision is appealed, the board of county commissioners must:
  - Hold a public hearing within a certain timeframe after receipt of the appeal notice.
  - Approve or reject the final order or decision after the public hearing.
- Defines historically significant property and historic preservation.
- Provides the board of county commissioners with the power to hear such appeals.

Amendment 2 by Rep. McCain (lines 137-144):

- Provides that a local government must not mandate or reject a particular professionally accepted methodology utilized in support of a comprehensive amendment.
- Clarifies that data collection and “analysis” are permitted to be evaluated.

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

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1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative McClain offered the following:
3
4 **Amendment (with title amendment)**
5 Between lines 599 and 600, insert:
6 Section 8. Section 166.04152, Florida Statutes, is created
7 to read:
8 166.04152 Final orders or decisions of locally established
9 historic preservation boards or commissions.–
10 (1) Notwithstanding any local charter, ordinance, or
11 regulation to the contrary, a final order or decision regarding
12 historically significant property made by a locally established
13 historic preservation board or commission, established pursuant
14 to municipal charter or ordinance, may be appealed to the board
15 of county commissioners of the county in which the municipality
16 is located.

17 (2) The board of county commissioners shall hold a public
18 hearing on the appeal within 30 days after receipt of notice of
19 the appeal.
20 (3) The board of county commissioners, after the public
21 hearing, may approve or reject the final order or decision. The
22 determination of the board of county commissions is final.
23 (4) This section is supplemental to all other remedies
24 available under general law.
25 (5) As used in this section, the term:
26 (a) "Historically significant property" means property
27 that is listed on the National Register of Historic Places
28 pursuant to the National Historic Preservation Act of 1966, or
29 is within and contributes to a registered historic district
30 pursuant to 26 U.S.C. s. 48(g)(3)(B), or has been found to meet
31 the criteria of historical significance of the Division of
32 Historical Resources of the Department of State, as certified by
33 the division or by a locally established historic preservation
34 board or commission, or like body, which has been granted
35 authority to designate the property by the jurisdiction within
36 which the property is located.
37 (b) "Historic preservation" has the same meaning as in s.
38 267.021(8).
39 Section 9. Paragraph (dd) to subsection (1) of section
40 125.01, Florida Statutes, is added to read:
41 125.01 Powers and duties.—

42 (1) The legislative and governing body of a county shall
43 have the power to carry on county government. To the extent not
44 inconsistent with general or special law, this power includes,
45 but is not restricted to, the power to:
46 (dd) Hear appeals of final orders or decisions of locally
47 established historic preservation boards or commissions as
48 provided in s. 166.04152.
49
50 ---
51 **T I T L E A M E N D M E N T**
52 Remove line 22 and insert:
53 cross-references; creating s. 166.04152, F.S.;
54 authorizing the appeal of a final order or decision
55 regarding historically significant property made by a
56 locally established historic preservation board or
57 commission to the board of county commissioners;
58 requiring a public hearing on the appeal within a
59 specified time; authorizing the board of county
60 commissions to approve or reject the final order
61 decision; providing that orders or decisions on appeal
62 are final; providing construction; providing
63 definitions; amending s. 125.01, F.S.; revising the
64 powers and duties of county commissions; providing
65 severability; providing an

<u>COMMITTEE/SUBCOMMITTEE ACTION</u>

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

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

Amendment

Remove lines 137-144 and insert:

2. Data must be taken from professionally accepted sources. The application of a methodology utilized in data collection <u>and analysis</u> or whether a particular methodology is professionally accepted may be evaluated. ~~However, the evaluation may not include whether one accepted methodology is better than another. Original data collection by local governments is not required. However, local governments may use original data so long as methodologies are professionally accepted.~~<u> A local government shall not mandate a particular professionally accepted methodology or reject a professionally</u>

16 accepted methodology utilized in support of a comprehensive plan
17 amendment.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1231 Limited Liability Companies
SPONSOR(S): Jacques
TIED BILLS: **IDEN./SIM. BILLS:** SB 1346

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

SUMMARY ANALYSIS

A limited liability company ("LLC") is a type of business entity recognized by and regulated under ch. 605, F.S., the Florida Revised Limited Liability Company Act ("LLC Act"). Benefits to forming a business as an LLC include a flexible tax structure and a "vertical liability shield," which limits the personal liability of the LLC's members and managers for company obligations.

In 1996, Delaware enacted legislation providing for the formation of a "protected series limited liability company" ("protected series LLC"), which offers both the traditional, vertical liability shield of an LLC and a new, horizontal liability shield for any protected series of the LLC. In other words, the assets of any one protected series of an LLC are not available to satisfy the claims of creditors of the LLC or of any other protected series of the LLC. Since then, 20 other states and the District of Columbia have enacted legislation providing for the formation of some type of protected series LLC.

In response to the growing popularity of this type of business entity, the Uniform Law Commission promulgated the Uniform Protected Series Act ("UPSA") in 2017, intended as a model law that could be inserted into a state's existing LLC statutes. The UPSA contains definitions; a description of the nature and purpose of a protected series LLC, as well as its powers, purpose, and duration; a description of how a protected series is governed by the LLC's operating agreement; and rules for applying certain provisions of a state's existing LLC act to a protected series.

A protected series LLC formed in another state (a "foreign series LLC") is currently authorized to do business in Florida if it meets all applicable statutory requirements for an LLC formed under the laws of another jurisdiction wishing to do business in Florida. However, Florida law does not currently recognize the protected series LLC model; thus, each series in a foreign series LLC must qualify to do business in Florida as if each series were a separate legal entity. Moreover, there is no guidance for lawyers and judges being asked to address a foreign series LLC with respect to contracts, claims, and disputes. In 2020, the Business Law Section of the Florida Bar formed the Protected Series LLC Task Force ("Task Force") to analyze the USPA and consider its adoption in Florida. The Task Force ultimately proposed that the LLC Act be modified to authorize the formation of a protected series LLC under Florida law, using model language borrowed from the UPSA and language which deviates from the UPSA to address unique aspects of Florida law.

HB 1231 adopts the Task Force's recommendations, creating ss. 605.2101-605.2802, F.S., to allow for the formation of a protected series LLC under Florida law. Practically speaking, this may encourage a business wishing to organize as a protected series LLC to organize under Florida law; will recognize the structure of existing protected series LLCs wishing to do business in Florida; and will provide clarity for lawyers and judges engaging with a business organized as a protected series LLC.

The bill may have an indeterminate fiscal impact on state government but does not appear to have a fiscal impact on local governments. The bill provides an effective date of January 1, 2025.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Limited Liability Companies

A limited liability company ("LLC") is a type of business entity recognized by and regulated under ch. 605, F.S., the Florida Revised Limited Liability Company Act ("LLC Act"). Benefits to forming a business as an LLC include a flexible tax structure[1] and a "vertical liability shield," which limits the personal liability of the LLC's members[2] and managers[3] for company obligations.[4]

Forming a Florida LCC

To form an LLC in Florida, the authorized representatives[5] must first choose a name, which name must be distinguishable from the names of all other business entity names in the records of the Department of State ("DOS") and include the words "limited liability company" or the abbreviation "LLC" or "L.L.C."[6] The authorized representatives must also designate a registered agent to accept legal notices and service of process on behalf of the LLC at a registered office located in Florida.[7]

Once these steps are completed, the authorized representatives must sign and deliver to the DOS for filing articles of organization stating the LLC's name; the street and mailing addresses of the LLC's principal office; and the name, street address in Florida, and written acceptance of the LLC's registered agent.[8] An LLC is formed when the LLC's articles of organization become effective[9] and when at least one person becomes a member at the time the articles of organization become effective.[10]

Once formed, the members of the LLC may establish an operating agreement to lay the groundwork for the company, which agreement governs the:

- Relations among the members as members and between the members and the LLC;
- Rights and duties of a person serving in the capacity of manager;
- LLC's activities and affairs; and

[1] Depending on elections made by an LLC's members, the IRS will treat an LLC as either a corporation, a partnership, or a disregarded entity. This last option allows for what is known as "pass-through taxation," in which the LLC's members claim the LLC's profits or losses as part of their personal taxes, alleviating the LLC of needing to file its own tax return and preventing the profits and losses from being taxed twice. IRS, *Limited Liability Company (LLC)*, https://www.irs.gov/businesses/small-businesses-self-employed/limited-liability-company-llc (last visited Jan. 25, 2024).

[2] "Member" means a person who: (a) is a member of an LLC under s. 605.0401, F.S., or was a member in a company when the company became subject to the Act; and (b) has not dissociated from the LLC under s. 605.0602, F.S. S. 605.0102(40), F.S.

[3] "Manager" means a person who, under the operating agreement of a manager-managed LLC, is responsible, alone or in concert with others, for performing the management functions stated in ss. 605.0407(3) and 605.04073(2), F.S.

[4] Exceptions to the liability shield include a member's or manager's written consent to be liable for an obligation; a statutory claw-back provision for improper distributions; provisions in agreements signed before the LLC's organization; a member's or manager's tortious conduct; a member's or manager's action or inaction that results in a violation of criminal law or improper personal gain; liability arising under federal tax laws of the Florida sales and use tax laws; and a violation of fiduciary duties to creditors. S. 605.0304, F.S. Daniel S. Kleinberger, *Limited Liability Limited* (Aug. 28, 2019), https://www.americanbar.org/groups/business_law/publications/blt/2019/09/limited-liability/ (last visited Jan. 25, 2024).

[5] One or more persons may act as authorized representatives to form an LLC. S. 605.0201, F.S.

[6] S. 605.0112, F.S.

[7] The registered agent must be an individual who resides in Florida and whose business address is identical to the address of the registered office; another domestic entity that is an authorized entity and whose business address is identical to the address of the registered office; or a foreign entity authorized to transact business in Florida that is an authorized entity and whose business address is identical to the address of the registered office. S. 605.0113, F.S.

[8] The articles of organization may contain statements on additional matters as specified in statute. S. 605.0201, F.S.

[9] Except as otherwise provided, any document delivered to the DOS for filing under the LLC Act may specify an effective time and a delayed effective date. In the case of initial articles of organization, a prior effective date may be specified in the articles of organization if such date is within five business days before the date of filing. If the record does not specify an effective time or a prior or delayed effective date, the record is effective on the date and at the time the record is accepted, as evidenced by the DOS's endorsement of the date and time on the filing. S. 605.0207, F.S.

[10] S. 605.0201, F.S.

- Means and conditions for amending the operating agreement.[11]

An LLC must also deliver to the DOS for filing an annual report stating:
- The LLC's name;
- The LLC's principal office and mailing addresses;
- The date of the LLC's organization;
- The LLC's federal employer identification number[12] or, if none exists, whether one has been applied for;
- The name, title or capacity, and address of at least one person with the authority to manage the LLC; and
- Any additional information that is necessary or appropriate to enable the DOS to carry out the LCC Act.[13]

Foreign LLCs Doing Business in Florida

An entity organized as an LLC under the laws of another jurisdiction (a "foreign LLC") that wishes to do business in Florida must, through an authorized representative, first apply for a certificate of authority to transact business in Florida by delivering an application for such a certificate to the DOS, which application must contain:
- The foreign LLC's name;
- The name of the foreign LLC's jurisdiction of formation;
- The foreign LLC's principal office and mailing addresses;
- The name and street address in Florida of, and the written acceptance by, the foreign LLC's initial registered agent in Florida;
- The name, title or capacity, and address of at least one person with the authority to manage the foreign LLC; and
- Additional information as may be necessary or appropriate in order to enable the DOS to determine whether the foreign LLC is entitled to file an application for a certificate of authority and to determine and assess applicable fees.[14]

Unless the DOS determines that such an application does not comply with the LLC Act's filing requirements, the DOS must, upon the payment of all filing fees, file the certificate of authority application.[15] The filing of the application means the foreign LLC has obtained a certificate of authority and is authorized to do business in Florida.[16] Such an LLC must file annual reports as required of a domestic LLC, which reports must include additional information pertinent to a foreign LLC as specified in the LLC Act.[17]

Protected Series Limited Liability Companies

In 1996, Delaware enacted legislation providing for the formation of a "protected series limited liability company" ("protected series LLC"), which offers both the traditional, vertical liability shield of an LLC and a new, horizontal liability shield for any protected series of the LLC; in other words, the assets of any one protected series of an LLC are not available to satisfy the claims of creditors of the LLC or of

[11] S. 605.0105, F.S.
[12] The federal employer identification number, also known as a federal tax identification number, is issued by the IRS and used to identify a business for federal tax purposes. IRS, *Employer ID Numbers*, https://www.irs.gov/businesses/small-businesses-self-employed/employer-id-numbers (last visited Jan. 25, 2024)
[13] S. 605.0212, F.S.
[14] S. 605.0903, F.S.
[15] *Id.*
[16] *Id.*
[17] S. 605.0212, F.S.

any other protected series of the LLC.[18] Since then, 20 other states and the District of Columbia have enacted legislation providing for the formation of some type of protected series LLC.[19]

In response to the growing popularity of this type of business entity, the Uniform Law Commission promulgated the Uniform Protected Series Act ("UPSA") in 2017, intended as a model law that could be inserted into a state's existing LLC statutes.[20] The UPSA contains definitions; a description of the nature and purpose of a protected series LLC, as well as its powers, purpose, and duration; a description of how a protected series is governed by the LLC's operating agreement; and rules for applying certain provisions of a state's existing LLC act to a protected series.[21]

Florida

A protected series LLC formed in another state (a "foreign series LLC") is currently authorized to do business in Florida if it meets all applicable statutory requirements for a foreign LLC and registers with the DOS.[22] However, Florida law does not currently recognize the protected series LLC model; thus, each series in a foreign series LLC must qualify to do business in Florida as if each series were a separate legal entity. Moreover, there is no guidance for lawyers and judges being asked to address a foreign series LLC with respect to contracts, claims, and disputes.[23]

In 2020, the Business Law Section of the Florida Bar formed the Protected Series LLC Task Force ("Task Force") to analyze the USPA and consider its adoption in Florida.[24] The Task Force ultimately proposed that new sections be added to the LLC Act to authorize the formation of a protected series LLC under Florida law, using model language borrowed from the UPSA and language which deviates from the UPSA to address unique aspects of Florida law.[25]

Effect of Proposed Changes

HB 1231 adopts the Business Law Section Task Force's recommendations, creating The Uniform Protected Series Provisions in ss. 605.2101-605.2802, F.S., within the LLC Act to allow for the formation of a protected series LLC under Florida law. The bill refers to a protected series LLC as a "series LLC" and defines the term to mean a domestic LLC with at least one protected series established under s. 605.2201, F.S.

Practically speaking, this may encourage a business wishing to organize as a protected series LLC to organize under Florida law. The bill also recognizes the structure of existing foreign series LLCs wishing to do business in Florida and provides clarity for lawyers and judges engaging with a business organized as a series LLC.

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[18] Protected Series LLC Task Force of the Florida Bar Business Law Section, *White Paper: Analysis of Proposed Additions to Chapter 605* (Jan. 14, 2024).
[19] These states are: Wisconsin, Oklahoma, Illinois, Nevada, Tennessee, Iowa, Texas, Kansas, Missouri, Montana, Utah, Alabama, Indiana, Arkansas, Nebraska, North Dakota, South Dakota, Virginia, Wyoming, and Ohio. Puerto Rico also recognizes a protected series LLC. *Id.*
[20] Uniform Law Commission, *The Uniform Protected Series Act*, https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/36953c44-f8c8-04e4-33b4-7217f4c94aa1_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1680018971&Signature=sTvqf2axyQzxE016hsFUBH9KNgc%3D (last visited Jan. 25, 2024).
[21] *Id.*
[22] *See* Business Law Section, *supra* note 18.
[23] *Id.*; *See* s. 605.0902, F.S., authorizing the DOS to require each individual series of a foreign series LLC to make a separate application for a certificate of authority, and to make such other filings as may be required for purposes of complying with the requirements of the LLC Act as if such series was a separate foreign LLC.
[24] *See* Business Law Section, *supra* note 18.
[25] *Id.*

Series LLC Formation

The bill specifies that the provisions of the LLC Act applicable to the formation of an LLC generally also apply to the formation of a series LLC or protected series, except as otherwise provided. The bill also establishes provisions specific to the formation of a series LLC or protected series.

Designation of Protected Series

The bill creates s. 605.2201, F.S., to provide that, with the affirmative vote or consent of all members of an LLC, the LLC may establish a protected series. To establish a protected series after such a vote, the bill requires an LLC to deliver to the DOS for filing a protected series designation, signed by the LLC, stating the names of the LLC and of the protected series to be established, and any other information the DOS requires for filing.

Under the bill, a protected series is established when the protected series designation takes effect. To amend such a designation, a series LLC must deliver to the DOS for filing a statement of designation change, signed by the company, that sets forth:

- The names of the series LLC and of the protected series to which the designation applies;
- Each change to the protected series designation; and
- A statement that the change was approved by the affirmative vote or consent of the members of the series LLC required to make the designated change.

The amendment takes effect when the statement of designation change takes effect.

Protected Series Name

The bill creates s. 605.2202, F.S., to specify that a protected series' name generally must meet the statutory requirements for LLC names. However, under the bill, a protected series' name must also:

- Begin with the series LLC's name, including any word or abbreviation required by the LLC Act; and
- Contain the phrase "protected series" or the abbreviation "P.S." or "PS."

If a series LLC changes its name, the LLC must deliver to the DOS for filing a statement of designation change for each of the LLC's protected series, changing the name of each such series to comply with this section.

Nature of a Protected Series

The bill creates s. 605.2103, F.S. to provide that a protected series is a person[26] distinct from all of the following:

- The series LLC, generally.
- Another protected series of the series LLC.
- A member of the series LLC, regardless of whether the member is an associated member[27] of the protected series.
- A protected-series transferee[28] of a protected series of the series LLC.
- A transferee of a transferrable interest[29] of the series LLC.

Powers and Duties of a Protected Series

[26] "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, LLC, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or another legal or commercial entity.

[27] An "associated member" is a member of a series LLC that meets statutory requirements and is associated with a protected series.

[28] "Protected-series transferee" means a person to which all or part of a protected-series transferable interest of a protected series has been transferred, other than the series LLC company, and includes a person that owns a protected-series transferable interest as a result of ceasing to be an associated member of a protected series.

[29] "Protected series transferrable interest" means a right to receive a distribution from a protected series.

The bill creates s. 605.2104, F.S., to provide that a protected series:

- Can sue and be sued in its own name.
- Generally has the same powers and purposes as the series LLC.
- Ceases to exist not later than when the series LLC completes its winding up.
- May not:
  - Be a member of the series LLC;
  - Establish a protected series; or
  - Except as otherwise authorized by Florida law, have a purpose or power, or take an action, that Florida law prohibits an LLC from having or taking.

Liability Limitations

The bill recognizes both the traditional, vertical liability shield of an LLC and the new, horizontal liability shield of a series LLC, and establishes the limitations of such shields as applied to a series LLC.

Liability Shield

The bill creates s. 605.2401, F.S., to provide that the following concepts generally apply:

- A series LLC's debt, obligation, or other liability is solely the debt, obligation, or liability of the series LLC.
- A protected series' debt, obligation, or other liability is solely the debt, obligation, or liability of the protected series.
- A series LLC is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of its protected series solely by reason of the protected series being a protected series of the series LLC, or the series LLC:
  - Being or acting as a protected-series manager of the protected series;
  - Having the protected series manage the series LLC; or
  - Owning a protected-series transferrable interest of the protected series.
- A protected series is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the series LLC or another protected series of the series LLC, solely by reason of:
  - Being a protected series of the series LLC;
  - Being or acting as a manager of the series LLC or a protected-series manager of another protected series of the company; or
  - Having the series LLC or another protected series of the company be or act as a protected-series manager of the protected series.

Further, the bill specifies that a person is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of:

- A protected series of a series LLC solely by reason of being or acting as:
  - An associated member, protected-series manager, or protected-series transferee of the protected series; or
  - A member, manager, or a transferee of the series LLC.
- A series LLC solely by reason of being or acting as an associated member, protected-series manger, or protected-series transferee of a protected series of the such LLC.

Claim Seeking to Disregard Liability Limitation

The bill creates s. 605.2402, F.S., to provide that a claim seeking to disregard a liability limitation pertaining to a series LLC, a protected series, or persons connected thereto, including a principal providing a right to a creditor or holding a person liable for a debt, obligation, or other liability of another person, is governed by the principles of law and equity which would apply if each protected series were an LLC formed separately from the series LLC and distinct from the series LLC and any other protected series of such LLC. The bill also specifies that:

- Failure of an LLC or a protected series to observe the formalities of its activities and affairs is not grounds to disregard a limitation in s. 605.2401(1), F.S., relating to the liability of persons

- acting in specified roles, but may be grounds to disregard a limitation in s. 605.2401(2), F.S., relating to the liability of a protected series or series LLC.
- This section applies to a claim seeking to disregard a liability limitation applicable to a foreign series LLC[30] or a foreign protected series[31] and comparable to a limitation stated in s. 605.2401, F.S., if:
  - The claimant is a Florida resident, transacting business in Florida, or authorized to transact business in Florida; or
  - The claim is to establish or enforce a liability arising under Florida law other than the LLC Act or from an act or omission in Florida.

Remedies of Certain Judgment Creditors

The bill creates s. 605.2403, F.S., to specify that the provisions of s. 605.0503, F.S., which provide or restrict remedies available to a judgment creditor[32] of a member or transferee of an LLC, apply to a judgment creditor of:
- An associated member or protected-series transferee of a protected series; and
- A series LLC, to the extent the LLC owns a protected-series transferable interest of a protected series.

Enforcement of Claim Against Non-Associated Assets

The bill creates s. 605.2404, F.S., to specify that, if a claim against a series LLC or a protected series of the LLC has been reduced to judgment, in addition to any other remedy provided by law or equity, the judgment may be enforced in accordance with the following:
- A judgment against a series LLC may be enforced against an asset[33] of a protected series of the LLC if the asset:
  - Was a non-associated asset[34] of the protected series on the incurrence date;[35] or
  - Is a non-associated asset of the protected series on the enforcement date.[36]
- A judgment against a protected series may be enforced against the series LLC if the asset:
  - Was a non-associated asset of the series LLC on the incurrence date; or
  - Is a non-associated asset of the series LLC on the enforcement date.
- A judgment against a protected series may be enforced against an asset of another protected series of the series LLC if the asset:
  - Was a non-associated asset of the other protected series on the incurrence date; or
  - Is a non-associated asset of the other protected series on the enforcement date.

Further, under the bill:
- If a claim against a series LLC or a protected series has not been reduced to a judgment, and a law other than the LLC Act authorizes a prejudgment remedy by attachment,[37] levy,[38] or the like, the court may apply the foregoing as a prejudgment remedy.

[30] A "foreign series LLC" is a foreign LLC that has at least one foreign series or protected series.

[31] A "foreign protected series" means an arrangement, configuration, or other structure established by a foreign LLC which has attributes comparable to a protected series established under ch. 605, F.S., regardless of whether the law under which such company is organized refers to "series" or "protected series."

[32] A "judgment creditor" is a person with the right to demand the payment of monetary damages awarded as part of a judgment rendered in a civil action. Legal Information Institute, *Judgment Creditor*, https://www.law.cornell.edu/wex/judgment_creditor (last visited Jan. 25, 2024).

[33] "Asset" means property: (a) in which a series LLC or a protected series has rights; or (b) as to which the series LLC or protected series has the power to transfer rights.

[34] A "non-associated asset" means: (a) an asset of a series LLC which is not an associated asset of such LLC; or (b) an asset of a protected series which is not an associated asset of the protected series. "Associated asset," meanwhile, means an asset that meets the requirements of s. 605.2301, F.S. In other words, associated assets have only one owner (that is, either the series LLC or the protected series), while non-associated assets are available to the creditors of both the series LLC and the protected series.

[35] "Incurrence date" means the date on which a series LLC or protected series incurred the liability giving rise to a claim that a claimant seeks to enforce under s. 605.2404, F.S.

[36] "Enforcement date" means 12:01 a.m. on the date on which a claimant first serves process on a series LLC or protected series in an action seeking to enforce a claim against an asset of the LLC or protected series by attachment, levy, or the like under s. 605.2404, F.S.

- The party asserting that an asset is or was an associated asset of a series LLC or a protected series has the burden of proof on the issue.
- Newly-created s. 605.2404, F.S., applies to an asset of a foreign series LLC or foreign protected series under specified circumstances, including that the asset is real or tangible property located in Florida.

Protected Series LLC Operations and Governance

The bill specifies that the provisions of the LLC Act applicable to LLCs in general, and their members and managers, including, but not limited to, provisions relating to LLC operation, existence, and management; court proceedings; and filings with the DOS and other state or local government agencies, generally apply to each series LLC and to each protected series established under s. 605.2201, F.S. The bill also creates provisions of the LLC Act applicable only to the operation and governance of a series LLC and a protected series.

Protected Series Governing Law

The bill creates ss. 605.2105 and 605.2701, F.S., to provide that Florida law governs:
- The internal affairs of a protected series or foreign protected series.
- The relations between a protected series or foreign protected series and specified parties, including the series LLC or foreign series LLC and another protected series of such LLC.
- The liability of a person for a debt, obligation, or other liability of a protected series or foreign protected series arising under specified circumstances.
- The liability of a series LLC or foreign series LLC for a debt, obligation, or other liability of its protected series arising under specified circumstances.
- The liability of a protected series or foreign protected series for a debt, obligation, or other liability of the series LLC or foreign series LLC arising under specified circumstances.

Operating Agreements

The bill creates s. 605.2106, F.S., to provide that a series LLC's operating agreement generally governs the internal affairs of a protected series and relations between a protected series and specified parties. The bill also specifies:
- How such matters are determined if the operating agreement of a series LLC does not provide for such matters in an authorized manner.
- How certain restrictions on operating agreements imposed by the LLC Act or other laws apply.

Further, the bill creates s. 605.2107, F.S., to provide that an operating agreement for a series LLC may not vary the effect of specified provisions of law created by the bill, except to the extent otherwise specified therein. Under the bill, an operating agreement may not unreasonably restrict the duties and rights of a person who is not an associated member of a protected series to information concerning the protected series, but may impose reasonable restrictions on the availability and use of such information, and may provide appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on such use.

Registered Agent

The bill creates s. 605.2203, F.S., to provide that the registered agent in Florida for a series LLC is the registered agent in Florida for each protected series of that LLC, but a series LLC must agree with a registered agent that the agent will serve as the registered agent in Florida for the LLC and for each protected series of the LLC before delivering a protected series designation to the DOS for filing. Further, under the bill, a person that ceases to be the registered agent for a:

[37] An "attachment" is a court order directing the freezing or seizure of specific assets belonging to a debtor, pending the outcome of a civil matter involving a creditor who may obtain a judgment in his or her favor that could be satisfied by the sale or application of the assets. Legal Information Institute, *Attachment*, https://www.law.cornell.edu/wex/attachment (last visited Jan. 25, 2024).
[38] A "levy" is the court-ordered seizure and sale of property to satisfy a delinquent debt or judgment. Legal Information Institute, *Levy*, https://www.law.cornell.edu/wex/levy (last visited Jan. 25, 2024).

- Series LLC ceases to be the registered agent for each protected series of such LLC.
- Protected series, other than as a result of the termination of the protected series, ceases to be the registered agent of the series LLC and any other protected series of such LLC.

Finally, the bill provides that, except as otherwise agreed upon by a series LLC and its registered agent, the registered agent is not obligated to distinguish between a process, notice, demand, or other record concerning the series LLC and a process, notice, demand, or other record concerning a protected series of the series LLC.

Service of Process, Notice, Demand, or Other Record

The bill creates s. 605.2204, F.S., to provide that process against a series LLC, a protected series, a registered foreign series LLC, or a registered foreign protected series may be serviced in the same manner as service is made on such entity under s. 48.062 and chapters 48 or 49, F.S. Under the bill, any notice or demand on a series LLC or protected series may be given or made to any member of a member-managed series LLC or to any manager of a manager-managed LLC; to the registered agent of a series LLC at the registered office of the series LLC in Florida; or to any other address in Florida which is the principal Florida office of the series LLC. Similarly, any notice or demand on a registered foreign series LLC or a registered foreign protected series may be given or made to any member of a member-managed foreign series LLC or to any manager of a manager-managed foreign series LLC; the registered agent of the registered foreign series LLC at the registered office of the foreign series LLC; or to the principal office address, or any other Florida address, which is the principal Florida office of the registered foreign series LLC. However, the bill does not affect the right to serve process on, give notice to, or make a demand on a series LLC or a protected series thereof, or on a foreign series LLC or a protected series thereof, in any other manner provided by law.

The bill also amends s. 48.062, F.S., to define “registered foreign protected series of a foreign series LLC” and “registered foreign series LLC” and to provide that:

- Service on a series LLC is notice to each protected series thereof.
- Service on a protected series is notice to the series LLC thereof.
- Service on a registered foreign series LLC is notice to each protected series thereof.
- Service on a registered foreign protected series is notice to each registered foreign series LLC thereof.

Foreign Series LLCs and Foreign Protected Series

The bill creates s. 605.2703, F.S., to require that an application by a foreign protected series for a certificate of authority to do business in Florida must include specified information, including the name and jurisdiction of formation of the foreign series LLC and the foreign protected series seeking the certificate and, if the foreign series LLC has other foreign protected series, the name, title, capacity, and street and mailing address of at least one person who has the authority to manage the foreign series LLC and who knows specified information about the protected series. The bill also specifies which provisions of the LLC Act apply to the application for a certificate of authority by a foreign series LLC, which provisions include the naming requirements and provisions relating to required information.

Further, the bill creates s. 605.2702, F.S., to provide that, in determining whether a foreign series LLC or foreign protected series is transacting business in Florida or is subject to the personal jurisdiction of Florida courts, the activities and affairs of the:

- Foreign series LLC are not attributable to a foreign protected series of such LLC solely by reason of the foreign protected series being a foreign protected series of the LLC.
- Foreign protected series are not attributable to a foreign series LLC or another foreign protected series of the LLC solely by reason of the foreign protected series being a foreign protected series of the foreign series LLC.

Finally, the bill creates s. 605.2704, F.S., to provide that, not later than 30 days after becoming a party to a proceeding before a civil, administrative, or other adjudicative tribunal of or located in Florida, or a tribunal of the United States located in Florida:[39]

- A foreign series LLC must disclose to each other party the name and street and mailing address of:
  - Each of its foreign protected series; and
  - Each foreign protected series manager of and a registered agent for service of process for each foreign protected series.
- A foreign protected series must disclose to each other party the name and street and mailing address of:
  - The foreign series LLC;
  - An agent for service of process for the foreign series LLC;
  - Any other foreign protected series of the foreign series LLC; and
  - Each foreign protected-series manager of and an agent for service of process for the other foreign protected series.

Under the bill, where a foreign series LLC or foreign protected series does not comply with the disclosure requirements under s. 605.2704, F.S., a party to the proceeding may ask the tribunal to treat the noncompliance as a failure to comply with the tribunal's discovery rules or bring a separate proceeding to the court to enforce compliance.

Issuance of Certificate of Status or Authority

The bill creates s. 605.2205, F.S., to provide that, upon the satisfaction of specified requirements, the DOS must issue a certificate of status for a protected series, or a certificate of authority for a foreign protected series, if:

- In the case of a protected series, the records show that the DOS has accepted and filed articles of organization for the series LLC and a protected series designation for the protected series.
- In the case of a foreign protected series, the records show that the DOS has filed a certificate of authority for the foreign series LLC and a certificate of authority for the foreign protected series.

A certificate issued under this section must contain specified information, including:

- In the case of a protected series, the name of the protected series, the series LLC's name, the date the protected series designation took effect, and other information.
- In the case of a foreign protected series, the foreign protected series' name, the foreign series LLC's name, the fact that the foreign series LLC is authorized to do business in Florida, and other information.

Under the bill, the certificate may be relied on as conclusive evidence of the facts stated therein, subject to any qualifications stated by the DOS in the certificate.

Annual Report Information

The bill creates s. 605.2206, F.S., to require that, in its annual report, a series LLC must include the name of each its protected series:

- For which the series LLC has previously delivered to the DOS for filing a protected series designation; and
- Which has not dissolved and completed winding up.

Under the bill, a series LLC's failure to comply with this requirement with regard to a protected series prevents issuance of a certificate of status pertaining to the protected series, but does not otherwise affect the protected series.

[39] The disclosure requirements are tolled under the bill if a foreign series LLC or foreign protected series challenges the personal jurisdiction of the tribunal, until the tribunal determines whether it has personal jurisdiction.

Similarly, the bill requires that, in its annual report, a registered foreign series LLC include the name of each registered foreign protected series of the registered foreign series LLC:

- For which the registered foreign series LLC has previously delivered to the DOS for filing an application for a certificate of authority to do business in Florida, which the DOS has accepted; and
- Which has not withdrawn is certificate of authority.

Under the bill, the failure of a registered foreign series LLC to comply with this requirement with regard to a registered foreign protected series prevents issuance of a certificate of status pertaining to the foreign protected series.

Associated Assets

The bill creates s. 605.2301, F.S., to provide that only an asset of a protected series may be an associated asset of the protected series, while only an asset of a series LLC may be an associated asset of the series LLC. Further, the bill specifies that an asset of a protected series is an associated asset of the protected series, and an asset of a series LLC is an associated asset of the series LLC, only if the protected series or series LLC creates and maintains specified records that state the name of the protected series or series LLC and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to make specified determinations about the asset. Such records may be organized by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any asset, or in any other reasonable manner.

Further, under the bill, a series LLC or protected series may, to the extent authorized by law, hold an associated asset directly or indirectly, except that:

- A protected series may not hold an associated asset in the name of the series LLC or another protected series of such LLC; and
- The series LLC may not hold an associated asset in the name of its protected series.

The bill also provides for the effect of a deed or other instrument granting an interest in real property to or from a series LLC or one or more protected series of a series LLC, or any other instrument otherwise affecting an interest in real property held by such entity, in each case to the extent such deed or other instrument is recorded in the office for recording transfers or other matters affecting real property and specified records are maintained.

Associated Member

The bill creates s. 605.2302, F.S., to specify that only a member of a series LLC may be an associated member of a protected series of such LLC. Under the bill, a member of a series LLC becomes an associated member of a protected series of such LLC if the operating agreement or a procedure established therein states:

- That the member is an associated member of the protected series;
- The date on which the member became an associated member of the protected series; and
- Any protected-series transferable interest the associated member has in connection with becoming or being an associated member of the protected series.

Further, the bill specifies:

- That if a person that is an associated member of a protected series is dissociated from the series LLC, the person ceases to be an associated member of the protected series.
- The rights of an associated member of a protected series to vote on or consent to an amendment to the series LLC's operating agreement or any other matter being decided by the members or to maintain a derivative action to enforce a right of the LLC.
- That an associated member of a protected series is an agent of the protected series with certain powers to bind the protected series.

Protected-Series Transferrable Interest

The bill creates s. 605.2303, F.S., to provide that a protected-series transferrable interest of a protected series must be owned initially by an associated member of the protected series or the series LLC. Under the bill, if a protected series has no associated members when established, the series LLC owns the protected-series transferable interests in the protected series. A series LLC may also acquire a protected-series transferable interest through a transfer from another person or as provided in the operating agreement.

Further, except as otherwise specified, a provision of the:

- LLC Act which applies to a protected-series transferee of a protected series applies to the series LLC in its capacity as an owner of a protected-series transferable interest of the protected series.
- Operating agreement of a series LLC which applies to a protected-series transferee of a protected series applies to the series LLC in its capacity as an owner of a protected-series transferrable interest of the protected series.

Management

The bill creates s. 605.2304, F.S., to specify that a protected series may have more than one protected-series manager and, if a protected series has no associated members, the series LLC is the protected-series manager. The bill also provides for the determination of any duties of a protected-series manager to:

- The protected series;
- Any associated member of the protected series; and
- Any protected-series transferee of the protected series.

However, the bill provides that, solely by reason of being or acting as a protected-series manager, a person owes no duty to:

- The series LLC;
- Another protected series of the series LLC; or
- Another person in that person's capacity as:
  - A member of the series LLC which is not an associated member of the protected series;
  - A protected-series transferee or protected-series manager of another protected series; or
  - A transferee of the series LLC.

Right of Non-Associated Members to Specified Information

The bill creates s. 605.2305, F.S., to specify the rights to information concerning the protected series of a member of a series LLC which is not an associated member of a protected series of such LLC; a person who was formerly an associated member of a protected series; the legal representative of a deceased associated member of a protected series; and a protected-series manager of a protected series. Such rights generally correspond to the current rights of the counterparts of such persons under

the LLC Act. The bill also provides that the court-ordered inspection provisions of s. 605.0411, F.S.,[40] apply to such information rights.

Entity Transactions

The bill provides for the role of, and in some instance prohibits the participation of, a series LLC or a protected series in certain entity transactions, including conversions,[41] domestications,[42] interest exchanges,[43] and mergers.[44]

Entity Transaction Restrictions

The bill creates ss. 605.2602 and 605.2603, F.S., to provide that a protected series and a series LLC, respectively, may not be a party to, be formed, organized, established, or created in, or result from:
- A conversion, domestication, or an interest exchange under the LLC Act or the law of a foreign jurisdiction; or
- A transaction with the same substantive effect as a conversion, domestication, or interest exchange.

The bill also specifies that a:
- Protected series may not be a party to, be formed, organized, established, or created in, or result from a merger under the LLC Act or the law of a foreign jurisdiction or a transaction with the same substantive effect as a merger.
- Series LLC may not, except as otherwise provided by law, be a party to or the surviving company[45] of a merger under the LLC Act or the law of a foreign jurisdiction or a transaction with the same substantive effect as a merger.

Mergers Authorized

The bill creates s. 605.2604, F.S., to authorize a series LLC to be party to a merger only if:
- Each other party to the merger is an LLC; and
- The surviving company is not created in the merger.

The bill also creates s. 605.2605, F.S., to require that the plan of merger:
- Comply with the requirements for the contents of a plan of merger for an LLC; and
- State specified information in a record, which information depends on whether the protected series is a protected series of a non-surviving company,[46] a protected series of a surviving company, a relocated protected series,[47] a continuing protected series,[48] or a protected series to be established by the surviving company.

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[40] S. 605.0411, F.S., applies if an LLC does not allow a member, manager, or other person who complies with applicable law to inspect and copy any records required to be available for inspection. Under this section, the circuit court may summarily order inspection and copying of the records demanded under specified circumstances, and may order the LLC to pay the costs, including reasonable attorney fees, incurred by the member, manager, or other person seeking the records to obtain the order and enforce its rights.
[41] A "conversion" is a transaction authorized under ss. 605.1041-605.1046, F.S.
[42] A "domestication" is a transaction authorized under ss. 605.1051-605.1056, F.S.
[43] An "interest exchange" is a transaction authorized under ss. 605.1031-605.1036, F.S.
[44] A "merger" is a transaction authorized under ss. 605.1021-605.1026, F.S.
[45] "Surviving company" means a merging company that continues in existence after a merger.
[46] "Non-surviving company" means a merging company that does not continue in existence after a merger.
[47] "Relocated protected series" means a protected series of a non-surviving company which, after a merger, continues in uninterrupted existence as a protected series of the surviving company.
[48] "Continuing protected series" means a protected series of a surviving series LLC which continues in uninterrupted existence after a merger.

Further, the bill creates s. 605.2606, F.S., to require that the articles of merger:

- Comply with the requirements for the articles of merger for an LLC;[49] and
- Include specified attachments, including, as appropriate, a signed statement of designation cancellation and termination; a signed statement of relocation and a statement of protected series designation; or a signed protected series designation.

Effect of Merger

The bill creates s. 605.2607. F.S., to establish the effects of a merger which occur in addition to the effects stated in s. 605.1026, F.S., relating to the merger of an LLC. Under this section:

- As provided in the plan of merger, each protected series of each merging series LLC which was established before the merger is a relocated or continuing protected series or is dissolved, wound up, and terminated.
- Any protected series to be established due to the merger is established.
- Any relocated or continuing protected series is the same person it was before the merger.
- All property of a relocated or continuing protected series continues to be vested in such protected series.
- All debts, obligations, and other liabilities of a relocated or continuing protected series continue as debts, obligations, and other liabilities of such protected series.
- Except as otherwise provided by law or the plan of merger, all rights, privileges, immunities, powers, and purposes of a relocated or continuing protected series remain in such protected series.
- The new name of a relocated protected series may be substituted for its former name in any pending action or proceeding.
- To the extent provided in the plan of merger:
  - A person becomes an associated member or a protected-series transferee or a relocated protected series or continuing protected series.
  - A person becomes an associated member of a protected series established by the surviving company due to the merger.
  - Any change in a person's rights or obligations in the person's capacity as an associated member or a protected series or continuing protected series takes effect.
  - Any consideration to be paid to a person that before the merger was an associated member or a protected-series transferee of a relocated protected series or continuing protected series is due.
- Any person that is an associated member of a relocated protected series becomes a member of the surviving company, if not already a member.

The bill also creates s. 605.2608, F.S., to specify how creditors' rights existing under s. 605.2404, F.S., immediately before a merger may be enforced.

Protected Series Dissolution and Reinstatement

The bill establishes the methods by which a protected series may be voluntarily or is automatically dissolved under the LLC Act.

Events Causing Protected Series Dissolution

The bill creates s. 605.2501, F.S., to provide that a protected series is dissolved, and its activities and affairs must be wound up, upon the occurrence of specified events, including:

- Dissolution of the series LLC;
- Occurrence of an event which the operating agreement states causes dissolution;
- Affirmative vote or consent of all members of the protected series;

[49] Under s. 605.1025, F.S., after a plan of merger is approved, articles of merger must be signed by each merging entity and delivered to the DOS for filing. The articles must also contain specified information, including the merger's effective date and the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity and of each entity that is the surviving entity.

- Entry of a court order dissolving the protected series under specified circumstances;
- Automatic or involuntary dissolution of the series LLC that established the protected series; and
- The filing of a statement of administrative dissolution[50] by the DOS.

Winding Up Dissolved Protected Series

The bill creates s. 605.2502, F.S., to provide the manner in which a dissolved protected series must wind up its activities and affairs, including by filing with the DOS articles of protected series dissolution and a statement of designation cancellation, and the extent to which judicial supervision or another judicial remedy is available in such a winding up. Further, the bill specifies that a series LLC does not complete its winding up until each of its protected series has completed its winding up.

Effect of Reinstatement or Voluntary Dismissal Revocation

The bill creates s. 605.2503, F.S., to provide that, if a series LLC that has been administratively dissolved is reinstated, or a series LLC that voluntarily dissolved revokes its articles of dissolution, before filing a statement of termination:
- Each protected series of the series LLC ceases winding up; and
- The provisions of s. 605.0708, F.S., relating to revocation of articles of dissolution, apply to the series LLC and to each protected series as specified in law.

Effective Date and Application

The bill creates s. 605.2801, F.S., to provide that s. 605.1102, F.S., relating to the applicability of the Electronic Signatures in Global and National Commerce Act, applies to the Uniform Protected Series Provisions. The bill also creates s. 605.2802, F.S., to provide that:
- Beginning July 1, 2025, Chapter 605, F.S., governs all domestic and foreign series LLCs, all domestic protected series, and all foreign series that do business in Florida.
- A domestic LLC formed before January 1, 2025, may not create or designate any protected series before the bill's effective date.

The bill provides an effective date of January 1, 2025.

B. SECTION DIRECTORY:

Section 1: Amends s. 48.062, F.S., relating to service on a domestic limited liability company or registered foreign limited liability company.
Section 2: Amends s. 605.0103, F.S., relating to knowledge; notice.
Section 3: Amends s. 605.0117, F.S., relating to serving process, giving notice, or making a demand.
Section 4: Amends s. 605.0211, F.S., relating to certificate of status.
Section 5: Provides a short title.
Section 6: Creates s. 605.2102, F.S., relating to definitions.
Section 7: Creates s. 605.2103, F.S., relating to nature of protected status.
Section 8: Creates s. 605.2104, F.S., relating to powers and duration of protected series.
Section 9: Creates s. 605.2105, F.S., relating to protected series governing law.
Section 10: Creates s. 605.2106, F.S., relating to relation of operating agreement and the protected series provisions of this chapter.
Section 11: Creates s. 605.2107, F.S., relating to additional limitations on operating agreements.
Section 12: Creates s. 605.2108, F.S., relating to application of this chapter to specified provisions of protected series.
Section 13: Creates s. 605.2201, F.S., relating to protected series designation; amendment.
Section 14: Creates s. 605.2202, F.S., relating to protected series name.
Section 15: Creates s. 605.2203, F.S., relating to registered agent.
Section 16: Creates s. 605.2204, F.S., relating to service of process, notice, demand, or other record.
Section 17: Creates s. 605.2205, F.S., relating to certificate of status for protected series.

[50] Administrative dissolution is governed by s. 605.0714, F.S.

Section 18: Creates s. 605.2206, F.S., relating to information required in annual report; effect of failure to provide such information.
Section 19: Creates s. 605.2301, F.S., relating to associated asset.
Section 20: Creates s. 605.2302, F.S., relating to associated member.
Section 21: Creates s. 605.2302, F.S., relating to protected-series transferable interest.
Section 22: Creates s. 605.2304, F.S., relating to management.
Section 23: Creates s. 605.2305, F.S., relating to right of a person who is not an associated member of protected series to information concerning protected series.
Section 24: Creates s. 605.2401, F.S., relating to limitations on liability.
Section 25: Creates s. 604.2402, F.S., relating to claim seeking to disregard limitation of liability.
Section 26: Creates s. 605.2403, F.S., relating to remedies of judgment creditor of associated member or protected-series transferee.
Section 27: Creates s. 605.2404, F.S., relating to enforcement of claim against non-associated asset.
Section 28: Creates s. 605.2501, F.S., relating to events causing dissolution of protected series.
Section 29: Creates s. 605.2502, F.S., relating to winding up dissolved protected series.
Section 30: Creates s. 605.2503, F.S., relating to effect of reinstatement of series limited liability company or revocation of voluntary dismissal.
Section 31: Creates s. 605.2601, F.S., relating to entity transactions involving a series limited liability company or a protected series restricted; definitions.
Section 32: Creates s. 605.2602, F.S., relating to protected series may not be party to entity transaction.
Section 33: Creates s. 605.2603, F.S., relating to restriction on entity transaction involving series limited liability company.
Section 34: Creates s. 605.2604, F.S., relating to merger authorized; parties restricted.
Section 35: Creates s. 605.2605, F.S., relating to plan of merger.
Section 36: Creates s. 605.2606, F.S., relating to articles of merger.
Section 37: Creates s. 605.2607, F.S., relating to effect of merger.
Section 38: Creates s. 605.2608, F.S., relating to application of s. 605.2404 after merger.
Section 39: Creates s. 605.2701, F.S., relating to governing law; foreign series limited liability companies and foreign protected series.
Section 40: Creates s. 605.2702, F.S., relating to no attribution of activities constituting transacting business or for establishing jurisdiction.
Section 41: Creates s. 605.2703, F.S., relating to certificate of authority for a foreign series limited liability company and foreign protected series; amendment of application.
Section 42: Creates s. 605.2704, F.S., relating to disclosure required when a foreign series limited liability company or foreign protected series is a party to a proceeding.
Section 43: Creates s. 605.2801, F.S., relating to relation to Electronic Signatures in Global and National Commerce Act.
Section 44: Creates s. 605.2802, F.S., relating to transitional provisions.
Section 45: Amends s. 605.0103, F.S., relating to knowledge; notice.
Section 46: Provides an effective date of July 1, 2023, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will affect how business entities, both foreign and domestic, may organize or register and do business in the state, which will have an indeterminate economic impact on such entities. To the extent that a business entity obtains a financial benefit from organizing or registering as a series LLC under Florida law, the economic impact may be positive.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on the DOS as it may attract foreign series LLCs, and newly-forming businesses wishing to organize as a series LLC, to register in or organize under Florida law, which, in turn, may increase the workload of the DOS. To the extent that the DOS can absorb any such increase within existing resources, the bill will have an insignificant fiscal impact on the DOS.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

S. 605.0214, F.S., already vests the DOS with the authority reasonably necessary to administer the LLC Act efficiently, to perform the duties imposed upon it, and to adopt reasonable rules necessary to carry out its duties and functions under this chapter. Thus, additional rulemaking authority is likely unnecessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to limited liability companies;
3 amending s. 48.062, F.S.; defining the terms
4 "registered foreign series limited liability company"
5 and "registered foreign protected series of a foreign
6 series limited liability company"; specifying that
7 certain limited liability companies are considered a
8 nonresident under certain circumstances; providing for
9 service of summons and complaint on such companies and
10 series; specifying that such service serves as notice
11 to such companies and series; amending s. 605.0103,
12 F.S.; correcting a cross-reference; amending s.
13 605.0117, F.S.; conforming a provision to changes made
14 by the act; amending s. 605.0211, F.S.; revising
15 requirements for certificates of status; creating s.
16 605.2101, F.S.; providing a short title; creating s.
17 605.2102, F.S.; defining terms; creating s. 605.2103,
18 F.S.; providing that a protected series of a series
19 limited liability company is a person distinct from
20 certain other entities; creating s. 605.2104, F.S.;
21 providing for powers and prohibitions for protected
22 series of series limited liability companies; creating
23 s. 605.2105, F.S.; providing construction; creating s.
24 605.2106, F.S.; providing construction regarding
25 protected series operating agreements; providing

26 applicability with regard to certain restrictions on
27 limited liability companies; creating s. 605.2107,
28 F.S.; providing prohibitions and authorizations
29 relating to operating agreements; creating s.
30 605.2108, F.S.; providing applicability; creating s.
31 605.2201, F.S.; authorizing domestic limited liability
32 companies to establish protected series; specifying
33 requirements for establishing protected series and
34 amending protected series designations; creating s.
35 605.2202, F.S.; specifying requirements for naming a
36 protected series; creating s. 605.2203, F.S.;
37 providing specifications and requirements for the
38 registered agent for a protected series; specifying
39 requirements relating to protected series
40 designations; specifying that a registered agent is
41 not required to distinguish between certain processes,
42 notices, demands, and records unless otherwise agreed
43 upon; creating s. 605.2204, F.S.; authorizing service
44 on, and provision of notice and demand to, certain
45 limited liability companies and protected series in a
46 specified manner; providing that certain notice is
47 effective regardless of whether any notice or demand
48 identify a person if certain requirements are met;
49 providing authorizations relating to certain services
50 and notices; providing construction; creating s.

51 605.2205, F.S.; requiring the Department of State to
52 issue a certificate of status under certain
53 circumstances; specifying requirements for
54 certificates of status; providing that a certificate
55 of status may be relied upon as conclusive evidence of
56 the facts stated in the certificate; creating s.
57 605.2206, F.S.; requiring series limited liability
58 companies and registered foreign series limited
59 liability companies to include specified information
60 in a required annual report; specifying that failure
61 to include such information prevents a certificate of
62 status from being issued; creating s. 605.2301, F.S.;
63 specifying that only certain assets may be considered
64 associated assets; specifying requirements for an
65 asset to be considered an associated asset;
66 authorizing that certain records and recordkeeping be
67 organized in a specified manner; authorizing series
68 limited liability companies or protected series of
69 such companies to hold an associated asset in a
70 specified manner; providing exceptions; creating s.
71 605.2302, F.S.; specifying requirements for becoming
72 an associated member of a protected series of a series
73 limited liability company; creating s. 605.2303, F.S.;
74 requiring that protected-series transferable interests
75 be owned initially by an associated member of the

76 protected series or the series limited liability
77 company; providing for ownership when a protected
78 series of a series limited liability company does not
79 have associated members upon establishment under
80 certain circumstances; authorizing series limited
81 liability companies to acquire such interests by
82 transfer; providing applicability; creating s.
83 605.2304, F.S.; authorizing a protected series to have
84 one or more protected-series managers; specifying that
85 if a protected series does not have associated
86 members, the series limited liability company is the
87 protected-series manager; providing applicability;
88 specifying that a person does not owe a duty to
89 specified entities for certain reasons; providing
90 rights of associated members; providing applicability;
91 specifying that an associated member of a member-
92 managed protected series, or a protected-series
93 manager of a manager-managed protected series, is an
94 agent for the protected series and has a specified
95 power; creating s. 605.2305, F.S.; providing rights
96 for certain persons relating to information concerning
97 protected series; providing applicability; creating s.
98 605.2401, F.S.; providing limitations on liability for
99 certain persons; creating s. 605.2402, F.S.;
100 specifying that certain claims are governed by

101 specified provisions; specifying that the failure of
102 limited liability companies or protected series to
103 observe certain formalities is not a ground to
104 disregard a specified limitation; providing
105 applicability; creating s. 605.2403, F.S.; specifying
106 that certain provisions relating to the provision or
107 restriction of remedies apply to certain judgment
108 creditors; creating s. 605.2404, F.S.; defining the
109 terms "enforcement date" and "incurrence date";
110 authorizing that certain judgments be enforced in
111 accordance with specified provisions; authorizing
112 courts to provide a specified prejudgment remedy;
113 providing that a party making a certain assertion has
114 the burden of proof in specified proceedings;
115 providing applicability; creating s. 605.2501, F.S.;
116 providing events causing the dissolution of protected
117 series of series limited liability companies; creating
118 s. 605.2502, F.S.; specifying requirements and
119 authorizations relating to dissolved protected series;
120 specifying that a series limited liability company has
121 not completed winding up until each of the protected
122 series of the company has done so; creating s.
123 605.2503, F.S.; providing for the effect of
124 reinstatements of series limited liability companies
125 and revocations of voluntary dissolutions; creating s.

126 605.2601, F.S.; defining terms; creating s. 605.2602,
127 F.S.; prohibiting protected series from involvement in
128 certain transactions; creating s. 605.2603, F.S.;
129 prohibiting series limited liability companies from
130 involvement in certain transactions; creating s.
131 605.2604, F.S.; authorizing series limited liability
132 companies to be a party to a merger under certain
133 circumstances; creating s. 605.2605, F.S.; requiring
134 that plans of merger meet certain requirements;
135 creating s. 605.2606, F.S.; requiring articles of
136 merger to meet certain requirements; creating s.
137 605.2607, F.S.; providing for effects of mergers of
138 protected series; creating s. 605.2608, F.S.;
139 providing the means for enforcement of creditors'
140 rights; providing applicability of certain provisions
141 after a merger; creating s. 605.2701, F.S.; providing
142 that the law of the jurisdiction of a foreign series
143 limited liability company's formation governs certain
144 aspects of the internal affairs of the foreign series
145 limited liability company; providing applicability;
146 creating s. 605.2702, F.S.; specifying requirements
147 for making a specified determination relating to
148 certain companies transacting business in this state
149 or being subject to the personal jurisdiction of the
150 courts in this state; creating s. 605.2703, F.S.;

151 providing applicability of laws of this state relating
152 to certificates of authority for foreign series
153 limited liability companies and foreign protected
154 series of such companies; requiring an application by
155 a foreign protected series for a certificate of
156 authority to include certain information and comply
157 with specified provisions; providing applicability;
158 creating s. 605.2704, F.S.; requiring foreign series
159 limited liability companies and foreign protected
160 series of such companies to make specified
161 disclosures; tolling such requirements under certain
162 circumstances; authorizing certain parties to make a
163 specified request or bring a separate proceeding if
164 such company or series fails to make the disclosures;
165 creating s. 605.2801, F.S.; providing applicability of
166 provisions relating to electronic signatures; creating
167 s. 605.2802, F.S.; providing construction; prohibiting
168 domestic limited liability companies from creating or
169 designating any protected series before a specified
170 date; providing an effective date.
171
172 Be It Enacted by the Legislature of the State of Florida:
173
174 Section 1. Present subsection (7) of section 48.062,
175 Florida Statutes, is redesignated as subsection (11), a new

176 subsection (7) and subsections (8), (9), and (10) are added to
177 that section, and subsections (1) and (6) of that section are
178 amended, to read:
179 48.062 Service on a domestic limited liability company or
180 registered foreign limited liability company.—
181 (1) As used in this section, the term:
182 (a) "Registered foreign limited liability company" means a
183 foreign limited liability company that has an active certificate
184 of authority to transact business in this state pursuant to a
185 record filed with the Department of State.
186 (b) "Registered foreign protected series of a foreign
187 series limited liability company" means a protected series of a
188 foreign series limited liability company that has an active
189 certificate of authority to transact business in this state
190 pursuant to a record filed with the Department of State.
191 (c) "Registered foreign series limited liability company"
192 means a foreign series limited liability company that has an
193 active certificate of authority to transact business in this
194 state pursuant to a record filed with the Department of State.
195 (6) A foreign limited liability company, foreign series
196 limited liability company, or foreign protected series of a
197 foreign series limited liability company engaging in business in
198 this state which is not registered is considered, for purposes
199 of service of process, a nonresident engaging in business in
200 this state and may be served pursuant to s. 48.181 or by order

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201 of the court under s. 48.102.
202 (7) Service of a summons and complaint on a series limited
203 liability company is notice to each protected series of the
204 series limited liability company of service of the summons and
205 complaint and the contents of the complaint.
206 (8) Service of a summons and complaint on a protected
207 series of a series limited liability company is notice to the
208 series limited liability company and any other protected series
209 of the series limited liability company of service of the
210 summons and complaint and the contents of the complaint.
211 (9) Service of a summons and complaint on a registered
212 foreign series limited liability company is notice to each
213 registered foreign protected series of the registered foreign
214 series limited liability company of service of the summons and
215 complaint and the contents of the complaint.
216 (10) Service of a summons and complaint on a registered
217 foreign protected series of a foreign series limited liability
218 company is notice to the foreign series limited liability
219 company and to any other registered foreign protected series of
220 the foreign series limited liability company of service of the
221 summons and complaint and the contents of the complaint.
222 (11) This section does not apply to service of process on
223 insurance companies.
224 Section 2. Subsection (1) of section 605.0103, Florida
225 Statutes, is amended to read:

226 605.0103 Knowledge; notice.—
227 (1) A person knows a fact if the person:
228 (a) Has actual knowledge of the fact; or
229 (b) Is deemed to know the fact under paragraph <u>(4)(a)</u>
230 ~~(4)(b)~~, or a law other than this chapter.
231 Section 3. Subsection (3) of section 605.0117, Florida
232 Statutes, is amended to read:
233 605.0117 Serving process, giving notice, or making a
234 demand.—
235 ~~(3) A registered series of a foreign series limited~~
236 ~~liability company may be served in the same manner as a~~
237 ~~registered limited liability company.~~
238 Section 4. Paragraphs (c) through (f) of subsection (1)
239 and subsection (2) of section 605.0211, Florida Statutes, are
240 amended to read:
241 605.0211 Certificate of status.—
242 (1) The department, upon request and payment of the
243 requisite fee, shall issue a certificate of status for a limited
244 liability company if the records filed in the department show
245 that the department has accepted and filed the company's
246 articles of organization. A certificate of status must state the
247 following:
248 (c) Whether all fees <u>and penalties</u> due to the department
249 under this chapter have been paid.
250 (d) <u>Whether</u> ~~If~~ the company's most recent annual report

251 required under s. 605.0212 has ~~not~~ been filed by the department.
252 (e) <u>Whether</u> ~~If~~ the department has administratively
253 dissolved the company or received a record notifying the
254 department that the company has been dissolved by judicial
255 action pursuant to s. 605.0705.
256 (f) <u>Whether</u> ~~If~~ the department has filed articles of
257 dissolution for the company.
258 (2) The department, upon request and payment of the
259 requisite fee, shall furnish a certificate of status for a
260 foreign limited liability company if the <u>filed</u> records ~~filed~~
261 show that the department has filed a certificate of authority
262 <u>for that company</u>. A certificate of status for a foreign limited
263 liability company must state the following:
264 (a) The foreign limited liability company's name and any
265 current alternate name adopted under s. 605.0906(1) for use in
266 this state.
267 (b) That the foreign limited liability company is
268 authorized to transact business in this state.
269 (c) Whether all fees and penalties due to the department
270 under this chapter or other law have been paid.
271 (d) <u>Whether</u> ~~If~~ the foreign limited liability company's
272 most recent annual report required under s. 605.0212 has ~~not~~
273 been filed by the department.
274 (e) <u>Whether</u> ~~If~~ the department has:
275 1. Revoked the foreign limited liability company's

276 certificate of authority; or
277 2. Filed a notice of withdrawal of certificate of
278 authority of the foreign limited liability company.
279 Section 5. Section 605.2101, Florida Statutes, is created
280 to read:
281 605.2101 Short title.—Sections 605.2101-605.2802 may be
282 cited as the "Uniform Protected Series Provisions."
283 Section 6. Section 605.2102, Florida Statutes, is created
284 to read:
285 605.2102 Definitions.—As used in ss. 605.2101-605.2802,
286 the term:
287 (1) "Asset" means either of the following:
288 (a) Property in which a series limited liability company
289 or a protected series has rights; or
290 (b) Property as to which the series limited liability
291 company or protected series has the power to transfer rights.
292 (2) "Associated asset" means an asset that meets the
293 requirements of s. 605.2301.
294 (3) "Associated member" means a member that meets the
295 requirements of s. 605.2302.
296 (4) "Foreign protected series" means an arrangement, a
297 configuration, or another structure established by a foreign
298 limited liability company which has attributes comparable to a
299 protected series established under this chapter, regardless of
300 whether the law under which the foreign company is organized

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301 refers to "series" or "protected series."
302 (5) "Foreign series limited liability company" means a
303 foreign limited liability company that has at least one foreign
304 series or protected series.
305 (6) "Non-associated asset" means either of the following:
306 (a) An asset of a series limited liability company which
307 is not an associated asset of the company; or
308 (b) An asset of a protected series of a series limited
309 liability company which is not an associated asset of the
310 protected series.
311 (7) "Person" has the same meaning as in s. 605.0102 and
312 includes a protected series and a foreign protected series.
313 (8) "Protected series," except in the phrase "foreign
314 protected series," means a protected series established under s.
315 605.2201.
316 (9) "Protected-series manager" means a person under whose
317 authority the powers of a protected series are exercised and
318 under whose direction the activities and affairs of the
319 protected series are managed under the operating agreement and
320 this chapter.
321 (10) "Protected-series transferable interest" means a
322 right to receive a distribution from a protected series.
323 (11) "Protected-series transferee" means a person other
324 than the series limited liability company to which all or part
325 of a protected-series transferable interest of a protected

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326 series of a series limited liability company has been
327 transferred. The term includes a person that owns a protected-
328 series transferable interest as a result of ceasing to be an
329 associated member of a protected series.
330 (12) "Registered foreign protected series" means a
331 protected series of a foreign series limited liability company
332 that has an active certificate of authority to transact business
333 in this state pursuant to a record filed with the department.
334 (13) "Registered foreign series limited liability company"
335 means a foreign series limited liability company that has an
336 active certificate of authority to transact business in this
337 state pursuant to a record filed with the department.
338 (14) "Series limited liability company," except in the
339 phrase "foreign series limited liability company," means a
340 domestic limited liability company that has at least one
341 protected series.
342 Section 7. Section 605.2103, Florida Statutes, is created
343 to read:
344 605.2103 Nature of protected status.—A protected series of
345 a series limited liability company is a person distinct from all
346 of the following:
347 (1) The series limited liability company, subject to ss.
348 605.2104(3), 605.2501(1), and 605.2502(4).
349 (2) Another protected series of the series limited
350 liability company.

351 (3) A member of the series limited liability company,
352 regardless of whether the member is an associated member of the
353 protected series of the series limited liability company.
354 (4) A protected-series transferee of a protected series of
355 the series limited liability company.
356 (5) A transferee of a transferable interest of the series
357 limited liability company.
358 Section 8. Section 605.2104, Florida Statutes, is created
359 to read:
360 605.2104 Powers and duration of protected series.—
361 (1) A protected series of a series limited liability
362 company has the capacity to sue and be sued in its own name.
363 (2) Except as otherwise provided in subsections (3) and
364 (4), a protected series of a series limited liability company
365 has the same powers and purposes as the series limited liability
366 company.
367 (3) A protected series of a series limited liability
368 company ceases to exist not later than when the series limited
369 liability company completes its winding up.
370 (4) A protected series of a series limited liability
371 company may not be or do, as applicable, any of the following:
372 (a) Be a member of the series limited liability company;
373 (b) Establish a protected series; or
374 (c) Except as permitted by the laws of this state other
375 than this chapter, have a purpose or power, or take an action,

376 that the laws of this state other than this chapter prohibit a
377 limited liability company from having or doing.
378 Section 9. Section 605.2105, Florida Statutes, is created
379 to read:
380 605.2105 Protected series governing law.—The laws of this
381 state govern the following:
382 (1) The internal affairs of a protected series of a series
383 limited liability company, including all of the following:
384 (a) Relations among any associated members of the
385 protected series.
386 (b) Relations between the protected series and:
387 1. Any associated member;
388 2. Any protected-series manager; or
389 3. Any protected-series transferee.
390 (c) Relations between any associated member and:
391 1. Any protected-series manager; or
392 2. Any protected-series transferee.
393 (d) The rights and duties of a protected-series manager.
394 (e) Governance decisions affecting the activities and
395 affairs of the protected series and the conduct of those
396 activities and affairs.
397 (f) Procedures and conditions for becoming an associated
398 member or a protected-series transferee.
399 (2) The relations between a protected series of a series
400 limited liability company and each of the following:

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401 (a) The series limited liability company.
402 (b) Another protected series of the series limited
403 liability company.
404 (c) A member of the series limited liability company which
405 is not an associated member of the protected series of the
406 series limited liability company.
407 (d) A protected-series manager that is not a protected-
408 series manager of the protected series.
409 (e) A protected-series transferee that is not a protected-
410 series transferee of the protected series.
411 (3) The liability of a person for a debt, an obligation,
412 or another liability of a protected series of a series limited
413 liability company if the debt, obligation, or liability is
414 asserted solely by reason of the person being or acting as any
415 of the following:
416 (a) An associated member, protected-series transferee, or
417 protected-series manager of the protected series;
418 (b) A member of the series limited liability company which
419 is not an associated member of the protected series;
420 (c) A protected-series manager that is not a protected-
421 series manager of the protected series;
422 (d) A protected-series transferee that is not a protected-
423 series transferee of the protected series;
424 (e) A manager of the series limited liability company; or
425 (f) A transferee of a transferable interest of the series

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426 limited liability company.
427 (4) The liability of a series limited liability company
428 for a debt, an obligation, or another liability of a protected
429 series of the series limited liability company if the debt,
430 obligation, or liability is asserted solely in connection with
431 any of the following on the part of the series limited liability
432 company:
433 (a) Having delivered to the department for filing under s.
434 605.2201(2) a protected series designation pertaining to the
435 protected series or under s. 605.2201(4) or s. 605.2202(3) a
436 statement of designation change pertaining to the protected
437 series;
438 (b) Being or acting as a protected-series manager of the
439 protected series;
440 (c) Having the protected series be or act as a manager of
441 the series limited liability company; or
442 (d) Owning a protected-series transferable interest of the
443 protected series.
444 (5) The liability of a protected series of a series
445 limited liability company for a debt, an obligation, or another
446 liability of the series limited liability company or of another
447 protected series of the series limited liability company if the
448 debt, obligation, or liability is asserted solely by reason of
449 any of the following:
450 (a) The protected series:

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451 1. Being a protected series of the series limited
452 liability company or having as a protected-series manager the
453 series limited liability company or another protected series of
454 the series limited liability company; or
455 2. Being or acting as a protected-series manager of
456 another protected series of the series limited liability company
457 or a manager of the series limited liability company; or
458 (b) The series limited liability company owning a
459 protected-series transferable interest of the protected series.
460 Section 10. Section 605.2106, Florida Statutes, is created
461 to read:
462 605.2106 Relation of a protected series operating
463 agreement and the protected series provisions of this chapter.—
464 (1) Except as otherwise provided in this section, and
465 subject to ss. 605.2107 and 605.2108, the operating agreement of
466 a series limited liability company governs the following:
467 (a) The internal affairs of a protected series, including
468 all of the following:
469 1. Relations among any associated members of the protected
470 series.
471 2. Relations between the protected series and:
472 a. Any associated member of the protected series;
473 b. Any protected-series manager; or
474 c. Any protected-series transferee.
475 3. Relations between any associated member and:

476 a. Any protected-series manager; or
477 b. Any protected-series transferee.
478 4. The rights and duties of a protected-series manager.
479 5. Governance decisions affecting the activities and
480 affairs of the protected series and the conduct of those
481 activities and affairs.
482 6. Procedures and conditions for becoming an associated
483 member or a protected-series transferee.
484 (b) Relations between a protected series of the series
485 limited liability company and each of the following:
486 1. The series limited liability company.
487 2. Another protected series of the series limited
488 liability company.
489 3. The protected series, any of its protected-series
490 managers, any associated member of the protected series, or any
491 protected-series transferee of the protected series.
492 4. A person in the person's capacity as:
493 a. A member of the series limited liability company which
494 is not an associated member of the protected series;
495 b. A protected-series transferee or protected-series
496 manager of another protected series; or
497 c. A transferee of the series limited liability company.
498 (2) If this chapter restricts the power of an operating
499 agreement to affect a matter, the restriction applies to a
500 matter under ss. 605.2101-605.2802 in accordance with s.

501 605.0105.

502 (3) If a law of this state other than this chapter imposes
503 a prohibition, limitation, requirement, condition, obligation,
504 liability, or other restriction on a limited liability company;
505 a member, a manager, or another agent of a limited liability
506 company; or a transferee of a limited liability company, except
507 as otherwise provided in the laws of this state other than this
508 chapter, the restriction applies in accordance with s. 605.2108.

509 (4) Except as otherwise provided in s. 605.2107, if the
510 operating agreement of a series limited liability company does
511 not provide for a matter described in subsection (1) in a manner
512 authorized by ss. 605.2101-605.2802, the matter is determined in
513 accordance with the following:

514 (a) To the extent that ss. 605.2101-605.2802 address the
515 matter, ss. 605.2101-605.2802 govern.

516 (b) To the extent that ss. 605.2101-605.2802 do not
517 address the matter, this chapter governs the matter in
518 accordance with s. 605.2108.

519 Section 11. Section 605.2107, Florida Statutes, is created
520 to read:

521 605.2107 Additional limitations on operating agreements.—

522 (1) An operating agreement may not vary the effect of:

523 (a) This section;

524 (b) Section 605.2103;

525 (c) Section 605.2104(1);

526 (d) Section 605.2104(2), to provide a protected series a
527 power beyond those provided in this chapter to a limited
528 liability company;
529 (e) Section 605.2104(3) or (4);
530 (f) Section 605.2105;
531 (g) Section 605.2106;
532 (h) Section 605.2108;
533 (i) Section 605.2201, except to vary the manner in which a
534 series limited liability company approves establishing a
535 protected series;
536 (j) Section 605.2202;
537 (k) Section 605.2301;
538 (l) Section 605.2302;
539 (m) Section 605.2303(1) or (2);
540 (n) Section 605.2304(3) or (6);
541 (o) Section 605.2401, except to decrease or eliminate a
542 limitation of liability stated in that section;
543 (p) Section 605.2402;
544 (q) Section 605.2403;
545 (r) Section 605.2404;
546 (s) Section 605.2501(1), (4), and (5);
547 (t) Section 605.2502, except to designate a different
548 person to manage winding up;
549 (u) Section 605.2503;
550 (v) Sections 605.2601-605.2608;

551 (w) Sections 605.2701-605.2704;
552 (x) Sections 605.2801-605.2802, except to vary the person
553 that has the right to sign and deliver to the department for
554 filing a record under this chapter; or
555 (y) A provision of this chapter pertaining to:
556 1. A registered office or registered agents; or
557 2. The department, including provisions relating to
558 records authorized or required to be delivered to the department
559 for filing under this chapter.
560 (2) An operating agreement may not unreasonably restrict
561 the duties and rights conferred under s. 605.2305 but may impose
562 reasonable restrictions on the availability and use of
563 information obtained under that section and may provide
564 appropriate remedies, including liquidated damages, for a breach
565 of any reasonable restriction on use.
566 Section 12. Section 605.2108, Florida Statutes, is created
567 to read:
568 605.2108 Application of this chapter to protected series.—
569 (1) Except as otherwise provided in subsection (2) and s.
570 605.2107, the following provisions apply in the application of
571 ss. 605.2106, 605.2304(3) and (6), 605.2501(4)(a), 605.2502(1),
572 and 605.2503(2):
573 (a) A protected series of a series limited liability
574 company is deemed to be a limited liability company that is
575 formed separately from the series limited liability company and

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576 is distinct from the series limited liability company and any
577 other protected series of the series limited liability company;
578 (b) An associated member of the protected series of a
579 series limited liability company is deemed to be a member of the
580 series limited liability company deemed to exist under paragraph
581 (a);
582 (c) A protected-series transferee of the protected series
583 is deemed to be a transferee of the series limited liability
584 company deemed to exist under paragraph (a);
585 (d) A protected-series transferable interest of the
586 protected series is deemed to be a transferable interest of the
587 series limited liability company deemed to exist under paragraph
588 (a);
589 (e) A protected-series manager is deemed to be a manager
590 of the series limited liability company deemed to exist under
591 paragraph (a);
592 (f) An asset of the protected series is deemed to be an
593 asset of the series limited liability company deemed to exist
594 under paragraph (a), regardless of whether the asset is an
595 associated asset of the protected series; or
596 (g) Any creditor or other obligee of the protected series
597 is deemed to be a creditor or obligee of the series limited
598 liability company deemed to exist under paragraph (a).
599 (2) Subsection (1) does not apply if its application would
600 do either of the following:

601 (a) Contravene s. 605.0105; or
602 (b) Authorize or require the department to:
603 1. Accept for filing a type of record which this chapter
604 does not authorize or require a person to deliver to the
605 department for filing; or
606 2. Make or deliver a record that this chapter does not
607 authorize or require the department to make or deliver.
608 (3) Except to the extent otherwise specified in ss.
609 605.2101-605.2802, the provisions of this chapter applicable to
610 limited liability companies in general and their managers,
611 members, and transferees, including, but not limited to,
612 provisions relating to formation, powers, operation, existence,
613 management, court proceedings, and filings with the department
614 and other state or local government agencies, are applicable to
615 each series limited liability company and to each protected
616 series established pursuant to s. 605.2201.
617 Section 13. Section 605.2201, Florida Statutes, is created
618 to read:
619 605.2201 Establishment of protected series; change of
620 designation.—
621 (1) With the affirmative vote or consent of all members of
622 a limited liability company, the company may establish a
623 protected series.
624 (2) To establish a protected series, a limited liability
625 company shall deliver to the department for filing a protected

626 series designation, signed by the company, stating the name of
627 the company and the name of the protected series to be
628 established, and any other information the department requires
629 for filing.
630 (3) A protected series is established when the protected
631 series designation takes effect under s. 605.0207.
632 (4) To amend a protected series designation, a series
633 limited liability company shall deliver to the department for
634 filing a statement of designation change, signed by the company,
635 that sets forth the following:
636 (a) The name of the series limited liability company and
637 the name of the protected series to which the change to the
638 protected series designation applies;
639 (b) Each change to the protected series designation; and
640 (c) A statement that each designation change was approved
641 by the affirmative vote or consent of the members of the series
642 limited liability company required to make each change to the
643 protected series designation.
644 (5) Each designation change made pursuant to subsection
645 (4) takes effect when the statement of designation change takes
646 effect under s. 605.0207.
647 Section 14. Section 605.2202, Florida Statutes, is created
648 to read:
649 605.2202 Protected series name.—
650 (1) Except as otherwise provided in subsection (2), the

651 name of a protected series must comply with s. 605.0112.
652 (2) The name of a protected series of a series limited
653 liability company must:
654 (a) Begin with the name of the series limited liability
655 company, including any word or abbreviation required by s.
656 605.0112; and
657 (b) Contain the phrase "protected series" or the
658 abbreviation "P.S." or "PS."
659 (3) If a series limited liability company changes its
660 name, the company must deliver to the department for filing a
661 statement of designation change for each of the company's
662 protected series, changing the name of each protected series to
663 comply with this section.
664 Section 15. Section 605.2203, Florida Statutes, is created
665 to read:
666 605.2203 Registered agent.—
667 (1) The registered agent in this state for a series
668 limited liability company is the registered agent in this state
669 for each protected series of that company.
670 (2) Before delivering a protected series designation to
671 the department for filing, a series limited liability company
672 must agree with a registered agent specifying that the agent
673 will serve as the registered agent in this state for that
674 company and for each protected series of that company.
675 (3) A person that signs a protected series designation

676 delivered to the department for filing affirms as a fact that
677 the series limited liability company on whose behalf the
678 designation is delivered has complied with subsection (2).
679 (4) A person that ceases to be the registered agent for a
680 series limited liability company ceases to be the registered
681 agent for each protected series of that company.
682 (5) A person that ceases to be the registered agent for a
683 protected series of a series limited liability company, other
684 than as a result of the termination of the protected series,
685 ceases to be the registered agent of that company and any other
686 protected series of that company.
687 (6) Except as otherwise agreed upon by a series limited
688 liability company and its registered agent, the registered agent
689 is not obligated to distinguish between a process, notice,
690 demand, or other record concerning the company and a process,
691 notice, demand, or other record concerning a protected series of
692 the company.
693 Section 16. Section 605.2204, Florida Statutes, is created
694 to read:
695 605.2204 Series limited liability company; service of
696 process; giving notice or making demand.—
697 (1) Process against a series limited liability company, a
698 protected series of a series limited liability company, a
699 registered foreign series limited liability company, or a
700 registered foreign protected series of a registered foreign

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701 series limited liability company, respectively, may be served in
702 the same manner as service is made on each such entity under s.
703 48.062 and chapter 48 or chapter 49.
704 (2) Any notice or demand on a series limited liability
705 company or a protected series of a series limited liability
706 company under this chapter may be given or made to any member of
707 a member-managed series limited liability company or to any
708 manager of a manager-managed series limited liability company;
709 to the registered agent of a series limited liability company at
710 the registered office of the series limited liability company in
711 this state; or to any other address in this state which is the
712 principal office in this state of the series limited liability
713 company.
714 (3) Any notice or demand on a registered foreign series
715 limited liability company or a registered foreign protected
716 series of a registered foreign series limited liability company
717 under this chapter may be given or made to any member of a
718 member-managed foreign series limited liability company or to
719 any manager of a manager-managed foreign series limited
720 liability company; to the registered agent of the registered
721 foreign series limited liability company at the registered
722 office of the registered foreign series limited liability
723 company in this state; or to the principal office address, or
724 any other address in this state which is, in fact, the principal
725 office in this state of the registered foreign series limited

726 liability company.

727 (4) This section does not affect the right to serve
728 process on, give notice to, or make a demand on a series limited
729 liability company or any protected series of a series limited
730 liability company, or to or on any foreign series limited
731 liability company or any protected series of the foreign series
732 limited liability company, in any other manner provided by law.

733 Section 17. Section 605.2205, Florida Statutes, is created
734 to read:

735 605.2205 Certificate of status for domestic or foreign
736 protected series.—

737 (1) The department, upon request, payment of the requisite
738 fee, and compliance with any other filing requirements of the
739 department, shall issue a certificate of status for a protected
740 series of a series limited liability company if the records
741 filed in the department show that the department has accepted
742 and filed articles of organization for the series limited
743 liability company and a protected series designation for the
744 protected series. A certificate of status for a protected series
745 of a series limited liability company must state all of the
746 following:

747 (a) The series limited liability company's name.

748 (b) The name of the protected series.

749 (c) That the series limited liability company was
750 organized under the laws of this state and the date of

751 organization.
752 (d) That the protected series was designated under the
753 laws of this state and the date of designation.
754 (e) Whether all fees and penalties due to the department
755 under this chapter or other law by the series limited liability
756 company and the protected series have been paid.
757 (f) Whether the series limited liability company's most
758 recent annual report required by s. 605.0212 has been filed by
759 the department.
760 (g) Whether the series limited liability company's most
761 recent annual report includes the name of the protected series,
762 unless:
763 1. When the series limited liability company delivered the
764 annual report for filing, the protected series designation
765 pertaining to the protected series had not yet taken effect; or
766 2. After the series limited liability company delivered
767 the annual report for filing, the company delivered to the
768 department for filing a statement of designation change, which
769 changes the name of the protected series.
770 (h) Whether the department has administratively dissolved
771 the series limited liability company or received a record
772 notifying the department that the company has been dissolved by
773 judicial action pursuant to s. 605.0705.
774 (i) Whether the department has administratively dissolved
775 the protected series or received a record notifying the

776 department that the protected series has been dissolved by
777 judicial action pursuant to s. 605.2501(4) or (5).
778 (j) Whether the department has filed articles of
779 dissolution for the series limited liability company.
780 (k) Whether the department has filed a statement of
781 dissolution, termination, or relocation for the protected
782 series.
783 (2) The department, upon request, payment of the requisite
784 fee, and compliance with any other filing requirements of the
785 department, shall issue a certificate of status for a foreign
786 protected series of a foreign series limited liability company
787 if the records filed in the department show that the department
788 has filed a certificate of authority for the foreign series
789 limited liability company and a certificate of authority for the
790 foreign protected series. A certificate of status for a
791 registered foreign protected series of a registered foreign
792 series limited liability company must state all of the
793 following:
794 (a) The foreign series limited liability company's name
795 and any current alternative name adopted under s. 605.0906(1)
796 for use in this state.
797 (b) The name of the foreign protected series and any
798 current alternative name adopted under s. 605.0906(1) for use in
799 this state.
800 (c) That the foreign series limited liability company is

801 authorized to transact business in this state.
802 (d) That the foreign protected series is authorized to
803 transact business in this state.
804 (e) Whether all fees and penalties due to the department
805 under this chapter or other law by the foreign series limited
806 liability company and the foreign protected series have been
807 paid.
808 (f) Whether the foreign series limited liability company's
809 most recent annual report required by s. 605.0212 has been filed
810 by the department.
811 (g) Whether the foreign series limited liability company's
812 most recent annual report includes the name of the foreign
813 protected series, unless:
814 1. When the foreign series limited liability company
815 delivered the annual report for filing, the foreign protected
816 series designation pertaining to the foreign protected series
817 had not yet taken effect; or
818 2. After the foreign series limited liability company
819 delivered the annual report for filing, the foreign series
820 limited liability company delivered to the department for filing
821 a statement of designation change which changes the name of the
822 foreign protected series.
823 (h) Whether the department has:
824 1. Revoked the foreign series limited liability company's
825 certificate of authority or revoked the foreign protected series

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826 certificate of authority; or
827 2. Filed a notice of withdrawal of the certificate of
828 authority for the foreign series limited liability company or
829 for the foreign protected series.
830 (3) Subject to any qualification stated by the department
831 in a certificate of status, a certificate of status issued by
832 the department may be relied upon as conclusive evidence of the
833 facts stated in the certificate of status as to the active
834 status of the domestic or foreign series limited liability
835 company and any protected series of the domestic or foreign
836 limited liability company authorized to transact business in
837 this state.
838 Section 18. Section 605.2206, Florida Statutes, is created
839 to read:
840 605.2206 Information required in annual report; failure to
841 comply.—
842 (1) In the annual report required by s. 605.0212, a series
843 limited liability company shall include the name of each
844 protected series of the company:
845 (a) For which the series limited liability company has
846 previously delivered to the department for filing a protected
847 series designation; and
848 (b) Which has not dissolved and completed winding up.
849 (2) The failure of a series limited liability company to
850 comply with subsection (1) with regard to a protected series

851 prevents issuance of a certificate of status pertaining to the
852 protected series, but does not otherwise affect the protected
853 series.
854 (3) In the annual report required by s. 605.0212, a
855 registered foreign series limited liability company shall
856 include the name of each registered foreign protected series of
857 the registered foreign series limited liability company:
858 (a) For which the registered foreign series limited
859 liability company has previously delivered to the department for
860 filing an application for a certificate of authority to transact
861 business in this state, which has been accepted by the
862 department; and
863 (b) Which has not withdrawn its certificate of authority
864 to transact business in this state.
865 (4) The failure of a registered foreign series limited
866 liability company to comply with subsection (3) with regard to a
867 registered foreign protected series prevents issuance of a
868 certificate of status pertaining to the registered foreign
869 protected series.
870 Section 19. Section 605.2301, Florida Statutes, is created
871 to read:
872 605.2301 Associated asset.—
873 (1) Only an asset of a protected series may be an
874 associated asset of the protected series. Only an asset of a
875 series limited liability company may be an associated asset of

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876 the company.
877 (2)(a) An asset of a protected series of a series limited
878 liability company is an associated asset of the protected series
879 only if the protected series creates and maintains records that
880 state the name of the protected series and describe the asset
881 with sufficient specificity to permit a disinterested,
882 reasonable individual to:
883 1. Identify the asset and distinguish it from any other
884 asset of the protected series, any asset of the series limited
885 liability company, and any asset of any other protected series
886 of the company;
887 2. Determine when and from which person the protected
888 series acquired the asset or how the asset otherwise became an
889 asset of the protected series; and
890 3. If the protected series acquired the asset from the
891 series limited liability company or another protected series of
892 the company, determine any consideration paid, the payor, and
893 the payee.
894 (b) A deed or other instrument granting an interest in
895 real property to or from one or more protected series of a
896 series limited liability company, or any other instrument
897 otherwise affecting an interest in real property held by one or
898 more protected series of a series limited liability company, in
899 each case to the extent such deed or other instrument is in
900 favor of a person who gives value without knowledge of the lack

901 of authority of the person signing and delivering a deed or
902 other instrument and is recorded in the office for recording
903 transfers or other matters affecting real property, is
904 conclusive of the authority of the person signing and
905 constitutes a record that such interest in real property is an
906 associated asset or liability, as applicable, of the protected
907 series.
908 (3)(a) An asset of a series limited liability company is
909 an associated asset of the company only if the company creates
910 and maintains records that state the name of the company and
911 describe the asset with sufficient specificity to permit a
912 disinterested, reasonable individual to:
913 1. Identify the asset and distinguish it from any other
914 asset of the series limited liability company and any asset of
915 any protected series of the company;
916 2. Determine when and from which person the series limited
917 liability company acquired the asset or how the asset otherwise
918 became an asset of the company; and
919 3. If the series limited liability company acquired the
920 asset from a protected series of the company, determine any
921 consideration paid, the payor, and the payee.
922 (b) A deed or other instrument granting an interest in
923 real property to or from a series limited liability company, or
924 any other instrument otherwise affecting an interest in real
925 property held by a series limited liability company, in each

926 case to the extent such deed or other instrument is in favor of
927 a person who gives value without knowledge of the lack of
928 authority of the person signing and delivering a deed or other
929 instrument and is recorded in the office for recording transfers
930 or other matters affecting real property, is conclusive of the
931 authority of the person signing and constitutes a record that
932 such interest in real property is an associated asset or
933 liability, as applicable, of the series limited liability
934 company.
935 (4) The records and recordkeeping required by subsections
936 (2) and (3) may be organized by specific listing, category,
937 type, quantity, or computational or allocative formula or
938 procedure, including a percentage or share of any asset, or in
939 any other reasonable manner.
940 (5) To the extent authorized by this chapter and the laws
941 of this state other than this chapter, a series limited
942 liability company or protected series of a series limited
943 liability company may hold an associated asset directly or
944 indirectly, through a representative, nominee, or similar
945 arrangement, except for the following:
946 (a) A protected series may not hold an associated asset in
947 the name of the series limited liability company or another
948 protected series of the company; and
949 (b) A series limited liability company may not hold an
950 associated asset in the name of a protected series of the

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951 company.
952 Section 20. Section 605.2302, Florida Statutes, is created
953 to read:
954 605.2302 Associated member.—
955 (1) Only a member of a series limited liability company
956 may be an associated member of a protected series of the
957 company.
958 (2) A member of a series limited liability company becomes
959 an associated member of a protected series of the company if the
960 operating agreement or a procedure established by the operating
961 agreement states all of the following:
962 (a) That the member is an associated member of the
963 protected series.
964 (b) The date on which the member became an associated
965 member of the protected series.
966 (c) Any protected-series transferable interest the
967 associated member has in connection with becoming or being an
968 associated member of the protected series.
969 (3) If a person that is an associated member of a
970 protected series of a series limited liability company is
971 dissociated from the company, the person ceases to be an
972 associated member of the protected series.
973 Section 21. Section 605.2303, Florida Statutes, is created
974 to read:
975 605.2303 Protected-series transferable interest.—

976 (1) A protected-series transferable interest of a
977 protected series of a series limited liability company must be
978 owned initially by an associated member of the protected series
979 or the series limited liability company.
980 (2) If a protected series of a series limited liability
981 company has no associated members when established, the company
982 owns the protected-series transferable interests in the
983 protected series.
984 (3) In addition to acquiring a protected-series
985 transferable series interest under subsection (2), a series
986 limited liability company may acquire a protected-series
987 transferable interest through a transfer from another person or
988 as provided in the operating agreement.
989 (4) Except for s. 605.2108(1)(c), any provision of this
990 chapter which applies to a protected-series transferee of a
991 protected series of a series limited liability company applies
992 to the company in its capacity as an owner of a protected-series
993 transferable interest of the protected series. Any provision of
994 the operating agreement of a series limited liability company
995 which applies to a protected-series transferee of a protected
996 series of the company applies to the company in its capacity as
997 an owner of a protected-series transferable interest of the
998 protected series.
999 Section 22. Section 605.2304, Florida Statutes, is created
1000 to read:

1001 605.2304 Management.—
1002 (1) A protected series may have one or more protected-
1003 series managers.
1004 (2) If a protected series has no associated members, the
1005 series limited liability company is the protected-series
1006 manager.
1007 (3) Section 605.2108 applies to the determination of any
1008 duties of a protected-series manager of a protected series to
1009 each of the following:
1010 (a) The protected series.
1011 (b) Any associated member of the protected series.
1012 (c) Any protected-series transferee of the protected
1013 series.
1014 (4) Solely by reason of being or acting as a protected-
1015 series manager of a protected series, a person owes no duty to
1016 any of the following:
1017 (a) The series limited liability company.
1018 (b) Another protected series of the series limited
1019 liability company.
1020 (c) Another person in that person's capacity as:
1021 1. A member of the series limited liability company which
1022 is not an associated member of the protected series;
1023 2. A protected-series transferee or protected-series
1024 manager of another protected series; or
1025 3. A transferee of the series limited liability company.

1026 (5) An associated member of a protected series of a series
1027 limited liability company has the same rights as any other
1028 member of the company to vote on or consent to an amendment to
1029 the company's operating agreement or any other matter being
1030 decided by the members, regardless of whether the amendment or
1031 matter affects the interests of the protected series or the
1032 associated member.
1033 (6) The right of a member to maintain a derivative action
1034 to enforce a right of a limited liability company pursuant to s.
1035 605.0802 applies to each of the following:
1036 (a) An associated member of a protected series, in
1037 accordance with s. 605.2108.
1038 (b) A member of a series limited liability company, in
1039 accordance with s. 605.2108.
1040 (7) An associated member of a member-managed protected
1041 series is an agent for the protected series with power to bind
1042 the protected series to the same extent that a member of a
1043 member-managed limited liability company is an agent for the
1044 company with power to bind the company under s. 605.04074(1)(a).
1045 A protected-series manager of a manager-managed protected series
1046 is an agent for the protected series with power to bind the
1047 protected series to the same extent that a manager of a manager-
1048 managed limited liability company is an agent for the company
1049 with power to bind the company under s. 605.04074(2)(b).
1050 Section 23. Section 605.2305, Florida Statutes, is created

1051 to read:

1052 605.2305 Right of a person that is not an associated
1053 member of a protected series to information of a protected
1054 series.—

1055 (1) A member of a series limited liability company which
1056 is not an associated member of a protected series of the company
1057 has a right to information concerning the protected series to
1058 the same extent, in the same manner, and under the same
1059 conditions that a member that is not a manager of a manager-
1060 managed limited liability company has a right to information of
1061 the company under s. 605.0410(1) and (3)(b).

1062 (2) A person that was formerly an associated member of a
1063 protected series has a right to information concerning the
1064 protected series to the same extent, in the same manner, and
1065 under the same conditions that a person dissociated as a member
1066 of a manager-managed limited liability company has a right to
1067 information concerning the limited liability company under s.
1068 605.0410(4) or other applicable law.

1069 (3) If an associated member of a protected series dies,
1070 the legal representative of the deceased associated member has a
1071 right to information concerning the protected series to the same
1072 extent, in the same manner, and under the same conditions that
1073 the legal representative of a deceased member of a limited
1074 liability company has a right to information concerning the
1075 company under ss. 605.0410(9) and 605.0504.

1076 (4) A protected-series manager of a protected series has a
1077 right to information concerning the protected series to the same
1078 extent, in the same manner, and under the same conditions that a
1079 manager of a manager-managed limited liability company has a
1080 right to information concerning the company under s.
1081 605.0410(3)(a).
1082 (5) The court-ordered inspection provisions of s. 605.0411
1083 apply to the information rights regarding series limited
1084 liability companies and protected series of such companies.
1085 Section 24. Section 605.2401, Florida Statutes, is created
1086 to read:
1087 605.2401 Limitations on liability.—
1088 (1) A person is not liable, directly or indirectly, by way
1089 of contribution or otherwise, for a debt, an obligation, or
1090 another liability of either of the following:
1091 (a) A protected series of a series limited liability
1092 company solely by reason of being or acting as:
1093 1. An associated member, protected-series manager, or
1094 protected-series transferee of the protected series; or
1095 2. A member, manager, or transferee of the company; or
1096 (b) A series limited liability company solely by reason of
1097 being or acting as an associated member, protected-series
1098 manager, or protected-series transferee of a protected series of
1099 the company.
1100 (2) Subject to s. 605.2404, the following apply:

1101 (a) A debt, an obligation, or another liability of a
1102 series limited liability company is solely the debt, obligation,
1103 or liability of the company.
1104 (b) A debt, an obligation, or another liability of a
1105 protected series is solely the debt, obligation, or liability of
1106 the protected series.
1107 (c) A series limited liability company is not liable,
1108 directly or indirectly, by way of contribution or otherwise, for
1109 a debt, an obligation, or another liability of a protected
1110 series of the company solely by reason of the protected series
1111 being a protected series of the company, or the series limited
1112 liability company:
1113 1. Being or acting as a protected-series manager of the
1114 protected series;
1115 2. Having the protected series manage the series limited
1116 liability company; or
1117 3. Owning a protected-series transferable interest of the
1118 protected series.
1119 (d) A protected series of a series limited liability
1120 company is not liable, directly or indirectly, by way of
1121 contribution or otherwise, for a debt, an obligation, or another
1122 liability of the company or another protected series of the
1123 company solely by reason of:
1124 1. Being a protected series of the series limited
1125 liability company;

1126 2. Being or acting as a manager of the series limited
1127 liability company or a protected-series manager of another
1128 protected series of the company; or
1129 3. Having the series limited liability company or another
1130 protected series of the company be or act as a protected-series
1131 manager of the protected series.
1132 Section 25. Section 605.2402, Florida Statutes, is created
1133 to read:
1134 605.2402 Claim seeking to disregard limitation of
1135 liability.—
1136 (1) Except as otherwise provided in subsection (2), a
1137 claim seeking to disregard a limitation in s. 605.2401 is
1138 governed by the principles of law and equity, including a
1139 principle providing a right to a creditor or holding a person
1140 liable for a debt, an obligation, or another liability of
1141 another person, which would apply if each protected series of a
1142 series limited liability company were a limited liability
1143 company formed separately from the series limited liability
1144 company and distinct from the series limited liability company
1145 and any other protected series of the series limited liability
1146 company.
1147 (2) The failure of a limited liability company or a
1148 protected series to observe formalities relating to the exercise
1149 of its powers or management of its activities and affairs is not
1150 a ground to disregard a limitation in s. 605.2401(1) but may be

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1151 a ground to disregard a limitation in s. 605.2401(2).
1152 (3) This section applies to a claim seeking to disregard a
1153 limitation of liability applicable to a foreign series limited
1154 liability company or foreign protected series and comparable to
1155 a limitation stated in s. 605.2401, if either of the following
1156 applies:
1157 (a) The claimant is a resident of this state, transacting
1158 business in this state, or authorized to transact business in
1159 this state; or
1160 (b) The claim is to establish or enforce a liability
1161 arising under law of this state other than this chapter or from
1162 an act or omission in this state.
1163 Section 26. Section 605.2403, Florida Statutes, is created
1164 to read:
1165 605.2403 Remedies of judgment creditor of associated
1166 member or protected-series transferee.—The provisions of s.
1167 605.0503 providing or restricting remedies available to a
1168 judgment creditor of a member or transferee of a limited
1169 liability company apply to a judgment creditor of either or both
1170 of the following:
1171 (1) An associated member or a protected-series transferee
1172 of a protected series.
1173 (2) A series limited liability company, to the extent the
1174 company owns a protected-series transferable interest of a
1175 protected series.

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1176 Section 27. Section 605.2404, Florida Statutes, is created
1177 to read:
1178 605.2404 Enforcement of claim against non-associated
1179 asset.—
1180 (1) For the purposes of this section, the term:
1181 (a) "Enforcement date" means 12:01 a.m. on the date on
1182 which a claimant first serves process on a series limited
1183 liability company or protected series in an action seeking to
1184 enforce a claim against an asset of the company or protected
1185 series by attachment, levy, or similar means under this section.
1186 (b) "Incurrence date," subject to s. 605.2608(2), means
1187 the date on which a series limited liability company or
1188 protected series of the company incurred the liability giving
1189 rise to a claim that a claimant seeks to enforce under this
1190 section.
1191 (2) If a claim against a series limited liability company
1192 or a protected series of the company has been reduced to
1193 judgment, in addition to any other remedy provided by law or
1194 equity, the judgment may be enforced in accordance with the
1195 following:
1196 (a) A judgment against the series limited liability
1197 company may be enforced against an asset of a protected series
1198 of the company if the asset:
1199 1. Was a non-associated asset of the protected series on
1200 the incurrence date; or

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1201 2. Is a non-associated asset of the protected series on
1202 the enforcement date.
1203 (b) A judgment against a protected series may be enforced
1204 against an asset of the series limited liability company if the
1205 asset:
1206 1. Was a non-associated asset of the series limited
1207 liability company on the incurrence date; or
1208 2. Is a non-associated asset of the series limited
1209 liability company on the enforcement date.
1210 (c) A judgment against a protected series may be enforced
1211 against an asset of another protected series of the series
1212 limited liability company if the asset:
1213 1. Was a non-associated asset of the other protected
1214 series on the incurrence date; or
1215 2. Is a non-associated asset of the other protected series
1216 on the enforcement date.
1217 (3) In addition to any other remedy provided by law or
1218 equity, if a claim against a series limited liability company or
1219 a protected series has not been reduced to a judgment, and law
1220 other than this chapter permits a prejudgment remedy by
1221 attachment, levy, or similar means, the court may apply
1222 subsection (2) as a prejudgment remedy.
1223 (4) In a proceeding under this section, the party
1224 asserting that an asset is or was an associated asset of a
1225 series limited liability company or a protected series of the

1226 series limited liability company has the burden of proof on the
1227 issue.
1228 (5) This section applies to an asset of a foreign series
1229 limited liability company or foreign protected series if all of
1230 the following apply:
1231 (a) The asset is real or tangible property located in this
1232 state.
1233 (b) The claimant is a resident of this state or
1234 transacting business or authorized to transact business in this
1235 state, or the claim under this section is to enforce a judgment,
1236 or to seek a prejudgment remedy, pertaining to a liability
1237 arising from the law of this state other than this chapter or an
1238 act or omission in this state.
1239 (c) The asset is not identified in the records of the
1240 foreign series limited liability company or foreign protected
1241 series in a manner comparable to the manner required by s.
1242 605.2301.
1243 Section 28. Section 605.2501, Florida Statutes, is created
1244 to read:
1245 605.2501 Events causing dissolution of protected series.—A
1246 protected series of a series limited liability company is
1247 dissolved, and its activities and affairs must be wound up, upon
1248 the occurrence of any of the following:
1249 (1) Dissolution of the series limited liability company.
1250 (2) Occurrence of an event or a circumstance that the

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1251 operating agreement states causes dissolution of the protected
1252 series.
1253 (3) Affirmative vote or consent of all associated members
1254 of the protected series.
1255 (4) Entry by the court of an order dissolving the
1256 protected series on application by an associated member or a
1257 protected-series manager of the protected series:
1258 (a) In accordance with s. 605.2108; and
1259 (b) To the same extent, in the same manner, and on the
1260 same grounds the court would enter an order dissolving a limited
1261 liability company on application by a member or manager of the
1262 limited liability company pursuant to s. 605.0702.
1263 (5) Entry by the court of an order dissolving the
1264 protected series on application by the series limited liability
1265 company or a member or manager of the series limited liability
1266 company:
1267 (a) In accordance with s. 605.2108; and
1268 (b) To the same extent, in the same manner, and on the
1269 same grounds the court would enter an order dissolving a limited
1270 liability company on application by a member or manager of the
1271 limited liability company pursuant to s. 605.0702.
1272 (6) Automatic or involuntary dissolution of the series
1273 limited liability company that established the protected series.
1274 (7) The filing of a statement of administrative
1275 dissolution of the limited liability company or a protected

1276 series of the company by the department pursuant to s. 605.0714.
1277 Section 29. Section 605.2502, Florida Statutes, is created
1278 to read:
1279 605.2502 Winding up dissolved protected series.—
1280 (1) Subject to subsections (2) and (3) and in accordance
1281 with s. 605.2108, the following apply:
1282 (a) A dissolved protected series shall wind up its
1283 activities and affairs in the same manner that a dissolved
1284 limited liability company winds up its activities and affairs
1285 under s. 605.0709, subject to the same requirements and
1286 conditions, and with the same effects.
1287 (b) Judicial supervision or another judicial remedy is
1288 available in the winding up of the protected series to the same
1289 extent, in the same manner, under the same conditions, and with
1290 the same effects that apply under s. 605.0709(5).
1291 (2) When a protected series of a series limited liability
1292 company dissolves, the company may deliver to the department for
1293 filing its articles of protected series dissolution stating the
1294 name of the series limited liability company and the protected
1295 series and that the protected series is dissolved. The filing of
1296 the articles of dissolution by the department has the same
1297 effect with regard to the protected series as the filing by a
1298 limited liability company of articles of dissolution with the
1299 department under s. 605.0707.
1300 (3) When a protected series of a series limited liability

1301 company has completed winding up in accordance with s. 605.0709,
1302 the company that established the protected series may deliver to
1303 the department for filing a statement of designation
1304 cancellation, stating all of the following:
1305 (a) The name of the company and the protected series.
1306 (b) That the protected series is terminated with the
1307 effective date of the termination if that date is not the date
1308 of filing of the statement of designation cancellation.
1309 (c) Any other information required by the department.
1310 (4) The filing of the statement of designation
1311 cancellation by the department has the same effect as the filing
1312 by the department of a statement of termination under s.
1313 605.0709(7).
1314 (5) A series limited liability company has not completed
1315 its winding up until each of the protected series of the company
1316 has completed its winding up.
1317 Section 30. Section 605.2503, Florida Statutes, is created
1318 to read:
1319 605.2503 Effects of reinstatement of series limited
1320 liability company; revocation of voluntary dissolution.—If a
1321 series limited liability company that has been administratively
1322 dissolved is reinstated, or if a series limited liability
1323 company that voluntarily dissolved revokes its articles of
1324 dissolution before filing a statement of termination, both of
1325 the following apply:

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1326 (1) Each protected series of the series limited liability
1327 company ceases winding up.
1328 (2) Section 605.0708 applies to the series limited
1329 liability company and to each protected series of the company,
1330 in accordance with s. 605.2108.
1331 Section 31. Section 605.2601, Florida Statutes, is created
1332 to read:
1333 605.2601 Entity transactions involving a series limited
1334 liability company or a protected series of the company
1335 restricted; definitions.—As used in ss. 605.2601-605.2608, the
1336 term:
1337 (1) "After a merger" or "after the merger" means when a
1338 merger under s. 605.2604 becomes effective and any time
1339 thereafter.
1340 (2) "Before a merger" or "before the merger" means before
1341 a merger under s. 605.2604 becomes effective.
1342 (3) "Continuing protected series" means a protected series
1343 of a surviving series limited liability company which continues
1344 in uninterrupted existence after a merger under s. 605.2604.
1345 (4) "Merging company" means a limited liability company
1346 that is party to a merger under s. 605.2604.
1347 (5) "Non-surviving company" means a merging company that
1348 does not continue in existence after a merger under s. 605.2604.
1349 (6) "Relocated protected series" means a protected series
1350 of a non-surviving company which, after a merger under s.

1351 605.2604, continues in uninterrupted existence as a protected
1352 series of the surviving company.
1353 (7) "Surviving company" means a merging company that
1354 continues in existence after a merger under s. 605.2604.
1355 Section 32. Section 605.2602, Florida Statutes, is created
1356 to read:
1357 605.2602 Restrictions on entity transactions involving
1358 protected series.—Except as provided in ss. 605.2605(2),
1359 605.2606(2), and 605.2607(1), a protected series may not be a
1360 party to; be formed, organized, established, or created in; or
1361 result from either of the following:
1362 (1) A conversion, domestication, interest exchange, or
1363 merger under this chapter or the law of a foreign jurisdiction,
1364 however the transaction is denominated under such law; or
1365 (2) A transaction with the same substantive effect as a
1366 conversion, domestication, interest exchange, or merger.
1367 Section 33. Section 605.2603, Florida Statutes, is created
1368 to read:
1369 605.2603 Restrictions on entity transactions involving
1370 series limited liability company.—A series limited liability
1371 company may not be:
1372 (1) A party to, formed, organized, created in, or result
1373 from either of the following:
1374 (a) A conversion, domestication, or interest exchange,
1375 under this chapter or the law of a foreign jurisdiction, however

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1376 the transaction is denominated under such law; or
1377 (b) A transaction with the same substantive effect as a
1378 conversion, domestication, or interest exchange.
1379 (2) Except as otherwise provided in s. 605.2604, a party
1380 to or the surviving company of either of the following:
1381 (a) A merger under this chapter or the law of a foreign
1382 jurisdiction, however a merger is denominated under such law; or
1383 (b) A transaction with the same substantive effect as a
1384 merger.
1385 Section 34. Section 605.2604, Florida Statutes, is created
1386 to read:
1387 605.2604 Restrictions on merger.—A series limited
1388 liability company may be a party to a merger in accordance with
1389 ss. 605.1021-605.1026, this section, and ss. 605.2605-605.2608
1390 only if both of the following apply:
1391 (1) Each other party to the merger is a limited liability
1392 company.
1393 (2) The surviving company is not created in the merger.
1394 Section 35. Section 605.2605, Florida Statutes, is created
1395 to read:
1396 605.2605 Plan of merger.—In a merger under s. 605.2604,
1397 the plan of merger must do all of the following:
1398 (1) Comply with s. 605.1022 relating to the contents of a
1399 plan of merger of a limited liability company.
1400 (2) State in a record:

1401 (a) For any protected series of a non-surviving company,
1402 whether, after the merger, the protected series will be a
1403 relocated protected series or be dissolved, wound up, and
1404 terminated.
1405 (b) For any protected series of the surviving company
1406 which exists before the merger, whether, after the merger, the
1407 protected series will be a continuing protected series or be
1408 dissolved, wound up, and terminated.
1409 (c) For each relocated protected series or continuing
1410 protected series:
1411 1. The name of any person that becomes an associated
1412 member or a protected-series transferee of the protected series
1413 after the merger, any consideration to be paid by, on behalf of,
1414 or in respect of the person, the name of the payor, and the name
1415 of the payee;
1416 2. The name of any person which rights or obligations in
1417 the person's capacity as an associated member or a protected-
1418 series transferee will change after the merger;
1419 3. Any consideration to be paid to a person that before
1420 the merger was an associated member or a protected-series
1421 transferee of the protected series and the name of the payor;
1422 and
1423 4. If, after the merger, the protected series will be a
1424 relocated protected series, its new name.
1425 (d) For any protected series to be established by the

1426 surviving company as a result of the merger:
1427 1. The name of the protected series and the address of its
1428 principal office;
1429 2. Any protected-series transferable interest to be owned
1430 by the surviving company when the protected series is
1431 established; and
1432 3. The name of and any protected-series transferable
1433 interest owned by any person that will be an associated member
1434 of the protected series when the protected series is
1435 established.
1436 (e) For any person that is an associated member of a
1437 relocated protected series and will remain a member after the
1438 merger, any amendment to the operating agreement of the
1439 surviving limited liability company which:
1440 1. Is or is proposed to be in a record; and
1441 2. Is necessary or appropriate to state the rights and
1442 obligations of the person as a member of the surviving limited
1443 liability company.
1444 Section 36. Section 605.2606, Florida Statutes, is created
1445 to read:
1446 605.2606 Articles of merger.—In a merger under s.
1447 605.2604, the articles of merger must do all of the following:
1448 (1) Comply with s. 605.1025 relating to the articles of
1449 merger.
1450 (2) Include as an attachment all of the following records,

1451 each to become effective when the merger becomes effective:
1452 (a) For a protected series of a merging company being
1453 terminated as a result of the merger, a statement of designation
1454 cancellation and termination signed by the non-surviving merging
1455 company.
1456 (b) For a protected series of a non-surviving company
1457 which after the merger will be a relocated protected series:
1458 1. A statement of relocation signed by the non-surviving
1459 company which contains the name of the series limited liability
1460 company and the name of the protected series before and after
1461 the merger; and
1462 2. A statement of protected series designation signed by
1463 the surviving company.
1464 (c) For a protected series being established by the
1465 surviving company as a result of the merger, a protected series
1466 designation signed by the surviving company.
1467 Section 37. Section 605.2607, Florida Statutes, is created
1468 to read:
1469 605.2607 Effect of merger.—When a merger of a protected
1470 series under s. 605.2604 becomes effective, in addition to the
1471 effects stated in s. 605.1026, all of the following apply:
1472 (1) As provided in the plan of merger, each protected
1473 series of each merging series limited liability company which
1474 was established before the merger is either a relocated
1475 protected series or continuing protected series, or is

1476 dissolved, wound up, and terminated.
1477 (2) Any protected series to be established as a result of
1478 the merger is established.
1479 (3) Any relocated protected series or continuing protected
1480 series is the same person without interruption as it was before
1481 the merger.
1482 (4) All property of a relocated protected series or
1483 continuing protected series continues to be vested in the
1484 protected series without transfer, reversion, or impairment.
1485 (5) All debts, obligations, and other liabilities of a
1486 relocated protected series or continuing protected series
1487 continue as debts, obligations, and other liabilities of the
1488 relocated protected series or continuing protected series.
1489 (6) Except as otherwise provided by law or the plan of
1490 merger, all the rights, privileges, immunities, powers, and
1491 purposes of a relocated protected series or continuing protected
1492 series remain in the protected series.
1493 (7) The new name of a relocated protected series may be
1494 substituted for the former name of the relocated protected
1495 series in any pending action or proceeding.
1496 (8) To the extent provided in the plan of merger, the
1497 following apply:
1498 (a) A person becomes an associated member or a protected-
1499 series transferee of a relocated protected series or continuing
1500 protected series.

1501 (b) A person becomes an associated member of a protected
1502 series established by the surviving company as a result of the
1503 merger.
1504 (c) Any change in the rights or obligations of a person in
1505 the person's capacity as an associated member or a protected-
1506 series transferee of a relocated protected series or continuing
1507 protected series takes effect.
1508 (d) Any consideration to be paid to a person that before
1509 the merger was an associated member or a protected-series
1510 transferee of a relocated protected series or continuing
1511 protected series is due.
1512 (9) Any person that is an associated member of a relocated
1513 protected series becomes a member of the surviving company, if
1514 not already a member.
1515 Section 38. Section 605.2608, Florida Statutes, is created
1516 to read:
1517 605.2608 Application of s. 605.2404 after merger.—
1518 (1) A creditor's right that existed under s. 605.2404
1519 immediately before a merger under that section may be enforced
1520 after the merger in accordance with the following provisions:
1521 (a) A creditor's right that existed immediately before the
1522 merger against the surviving company, a continuing protected
1523 series, or a relocated protected series continues without change
1524 after the merger.
1525 (b) A creditor's right that existed immediately before the

1526 merger against a non-surviving company:
1527 1. May be asserted against an asset of the non-surviving
1528 company which vested in the surviving company as a result of the
1529 merger; and
1530 2. Does not otherwise change.
1531 (c) Subject to subsection (2), the following provisions
1532 apply:
1533 1. In addition to the remedy stated in paragraph (b), a
1534 creditor with a right conferred under s. 605.2404 which existed
1535 immediately before the merger against a non-surviving company or
1536 a relocated protected series may assert the right against:
1537 a. An asset of the surviving company, other than an asset
1538 of the non-surviving company which vested in the surviving
1539 company as a result of the merger;
1540 b. An asset of a continuing protected series;
1541 c. An asset of a protected series established by the
1542 surviving company as a result of the merger;
1543 d. If the creditor's right was against an asset of the
1544 non-surviving company, an asset of a relocated protected series;
1545 or
1546 e. If the creditor's right was against an asset of a
1547 relocated protected series, an asset of another relocated
1548 protected series.
1549 2. In addition to the remedy stated in paragraph (b), a
1550 creditor with a right that existed immediately before the merger

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1551 against the surviving company or a continuing protected series
1552 may assert the right against:
1553 a. An asset of a relocated protected series; or
1554 b. An asset of a non-surviving company which vested in the
1555 surviving company as a result of the merger.
1556 (2) For the purposes of paragraph (1)(c) and s.
1557 605.2404(2)(a)1., (b)1., and (c)1., the incurrence date is
1558 deemed to be the date on which the merger becomes effective.
1559 (3) A merger under s. 605.2604 does not affect the manner
1560 in which s. 605.2404 applies to a liability incurred after the
1561 merger becomes effective.
1562 Section 39. Section 605.2701, Florida Statutes, is created
1563 to read:
1564 605.2701 Governing law; foreign series limited liability
1565 companies and foreign protected series.—The law of the
1566 jurisdiction of formation of a foreign series limited liability
1567 company governs all of the following:
1568 (1) The internal affairs of a foreign protected series of
1569 the foreign series limited liability company, including the
1570 following:
1571 (a) Relations among any associated members of the foreign
1572 protected series.
1573 (b) Relations between the foreign protected series and:
1574 1. Any associated member;
1575 2. Any protected-series manager; or

1576 3. Any protected-series transferee.
1577 (c) Relations between any associated member and:
1578 1. Any protected-series manager; or
1579 2. Any protected-series transferee.
1580 (d) The rights and duties of a protected-series manager.
1581 (e) Governance decisions affecting the activities and
1582 affairs of the foreign protected series and the conduct of those
1583 activities and affairs.
1584 (f) Procedures and conditions for becoming an associated
1585 member or a protected-series transferee.
1586 (2) Relations between the foreign protected series and the
1587 following:
1588 (a) The foreign series limited liability company.
1589 (b) Another foreign protected series of the foreign series
1590 limited liability company.
1591 (c) A member of the foreign series limited liability
1592 company which is not an associated member of the foreign
1593 protected series.
1594 (d) A foreign protected-series manager that is not a
1595 protected-series manager of the foreign protected series.
1596 (e) A foreign protected-series transferee that is not a
1597 foreign protected-series transferee of the foreign protected
1598 series.
1599 (f) A transferee of a transferable interest of the foreign
1600 series limited liability company.

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1601 (3) Except as otherwise provided in ss. 605.2402 and
1602 605.2404, the liability of a person for a debt, an obligation,
1603 or another liability of a foreign protected series of a foreign
1604 series limited liability company if the debt, obligation, or
1605 liability is asserted solely by reason of the person being or
1606 acting as any of the following:
1607 (a) An associated member, a protected-series transferee,
1608 or a protected-series manager of the foreign protected series.
1609 (b) A member of the foreign series limited liability
1610 company which is not an associated member of the foreign
1611 protected series.
1612 (c) A protected-series manager of another foreign
1613 protected series of the foreign series limited liability
1614 company.
1615 (d) A protected-series transferee of another foreign
1616 protected series of the foreign series limited liability
1617 company.
1618 (e) A manager of the foreign series limited liability
1619 company.
1620 (f) A transferee of a transferable interest of the foreign
1621 series limited liability company.
1622 (4) Except as otherwise provided in ss. 605.2402 and
1623 605.2404, the following apply:
1624 (a) The liability of the foreign series limited liability
1625 company for a debt, an obligation, or another liability of a

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1626 foreign protected series of the foreign series limited liability
1627 company if the debt, obligation, or liability is asserted solely
1628 by reason of the foreign protected series being a foreign
1629 protected series of the foreign series limited liability
1630 company, or the foreign protected series limited liability
1631 company:
1632 1. Being or acting as a foreign protected-series manager
1633 of the foreign protected series;
1634 2. Having the foreign protected series manage the foreign
1635 series limited liability company; or
1636 3. Owning a protected-series transferable interest of the
1637 foreign protected series.
1638 (b) The liability of a foreign protected series for a
1639 debt, an obligation, or another liability of the foreign series
1640 limited liability company or another foreign protected series of
1641 the foreign series limited liability company, if the debt,
1642 obligation, or liability is asserted solely by reason of the
1643 foreign protected series:
1644 1. Being a foreign protected series of the foreign series
1645 limited liability company or having the foreign series limited
1646 liability company or another foreign protected series of the
1647 foreign series limited liability company be or act as a foreign
1648 protected-series manager of the foreign protected series; or
1649 2. Managing the foreign series limited liability company
1650 or being or acting as a foreign protected-series manager of

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1651 another foreign protected series of the foreign series limited
1652 liability company.
1653 Section 40. Section 605.2702, Florida Statutes, is created
1654 to read:
1655 605.2702 No attribution of activities constituting
1656 transacting business or for establishing jurisdiction.—In
1657 determining whether a foreign series limited liability company
1658 or foreign protected series of the foreign series limited
1659 liability company is transacting business in this state or is
1660 subject to the personal jurisdiction of the courts in this
1661 state, the following apply:
1662 (1) The activities and affairs of the foreign series
1663 limited liability company are not attributable to a foreign
1664 protected series of the foreign series limited liability company
1665 solely by reason of the foreign protected series being a foreign
1666 protected series of the foreign series limited liability
1667 company.
1668 (2) The activities and affairs of a foreign protected
1669 series are not attributable to the foreign series limited
1670 liability company or another foreign protected series of the
1671 foreign series limited liability company, solely by reason of
1672 the foreign protected series being a foreign protected series of
1673 the foreign series limited liability company.
1674 Section 41. Section 605.2703, Florida Statutes, is created
1675 to read:

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1676 605.2703 Certificate of authority for foreign series
1677 limited liability company and foreign protected series;
1678 amendment of application.—
1679 (1) Except as otherwise provided in this section and
1680 subject to ss. 605.2402 and 605.2404, the laws of this state
1681 governing application by a foreign limited liability company to
1682 obtain a certificate of authority to transact business in this
1683 state as required under s. 605.0902, including the effect of
1684 obtaining a certificate of authority under s. 605.0903, and the
1685 effect of failure to have a certificate of authority as
1686 described in s. 605.0904, apply to a foreign series limited
1687 liability company and to a foreign protected series of a foreign
1688 series limited liability company, as if the foreign protected
1689 series was a foreign limited liability company formed separately
1690 from the foreign series limited liability company, and distinct
1691 from the foreign series limited liability company and any other
1692 foreign protected series of the foreign series limited liability
1693 company.
1694 (2) An application by a foreign protected series of a
1695 foreign series limited liability company for a certificate of
1696 authority to transact business in this state must include all of
1697 the following:
1698 (a) The name and jurisdiction of formation of the foreign
1699 series limited liability company and the foreign protected
1700 series seeking a certificate of authority, and all of the other

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1701 information required under s. 605.0902, and any other
1702 information required by the department.
1703 (b) If the company has other foreign protected series, the
1704 name, title, capacity, and street and mailing address of at
1705 least one person that has the authority to manage the foreign
1706 limited liability company and who knows the name and street and
1707 mailing address of:
1708 1. Each other foreign protected series of the foreign
1709 series limited liability company; and
1710 2. The foreign protected-series manager of, and the
1711 registered agent for service of process on, each other foreign
1712 protected series of the foreign series limited liability
1713 company.
1714 (3) The name of a foreign protected series applying for a
1715 certificate of authority to transact business in this state must
1716 comply with ss. 605.0112 and 605.2202, which may be accomplished
1717 by using an alternate name pursuant to ss. 605.0906 and 865.09,
1718 if the alternate name complies with ss. 605.0112, 605.0906, and
1719 605.2202.
1720 (4) The requirements in s. 605.0907 relating to required
1721 information and amending of a certificate of authority apply to
1722 the information required by subsection (2).
1723 (5) Sections 605.0903-605.0912 apply to a foreign limited
1724 liability company and to a protected series of a foreign series
1725 limited liability company applying for, amending, or withdrawing

1726 a certificate of authority to transact business in this state.
1727 Section 42. Section 605.2704, Florida Statutes, is created
1728 to read:
1729 605.2704 Disclosure required when a foreign series limited
1730 liability company or foreign protected series becomes a party to
1731 proceeding.—
1732 (1) Not later than 30 days after becoming a party to a
1733 proceeding before a civil, administrative, or other adjudicative
1734 tribunal of or located in this state, or a tribunal of the
1735 United States located in this state:
1736 (a) A foreign series limited liability company shall
1737 disclose to each other party the name and street and mailing
1738 address of:
1739 1. Each foreign protected series of the foreign series
1740 limited liability company; and
1741 2. Each foreign protected-series manager of and a
1742 registered agent for service of process for each foreign
1743 protected series of the foreign series limited liability
1744 company.
1745 (b) A foreign protected series of a foreign series limited
1746 liability company shall disclose to each other party the name
1747 and street and mailing address of:
1748 1. The foreign series limited liability company and each
1749 manager of the foreign series limited liability company and an
1750 agent for service of process for the foreign series limited

1751 liability company; and
1752 2. Any other foreign protected series of the foreign
1753 series limited liability company and each foreign protected-
1754 series manager of and an agent for service of process for the
1755 other foreign protected series.
1756 (2) If a foreign series limited liability company or
1757 foreign protected series challenges the personal jurisdiction of
1758 the tribunal, the requirement that the foreign series limited
1759 liability company or foreign protected series make disclosure
1760 under subsection (1) is tolled until the tribunal determines
1761 whether it has personal jurisdiction.
1762 (3) If a foreign series limited liability company or
1763 foreign protected series does not comply with subsection (1), a
1764 party to the proceeding may do one or both of the following:
1765 (a) Request the tribunal to treat the noncompliance as a
1766 failure to comply with the tribunal's discovery rules.
1767 (b) Bring a separate proceeding in the court to enforce
1768 subsection (1).
1769 Section 43. Section 605.2801, Florida Statutes, is created
1770 to read:
1771 605.2801 Relation to Electronic Signatures in Global and
1772 National Commerce Act.—Section 605.1102 applies to ss. 605.2101-
1773 605.2802.
1774 Section 44. Section 605.2802, Florida Statutes, is created
1775 to read:

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

1776 605.2802 Effective date.—
1777 (1) Beginning January 1, 2025, this chapter governs all
1778 domestic and foreign protected series limited liability
1779 companies and all domestic protected series and all foreign
1780 series that transact business in this state.
1781 (2) A domestic limited liability company formed before
1782 January 1, 2025, may not create or designate any protected
1783 series before the effective date of this act.
1784 Section 45. This act shall take effect January 1, 2025.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1559 Professional Licensure
SPONSOR(S): McClure
TIED BILLS: **IDEN./SIM. BILLS:** SB 1786

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Chapter 472, F.S., governs the practice of land surveying and mapping in Florida. Through the Florida Board of Professional Surveyors and Mappers (Board), the Department of Agriculture and Consumer Services (DACS) licenses and regulates professional surveyors and mappers in the state. Current law provides education and experience prerequisites that must be met in order to be eligible to take the licensure examination to practice as a surveyor and mapper.

Currently, applicants must **at least** have a **bachelor's degree** in a related course of study and a minimum of **four years of experience** working under a professional surveyor in order to take the licensure examination.

Applicants with a bachelor's degree in an unrelated course of study must have **six years of experience**, and complete a minimum of **25 semester hours** from a college or university approved by the board in surveying and mapping related subjects **in order to take the licensure examination**.

The bill provides **additional pathways** to qualify to take the **licensure examination** as follows:

- Allows applicants with a **high school diploma** or an **associate's degree,** who complete **25 hours of coursework in surveying and mapping,** and **six** years of experience under a professional surveyor and mapper, **five** years of which must be in responsible charge of the work performed, to be eligible to take the licensure examination.
- Allows applicants who qualified to obtain a surveying and mapping license in another state that hold a **license to practice in another state** and have **two years of experience in the active practice** of surveying and mapping to be eligible to take the **licensure examination**.
- Allows applicants with a **registered apprenticeship certificate** in surveying and mapping and an **experience record of two** or more years in the active practice of mapping to be eligible to take the licensure examination.

The bill may have a positive fiscal impact on state government and the private sector, and no fiscal impact on local government.

The effective date of the bill is July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Land Surveying and Mapping

Chapter 472, F.S., governs the practice of land surveying and mapping in Florida. Through the Florida Board of Professional Surveyors and Mappers (Board), the Department of Agriculture and Consumer Services (DACS) licenses and regulates professional surveyors and mappers in the state.[1]

These regulations include, but are not limited to:[2]

- Examination;
- Licensure, including certificates of authorization;
- Continuing education;
- Seals;
- Standards of practice;
- Prohibitions and penalties;
- Disciplinary guidelines;
- Investigative procedures;
- Power to administer oaths, take depositions, and issue subpoenas;
- Unlicensed activities; and
- Elevation certificates.

According to DACS, licensed surveyors and mappers make exact measurements and determine property boundaries. They provide data relevant to the shape, contour, gravitation, location, elevation or dimension of land or land features on or near the earth's surface for engineering, mapmaking, mining, land evaluation, construction and other purposes.[3]

The Board has authority to adopt rules to implement ch. 472, F.S., subject to approval by DACS.[4] Effective October 1, 2009, the regulation of professional surveyors and mappers by the Board was transferred from the Department of Business and Professional Regulation (DBPR) to DACS.[5]

According to DACS, in 2022, there were 2,579 surveyors and mappers licensed in Florida.[6]

Licensing Examinations

Current law provides education and experience prerequisites that must be met in order to be eligible to take the licensure examination to practice as a surveyor and mapper or as a surveyor and mapper intern.[7] All applicants must be approved by the Board prior to taking any examination.[8]

All pathways to licensure as a professional surveyor and mapper in Florida require **at least a four-year college degree.** The prerequisites to take the licensure examination to practice as a surveyor and

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[1] S. 472.007, F.S.
[2] *See* ch. 472, F.S.
[3] Florida Department of Agriculture and Consumer Services, Consumer Services, *Surveyors and Mappers*, https://www.fdacs.gov/Business-Services/Surveyors-and-Mappers (last visited Jan. 27, 2024).
[4] S. 472.008, F.S.
[5] Ch. 2009-66, Laws of Fla.
[6] Email from Carlos Nathan, Legislative Affairs Director, Department of Agriculture and Consumer Services, Re: Surveyors Data, (Jan. 6, 2022).
[7] S. 472.013, F.S.
[8] R. 5J-17.030, F.A.C.

mapper are as follows:[9]

- A bachelor's degree in surveying and mapping or in a similarly titled program:
  - Four or more years of work experience under a professional surveyor;
  - All four years of work experience must have been in responsible charge of the accuracy and correctness of the surveying work performed; or
- A bachelor's degree in a course of study **other than surveying and mapping**:
  - Six or more years of work experience under a professional surveyor;
  - Five of the six years of experience must have been in responsible charge of the accuracy and correctness of the surveying work performed.
  - These applicants must also complete a minimum of **25 semester hours** from a college or university approved by the board in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences.

The following is a chart outlining these education and work experience prerequisites:

Type of Applicant	Type of Degree	Work Experience
Surveyor and Mapper *(Option 1)*	Surveying and Mapping **Bachelor's Degree**	**4** or more years subordinate to surveyor and mapper and in "responsible charge" of work performed
Surveyor and Mapper *(Option 2)*	Non-Surveying and Mapping **Bachelor's Degree**; ***and*** **25 semester hours surveying and mapping subjects**	**6** or more years subordinate to surveyor and mapper of which 5 years must be in "responsible charge" of work performed

The board, by rule,[10] is authorized to establish fees for examination. The initial application and examination fee must not exceed $125 plus the actual per applicant cost to DACS to purchase the examination from the National Council of Engineering Examiners or a similar national organization. The examination fee must be sufficient to cover the cost of obtaining and administering the examination and is refundable if the applicant is found ineligible to sit for the examination. The application fee is nonrefundable.[11]

Exiled Foreign-Trained Professionals

Exiled foreign-trained professionals that wish to become surveyors and mappers must have graduated with an appropriate college degree from a college or university and must have lawfully practiced the profession for at least three years.[12] Specifically, an exiled professional is eligible for examination if the exiled professional satisfies all of the following seven requirements:[13]

- Immigrated to the United States after leaving the person's home country because of political reasons, provided the country is located in the Western Hemisphere and does not have diplomatic relations with the United States;
- Applied to DACS and submits a fee;
- Was a resident of this state immediately preceding the person's application;

[9] *See* s. 472.013, F.S.
[10] R. 5J-17.070, F.S.
[11] S. 472.011, F.S.
[12] *See* s. 472.0101, F.S.
[13] S. 472.0101(1)(a)-(g), F.S.

- Demonstrated to DACS, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant graduated with an appropriate professional or occupational degree from a college or university.
    - However, DACS may not require receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;
- Lawfully practiced the profession for at least 3 years;
- Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and
- Presented a certificate demonstrating the successful completion of a continuing education program, which offers a course of study that will prepare the applicant for the examination.

DACS is required to develop rules for the approval of such programs for the Board.[14]

Upon request of a person who meets the requirements and submits an examination fee, DACS, for the Board, is required to conduct a written practical examination that tests the person's current ability to practice the profession competently in accordance with the actual practice of the profession. The fees charged for the examinations are established by DACS, for the board, by rule,[15] and must be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.[16]

Recent Trends

The average age of a land surveyor in the U.S. is in the upper 50s. According to the Bureau of Labor Statistics, in 2023 there were 43,000 working surveyors in the U.S., 8,000 were 34 years of age or younger, and 16,000 were age 55 and over.[17] Many in the profession will be retiring and need to be replaced.[18]

In addition, reports indicate that the most common degree for land surveyors is a bachelor's degree, with 43 percent of land surveyors earning that degree. The second and third most common degree level is an associate degree at 24 percent and high school diploma at 21 percent.[19]

Certain education and licensing qualifications for surveyors have created recruitment barriers.[20] Some in the industry have indicated that a shortage may exist in the profession because of extensive education expectations and cost. Many state boards require a four-year degree before beginning work in the surveying field. These requirements might hinder those from pursuing a surveying path. Nationally there appears to be a decline in the number of students graduating from surveying programs.[21]

In Florida, as of 2022, the number of licensed surveyors had decreased by 305 licensees, from 2,884 licensees in 2013 to 2,579 licensees in 2021.[22]

Other States

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[14] S. 472.001(1), F.S.
[15] R. 5J-17.210, F.A.C.
[16] S. 472.0101(2), F.S.
[17] U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, https://www.bls.gov/cps/cpsaat11b.pdf (last visited Jan. 27, 2024).
[18] U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook*, https://www.bls.gov/ooh/architecture-and-engineering/surveyors.htm#tab-6 (last visited Jan. 27, 2024).
[19] Zippia, The Career Expert, *LAND SURVEYOR DEMOGRAPHICS AND STATISTICS IN THE US*, https://www.zippia.com/land-surveyor-jobs/demographics/ (last visited Jan. 27, 2024).
[20] The American Surveyor, *Reaching Out, Using Technology and Outreach to Encourage Students to Join the Profession*, https://amerisurv.com/2023/06/10/reaching-out/ (last visited Jan. 27, 2024).
[21] Nearterm Blog, *Is There a Shortage of Land Surveyors?* (Nov. 2, 2020), https://nearterm.com/is-there-a-shortage-of-land-surveyors/ (last visited Jan. 27, 2024).
[22] Email from Carlos Nathan, Legislative Affairs Director, Department of Agriculture and Consumer Services, Re: Surveyors Data, (Jan. 6, 2022).

Each state and territory in the U.S. require those who perform the tasks defined as the practice of surveying to hold a professional surveying license. Most states require professional surveyors to meet a combination of requirements in education and exams.[23]

Generally, while each state board for surveyors has its own requirements for licensure, potential licensees will follow a similar path of prerequisites to obtain a license in any state. Prerequisites typically include:[24]

- An education requirement - Sometimes a high school diploma but some states also require a four-year degree from an accredited surveying program.
- Successful completion of a Fundamentals of Surveying (FS) written examination - testing an applicant's breadth of understanding of basic surveying principles.
- Successful completion of a written Principles and Practice of Surveying (PS) examination - testing an applicant's knowledge and competency of surveying skills.
- A requisite amount of surveying experience - which for most states is four years and is usually under the supervision of a professional surveyor.

According to research, the education and experience requirements in all 50 states appear to indicate the following patterns:[25]

- Most states require at least a four-year degree and four years of professional experience.
- Typically, the extent of the degree is relative to the amount of professional experience required.
- Fourteen states provide an option that requires only a high school diploma (or do not have any educational requirements) along with a certain amount of professional experience.
- Six states provide an option that does not require the completion of a degree, but requires the completion of a certain amount of survey and mapping coursework and professional experience.
- The degrees that are required are typically in a surveying and mapping curriculum, a curriculum related to surveying and mapping, or an unrelated curriculum but with a certain amount of coursework in a surveying related curriculum.
- States that allow postgraduate coursework in a surveying curriculum allow the coursework to be substituted for professional experience.
- Twenty-eight states do not provide an education-less alternative method of licensure.

One example of a state that allows a number of different pathways to licensure is North Carolina:[26]

- **Bachelor's Degree**: Graduates with a Bachelor's degree in surveying can take the licensing exam after **two years** of supervised experience.
- **Associate's Degree**: Graduates with a two-year Associate's degree in surveying can take the licensing exam with **five years** of supervised experience.
- **High School Diploma and Apprenticeship:** Graduates with a high school diploma and an apprenticeship can take the licensing exam with **seven years** of supervised experience.
- **High School Diploma**: Graduates with a high school diploma or equivalent can take the licensing exam with **nine years** of supervised experience.

Effect of the Bill

The bill changes language in the licensing requirements that allow the Board to approve educational institutions and coursework to specify that applicants can obtain the required degree from "a college or university accredited by an accrediting body recognized by the United States Department of Education."

[23] The National Council of Examiners for Engineering and Surveying (NCEES), *Surveying Licensure*, https://ncees.org/surveying/surveying-licensure/ (last visited Jan. 27, 2024).
[24] The National Council of Examiners for Engineering and Surveying (NCEES), *NCEES Member Licensing Boards*, https://ncees.org/member-licensing-boards/ (last visited Jan. 27, 2024).
[25] NCEES, *supra* note 24.
[26] North Carolina Society of Surveyors, *Licensure Requirements in North Carolina*, https://www.ncsurveyors.com/education/licensure_requirements (last visited Jan. 27, 2024).

The bill creates additional pathways for people to become licensed as a surveyor and mapper, while maintaining the prerequisite to take the licensure examination. Applicants are no longer required to obtain a four year bachelor's degree if the applicant:

- Received an **associate degree or a high school diploma** and completes a minimum of 25 semester hours specific to surveying and mapping at a college or university accredited by an accrediting body recognized by the United States Department of Education.
  - The hours may be from courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences.
  - Such applicants must have **six or more years' experience** as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, **five years of which must be of a nature indicating that the applicant was in responsible charge of the work performed**.
- Hold a **valid license** to practice surveying and mapping **in another state**, jurisdiction, or territory, and:
  - Gave **two years of experience in the active practice** of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.
- Have received a **registered apprenticeship certificate** in surveying and mapping after completing a registered apprenticeship program approved by the Department of Education, and:
  - Have an experience record of **two or more years as a subordinate** to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

The bill specifies that work experience acquired as a part of the education requirements may not be construed as experience in responsible charge.

Regarding a bachelor's degree in a course of study other than surveying and mapping, the bill removes a provision authorizing the Board to approve any of the required 25 semester hours of study completed not as a part of the bachelor's degree, its equivalent, or higher.

The bill allows exiled foreign-trained professionals who have practiced the profession for three years to substitute this experience for the current education requirement.

B. SECTION DIRECTORY:

Section 1: amends s. 472.0101, F.S., relating to foreign-trained professionals, special examination and license provisions.

Section 2: amends s. 472.013, F.S., relating to examinations, prerequisites.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The bill may have a positive impact on examination and licensing revenue, to the extent that additional individuals will take the licensure examination and become licensed. All funds collected are deposited into the DACS General Inspection Trust Fund. According to DACS, it "could experience an indeterminate positive fiscal impact due to new applicant fees."[27]

2. Expenditures:

[27] Department of Agriculture and Consumer Services, Agency Analysis of 2024 SB 1776, p. 2 (Jan. 24, 2024).

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates additional pathways so that applicants are no longer required to obtain a bachelor's degree to qualify to take the licensure examination to practice as a surveyor and mapper, which will lower the cost and time it takes to become licensed, and allow more people to practice their chosen profession.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Agency rules may have to be amended to change current education and work experience requirements. Current law appears to provide sufficient rulemaking authority for DACS to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to professional licensure; amending s.
3 472.0101, F.S.; authorizing the practice of a
4 profession as a substitute for certain professional or
5 occupational degrees for certain foreign-trained
6 professionals; amending s. 472.013, F.S.; revising
7 education and work experience requirements for taking
8 the surveyor and mapper licensure examination;
9 providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Paragraph (e) of subsection (1) of section
14 472.0101, Florida Statutes, is amended, and paragraph (d) of
15 that subsection is republished, to read:
16 472.0101 Foreign-trained professionals; special
17 examination and license provisions.—
18 (1) When not otherwise provided by law, the department
19 shall by rule provide procedures under which exiled
20 professionals may be examined under this chapter. A person is
21 eligible for the examination if the exiled professional:
22 (d) Demonstrates to the department, through submission of
23 documentation verified by the applicant's respective
24 professional association in exile, that the applicant was
25 graduated with an appropriate professional or occupational

26 degree from a college or university. However, the department may
27 not require receipt of any documentation from the Republic of
28 Cuba as a condition of eligibility under this section;
29 (e) Lawfully practiced the profession for at least 3
30 years. Such practice of the profession may be substituted for
31 the professional or occupational degree requirement under
32 paragraph (d);
33 Section 2. Subsection (2) of section 472.013, Florida
34 Statutes, is amended to read:
35 472.013 Examinations, prerequisites.—
36 (2) An applicant shall be entitled to take the licensure
37 examination to practice in this state as a surveyor and mapper
38 if the applicant is of good moral character and has satisfied
39 one of the following requirements:
40 (a) The applicant has received a bachelor's degree, its
41 equivalent, or higher in surveying and mapping or a similarly
42 titled program, including, but not limited to, geomatics,
43 geomatics engineering, and land surveying, from a college or
44 university accredited by an accrediting body recognized by the
45 United States Department of Education board and has a specific
46 experience record of 4 or more years as a subordinate to a
47 professional surveyor and mapper in the active practice of
48 surveying and mapping, which experience is of a nature
49 indicating that the applicant was in responsible charge of the
50 accuracy and correctness of the surveying and mapping work

51 performed. Work experience acquired as a part of the education
52 requirement may not be construed as experience in responsible
53 charge.
54 (b) The applicant has received a bachelor's degree, its
55 equivalent, or higher in a course of study, other than in
56 surveying and mapping, at <u>a</u> ~~an accredited~~ college or university
57 <u>accredited by an accrediting body recognized by the United</u>
58 <u>States Department of Education</u> and has a specific experience
59 record of 6 or more years as a subordinate to a registered
60 surveyor and mapper in the active practice of surveying and
61 mapping, 5 years of which shall be of a nature indicating that
62 the applicant was in responsible charge of the accuracy and
63 correctness of the surveying and mapping work performed. The
64 applicant must have completed a minimum of 25 semester hours
65 from a college or university <u>accredited by an accrediting body</u>
66 <u>recognized by the United States Department of Education</u> ~~approved~~
67 ~~by the board~~ in surveying and mapping subjects or in any
68 combination of courses in civil engineering, surveying, mapping,
69 mathematics, photogrammetry, forestry, or land law and the
70 physical sciences. ~~Any of the required 25 semester hours of~~
71 ~~study completed not as a part of the bachelor's degree, its~~
72 ~~equivalent, or higher may be approved at the discretion of the~~
73 ~~board.~~ Work experience acquired as a part of the education
74 requirement may not be construed as experience in responsible
75 charge.

76 (c) The applicant has received an associate degree and has
77 a specific experience record of at least 6 years as a
78 subordinate to a professional surveyor and mapper in the active
79 practice of surveying and mapping, at least 5 years of which
80 shall be of a nature indicating that the applicant was in
81 responsible charge of the accuracy and correctness of the
82 surveying and mapping work performed. The applicant must have
83 completed at least 25 semester hours from a college or
84 university accredited by an accrediting body recognized by the
85 United States Department of Education in surveying and mapping
86 subjects or in any combination of courses in civil engineering,
87 surveying, mapping, mathematics, photogrammetry, forestry, or
88 land law and the physical sciences. Work experience acquired as
89 a part of the education requirement may not be construed as
90 experience in responsible charge.
91 (d) The applicant has received a high school diploma or
92 its equivalent and has a specific experience record of at least
93 6 years as a subordinate to a professional surveyor and mapper
94 in the active practice of surveying and mapping, at least 5
95 years of which shall be of a nature indicating that the
96 applicant was in responsible charge of the accuracy and
97 correctness of the surveying and mapping work performed. The
98 applicant must have completed at least 25 semester hours from a
99 college or university accredited by an accrediting body
100 recognized by the United States Department of Education in

101 surveying and mapping subjects or in any combination of courses
102 in civil engineering, surveying, mapping, mathematics,
103 photogrammetry, forestry, or land law and the physical sciences.
104 Work experience acquired as a part of the education requirement
105 may not be construed as experience in responsible charge.
106 (e) The applicant holds a valid license to practice
107 surveying and mapping in another state, jurisdiction, or
108 territory, and has at least 2 years of experience in the active
109 practice of surveying and mapping, which experience is of a
110 nature indicating that the applicant was in responsible charge
111 of the accuracy and correctness of the surveying and mapping
112 work performed.
113 (f) The applicant has received a registered apprenticeship
114 certificate in surveying and mapping after completing a
115 registered apprenticeship program approved by the Department of
116 Education and has a specified experience record of at least 2
117 years as a subordinate to a professional surveyor and mapper in
118 the active practice of surveying and mapping, which experience
119 is of a nature indicating that the applicant was in responsible
120 charge of the accuracy and correctness of the surveying and
121 mapping work performed. Work experience acquired as a part of
122 the education requirement may not be construed as experience in
123 responsible charge.
124 Section 3. This act shall take effect July 1, 2024.

PCS for HB 429

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 429 Real Property
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Currently, the Governor is authorized to appoint commissioners of deeds to take acknowledgements, proofs of execution, or oaths in any foreign country, in international waters, or in any possession, territory, or commonwealth of the United States outside the 50 states. The commissioner's duties include authenticating acknowledgements in certain real estate transactions outside of Florida but within the United States, and outside of the United States or within foreign countries.

Chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (Timeshare Act), administered by the Division of Florida Condominiums, Timeshares, and Mobile Homes (DFCT) within the Department of Business and Professional Regulation (DBPR), establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers. The Timeshare Act authorizes the board of administration of any owners' association that operates a timeshare condominium, or a timeshare cooperative, to make "material alterations" or "substantial additions" to accommodations or facilities without the approval of the owners' association. However, current law does not authorize the board of administration to "delete" accommodations or facilities without the owners' association's approval.

The Timeshare Act requires the managing entity of a timeshare plan to provide an "assessment certificate" within 30 days after receiving a written request from a timeshare interest owner, an agent designated in writing by the timeshare interest owner, or a person providing resale transfer services for a consumer timeshare reseller. However, condominium and cooperative association purchasers are authorized to request that the seller provide an "estoppel certificate," from the condominium or cooperative association, which must be provided within 10 days after receiving a written request. An estoppel certificate certifies the amount of any total debt owed to the association by a unit or parcel owner as of a specified date, and provides other information about recurring assessments and other monetary obligations.

Operators of public lodging establishments or public food service establishments are authorized to remove or refuse to accommodate persons for offenses such as drug use or intoxication. The Timeshare Act does not give the managing entity of a timeshare project these same rights.

The bill:

- Requires the Secretary of State, rather than the Governor, to appoint commissioners of deeds.
- Revises the Timeshare Act, as follows:
  - Authorizes the board of administration for a condominium or cooperative association to "delete" accommodations or facilities without the approval of the members of the association.
  - Grants the managing entity of a timeshare project all of the same rights and remedies to remove and refuse to accommodate that an operator of a public lodging establishment or public food service establishment has.
  - Requires the managing entity of a timeshare condominium or timeshare cooperative to provide the assessment certificate required under the Timeshare Act in lieu of the estoppel certificate relating to condominium and cooperative associations.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Commissioner of Deeds

The Governor may appoint commissioners of deeds to take acknowledgements, proofs of execution, or oaths in any foreign country, in international waters, or in any possession, territory, or commonwealth of the United States outside the 50 states. The term of office is 4 years. Commissioners of deeds have authority to take acknowledgements, proofs of execution, and oaths in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other writing to be used or recorded in connection with a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state; provided such instrument or writing is executed outside the United States.[1]

Transfers of real property are not effectual in law unless the transfer is recorded according to law. Nor is any such instrument made or executed by power of attorney effectual in law unless the power of attorney is recorded before the accruing of the right of a creditor or subsequent purchaser.[2]

To entitle any instrument concerning real property to be recorded, the execution must be acknowledged by the party executing it, proved by a subscribing witness to it, or legalized or authenticated in one of the following forms:

- Within Florida – Acknowledgement or proof taken, administered, or made within this state by a judge, clerk, or deputy clerk of any court; a United States commissioner or magistrate; or any notary public or civil-law notary of this state.
- Outside of Florida but within the United States – Acknowledgement of proof taken, administered, or made by or before a civil-law notary of this state or a commissioner of deeds appointed by the Governor of Florida, or other certain individuals.
- Outside of the United States or within Foreign Countries – An acknowledgement, an affidavit, an oath, a legalization, an authentication, or a proof taken, administered, or made by or before a commissioner of deeds appointed by the Governor of Florida to act in such country, or other certain individuals.[3]

Florida Vacation Plan and Timesharing Act

A timeshare interest is a form of ownership of real and personal property.[4] In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time (typically one week) during which the owner has the exclusive right to use the property.

Chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (Timeshare Act), administered by the Division of Florida Condominiums, Timeshares, and Mobile Homes (DFCT) within the Department of Business and Professional Regulation (DBPR), is the chapter of Florida law that governs vacation plans and timesharing in the state. The purpose of the Timeshare Act is to:

- Recognize real and personal property timeshare plans in the state;
- Establish procedures for the creation, sale, exchange, promotion and operation of timeshare plans;
- Provide full and fair disclosure to purchasers and prospective purchasers of timeshare plans;
- Require every timeshare plan in the state to be subjected to the provisions of the chapter;

[1] S. 721.97(1), F.S.
[2] S. 695.01, F.S.
[3] S. 695.03(1)-(3), F.S.
[4] *See* s. 721.05(36), F.S.

- Require full and fair disclosure of terms, conditions, and services by resale service providers; and
- Recognize that a uniform and consistent method of regulation is necessary to safeguard Florida's tourism industry and the state's economic well-being.[5]

The Timeshare Act applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years when the accommodations and facilities are located or offered within this state.[6] The Timeshare Act governs vacation plans and timesharing,[7] and multisite vacation and timeshare plans that are also known as vacation clubs.[8]

The term "timeshare plan" means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, where a purchaser, for consideration, receives ownership rights in or a right to use accommodations and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.[9] The term includes both personal property timeshare and real property timeshare plans.[10]

A "timeshare unit" is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.[11]

A "timeshare estate" is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.[12] The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary's spouse or other dependent.

A "timeshare license" is the right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.[13]

A "timeshare interest" is a timeshare estate, a personal property timeshare interest, or a timeshare license.[14]

Board of Administration

Each condominium, cooperative, and homeowners' association is governed by a board of administration elected by the association's members or appointed by a developer prior to turnover of the association. The board has those duties described in statute and in the association's governing documents, including association administration, policy development, and property maintenance.[15] A board director also has a fiduciary responsibility to the association's members and must use the highest degree of good faith in placing the interests of the members above his or her own personal interests.[16]

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[5] S. 721.02, F.S.
[6] S. 721.03, F.S.
[7] Ch. 721, part I, F.S.
[8] Ch. 721, part II, F.S.
[9] S. 721.05(39), F.S.
[10] S. 721.05(39)(a), F.S., defines a "personal property timeshare plan," as a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property. Section 721.05(39)(b), F.S., defines a "real property timeshare plan," as a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.
[11] *See* ss. 721.05(41) and 718.103(26), F.S.
[12] S. 721.05(34), F.S.
[13] S. 721.05(37), F.S.
[14] S. 721.05(36), F.S.
[15] *See generally* chs. 718, 719, and 720, F.S.; Florida DBPR, *FAQs*, http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/faqs/#1492784365590-e9ec1083-2ca1 (last visited Jan. 24, 2024).
[16] *Id.*

To ensure that a director is able to faithfully and competently exercise his or her duties, within 90 days of being elected or appointed to the board, each newly elected or appointed director must:

- Certify in writing that he or she has read the association's governing documents; will work to uphold the governing documents to the best of his or her ability; and will faithfully discharge his or her fiduciary responsibility to the association's members; or
- Submit a certificate showing he or she satisfactorily completed the educational curriculum administered by a DFCT-approved[17] education provider within one year before or 90 days after his or her election or appointment date.[18]

Application of the Condominium and Cooperative Acts

In addition to regulation under the Timeshare Act, a timeshare plan may also be subject to ch. 718, F.S. (the Condominium Act) or ch. 719, F.S. (the Cooperative Act); where this is the case, the timeshare plan must meet the requirements of all applicable chapters unless an exemption applies.[19] Specifically, if a timeshare plan subject to either the Condominium Act or the Cooperative Act is fully compliant with the Timeshare Act, the timeshare plan is exempt from certain provisions of the Condominium Act or the Cooperative Act, including provisions relating to:

- Sales or reservation deposits prior to closing;
- Filing prior to sale or lease;
- Disclosures prior to sale;
- The prospectus or offering circular; and
- Conversions to the condominium or cooperative form of ownership.[20]

Timeshares Under the Condominium Act

Timeshare estates may not be created with respect to any condominium unit except pursuant to provisions in the declaration of condominium expressly permitting the creation of such estates.[21] A declaration must, if timeshare estates will or may be created with respect to any condominium unit:

- Provide a statement in conspicuous type declaring that timeshare estates will or may be created with respect to units in the condominium; and
- Define and describe in detail the degree, quantity, nature, and extent of the timeshare estates that will or may be created.[22]

Unless otherwise provided in the declaration as originally recorded, an amendment to the declaration may not authorize a timeshare estate to be created in any condominium unit unless the record owner of each condominium unit and of liens on each condominium unit join in the amendment's execution.[23]

Timeshares Under the Cooperative Act

Original cooperative documents[24] must describe whether or not timeshare estates will or may be created with respect to any cooperative units and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession or

[17] A DFCT-approved provider must cover specified topics in its education program, which may include budgets; reserves; elections; financial reporting; association operations; dispute resolution; and records maintenance. For a list of DFCT-approved education providers, see *http://www.myfloridalicense.com/dbpr/lsc/documents/CondoCOOPListofApprovedProviders2015.pdf* (last visited Jan. 24, 2024). 61B-19.001 and 61B-75.0051, F.A.C.
[18] This requirement does not apply to the board of directors for a commercial condominium. Ss. 718.112(2)(d), 719.106(1)(d), and 720.3033(1)(a)-(c), F.S.
[19] S. 721.03(2), F.S.
[20] S. 721.03(3), F.S.
[21] The "declaration of condominium" is the instrument creating the condominium, as it is amended from time to time. Ss. 718.103(15) and 718.1045, F.S.
[22] S. 718.104(4)(o), F.S.
[23] S. 718.110(8), F.S.
[24] "Cooperative documents" means the documents: creating the cooperative; evidencing a unit owner's membership or share in the association; or recognizing a unit owner's title or right of possession to his or her unit. S. 719.103(13), F.S.

occupancy that may be established with respect to any unit.[25] Unless the creation of timeshare estates in any cooperative unit is authorized by the original cooperative documents, an amendment adding phases to a cooperative that authorizes the creation of timeshare estates in any unit of the additional phase requires the execution or consent by all unit owners other than the developer.[26]

Public Offering Statement

Prior to offering any timeshare plan, a developer must submit a public offering statement,[27] which must include certain information and disclosures, to the DFCT.[28] Any amendment to an approved offering statement must be filed with the DFCT for approval prior to becoming effective.[29]

Extension or Termination of Timeshare Plans

The Timeshare Act provides a statutory default provision for timeshare instruments that have been in existence for at least 25 years and are silent as to how the plan terminates or is extended. A vote or written consent of 60 percent of all the voting interests in the timeshare plan is required to extend or terminate the term of a timeshare plan.[30]

If the term of a timeshare plan is extended, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force. If a timeshare plan is terminated, the termination has immediate effect pursuant to applicable law and the timeshare instrument.[31]

A termination, extension vote, or consent proposed for a component site of a multisite timeshare plan located in this state is effective only if the person authorized to make additions or substitutions approves.[32]

After termination of a timeshare plan, the board serves as the termination trustee. In that fiduciary capacity, the board may bring a partition action on behalf of the tenants in common in each former timeshare property, or may sell the former timeshare property in any manner and to any person approved by a majority of all the tenants in common. The board also has all other powers reasonably necessary to accomplish the partition or sale, including the power to maintain the property while the partition action or sale is pending, and must adopt reasonable procedures to implement the partition or sale and comply with statutory requirements.[33] All reasonable expenses incurred by the board relating to the performance of its trustee duties, including reasonable fees of attorneys and other professionals, must be paid by the tenants in common, in proportion to their respective ownership interests.[34]

If a timeshare plan is terminated in a timeshare condominium or timeshare cooperative and the underlying condominium or cooperative is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of such tenants in common conducted by the termination trustee, or conducted by the board of administration of the condominium or cooperative association, if such association managed the former timeshare property, are required to:[35]

- Designate a voting representative for the unit and file a voting certificate with the condominium or cooperative association.

[25] S. 719.403(2)(f), F.S.
[26] S. 719.403(6)(e), F.S.
[27] "Public offering statement" means the written materials describing a single-site timeshare plan or a multisite timeshare plan, including a text and any exhibits attached thereto as required by ss. 721.07, 721.55, and 721.551. S. 721.05(29), F.S.
[28] Ss. 721.07 and 721.55, F.S.
[29] S. 721.07(3)(a)1., F.S.
[30] S. 721.125, F.S.
[31] *Id.*
[32] *Id.*
[33] S. 721.125(3)(a)1., F.S.
[34] S. 721.125(3)(a)2., F.S.
[35] *Id.*

- Allow the voting representative to vote on all matters at meetings of the condominium or cooperative association, including termination of the condominium or cooperative.

Management of a Timeshare Plan

Current law requires the developer to provide a managing entity for each timeshare plan, which entity may be the developer, a separate manager or management company, or an owners' association.[36] Any owner's association must be created before the first closing of the sale of a timeshare interest.[37] However, with respect to a timeshare plan which is also regulated under chs. 718 or 719, F.S., or which contains a mandatory owner's association, the board is the timeshare plan's managing entity.[38]

The duties of a managing entity include:
- Management and maintenance of all accommodations and facilities constituting the timeshare plan;
- Collection of all assessments for common expenses;
- Providing an itemized annual budget to all purchasers;
- Maintaining all books and records concerning the timeshare plan and making such books and records reasonably available for inspection by any purchaser;
- Arranging for an annual audit of the timeshare plan's financial statement;
- Scheduling timeshare unit occupancy in certain circumstances;
- Performing any other functions and duties necessary to maintain the accommodations or facilities; and
- Entering into ad valorem tax escrow agreements before the receipt of any ad valorem tax escrow payments under certain conditions.

Managing Entity

The Timeshare Act requires the developer to provide a managing entity for each timeshare plan. The managing entity operates or maintains the timeshare plan.[39] The managing entity may be the developer, a separate manager or management firm, or an owners' association.[40]

The duties of the managing entity include, but are not limited to:[41]
- Management and maintenance of all accommodations and facilities constituting the timeshare plan.
- Collection of all assessments for common expenses.
- Providing annually to all purchasers an itemized annual budget that includes estimated revenues and expenses.
- Maintenance of books and records concerning the timeshare plan so that all such books and records are reasonably available for inspection by any purchaser or their authorized agent.
- Arranging for an annual audit of the financial statements of the timeshare plan by a certified public accountant licensed by the Board of Accountancy of DBPR, in accordance with generally accepted auditing standards as defined by the rules of the Board of Accountancy of DBPR.
- Making available for inspection by the DFCT any books and records of the timeshare plan upon the request of the DFCT.
- Scheduling occupancy of the timeshare units, when purchasers are not entitled to use specific timeshare periods, so that all purchasers will be provided the use and possession of the accommodations and facilities of the timeshare plan which they have purchased.
- Performing any other functions and duties which are necessary and proper to maintain the accommodations or facilities, as provided in the contract and as advertised.

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[36] "Owners' association" means an association made up of all owners of timeshare interests in a timeshare plan, including developers and timeshare plan purchasers. Ss. 721.05(27) and 721.13, F.S.
[37] S. 721.13(1)(a), F.S.
[38] S. 721.13(1)(b), F.S.
[39] *See* s. 721.05(22), F.S., defining the term "managing entity."
[40] S. 721.13(1)(a), F.S.
[41] S. 721.13(3), F.S.

- Entering into an ad valorem tax escrow agreement prior to the receipt of any ad valorem tax escrow payments into the ad valorem tax escrow account, as long as an independent escrow agent is required by s. 192.037, F.S., and submitting to the DFCT the statement of receipts and disbursements regarding the ad valorem tax escrow account.

Managing Entity Emergency Powers

Florida law provides for the exercise of specified emergency powers by the boards of condominium, cooperative, and homeowners' associations in response to damage or injury caused by or anticipated in connection with a declared state of emergency.[42] Such emergency powers include, unless prohibited by other law or the association's governing documents, the power to:

- Conduct board meetings, elections, and membership meetings by telephone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as practicable;
- Cancel and reschedule any association meeting;
- Name as assistant officers person who are not board directors;
- Relocate the association's principal office or designate alternative principal offices;
- Enter into agreements with local governments to assist with debris removal;
- Implement a disaster or emergency plan that may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners;
- Determine any portion of the association property is unavailable for entry or occupancy in certain circumstances;
- Require the evacuation of association property in certain circumstances;
- Determine that association property can be safely inhabited, accessed, or occupied, in certain circumstances;
- Mitigate further damage, injury, or contagion;
- Contract for items or services for which the owners are otherwise individually responsible, but which are necessary to prevent further injury, contagion, or damage, and obtain reimbursement;
- Levy special assessments without an owner vote; and
- Borrow money or pledge association assets as collateral to fund emergency repairs and carry out association duties when operating funds are insufficient.[43]

However, the Act does not provide comparable emergency powers for a timeshare plan's managing entity.

Material Alterations or Substantial Additions to Accommodations or Facilities

Notwithstanding anything to the contrary in s. 718.110, F.S.,[44] s. 718.113, F.S.,[45] s. 718.114, F.S.,[46] or s. 719.1055, F.S.,[47] the board of administration of any owners' association that operates a timeshare

[42] Ss. 718.1265, 719.128, and 720.316, F.S.

[43] The powers to require association property evacuation and to contract for items or services for which the owners are otherwise individually responsible are only held by condominium and cooperative associations.

[44] S. 718.110, F.S., provides for the amending of a declaration of condominium and, in part, prohibits any amendment that materially alters or substantially adds to the condominium property, unless all recorded unit owners and all record owners of liens join in and approve the execution of the amendment.

[45] Section 718.113., F.S., sets forth the responsibility of a condominium association to maintain the common elements of the condominium and, in relevant part, prohibits any material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided in the declaration. However, if the declaration as originally recorded or as amended does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions before the material alterations or substantial additions are commenced.

[46] Section 718.114, F.S., authorizes condominium associations, with specified conditions, to "enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities, regardless of whether the lands or facilities are contiguous to the lands of the condominium, if such lands and facilities are intended to provide enjoyment, recreation, or other use or benefit to the unit owners."

condominium pursuant to s. 718.111, F.S., or a timeshare cooperative pursuant to s. 719.104, F.S., has the power to make material alterations or substantial additions to the accommodations[48] or facilities[49] of such timeshare condominium or timeshare cooperative without the approval of the owners' association. However, current law does not give the board of administration the authority to "delete" accommodations or facilities without the approval of the owners' association.[50]

If the timeshare condominium or timeshare cooperative contains any residential units that are not subject to the timeshare plan, the board of administration for the condominium or cooperative must obtain the approval of a majority of the owners of such residential units before it can make any material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative. However, unless otherwise provided in the timeshare instrument as originally recorded, an amendment may not change the configuration or size of any accommodation in any material fashion, or change the proportion or percentage by which a member of the owners' association shares the common expenses, unless the record owners of the affected units or timeshare interests and all record owners of liens on the affected units or timeshare interests join in the execution of the amendment.[51]

Assessment Certificates

Condominiums and Cooperatives

"Common expenses" are all expenses and assessments properly incurred by a condominium or cooperative association.[52]

An assessment is a unit or parcel owner's share of the funds required for the payment of the association's common expenses.[53] A special assessment is any assessment levied against a unit or parcel owner other than the assessment adopted in the annual budget.[54]

Assessments that are unpaid may become a lien on the unit or parcel.[55] An owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.[56] This liability is without prejudice to an owner's right to recover from the previous owner the amounts paid that were assessed during the time that the previous owner owned the property.[57]

To protect against undisclosed financial obligations and to obtain title to the property free of any lien or encumbrance in favor of the association, purchasers may request that the seller provide an estoppel certificate, also known as an assessment certificate, from the condominium or cooperative association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.[58]

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[47] Section 719.1055, F.S., provides for the amendment of cooperative documents and, in part, prohibits any amendment that materially alters or substantially adds to the cooperative property, unless all recorded unit owners and all record owners of liens join in and approve the execution of the amendment.
[48] "Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, campground, cruise ship cabin, houseboat or other vessel, recreational or other motor vehicle, or any private or commercial structure which is real or personal property and designed for overnight occupancy by one or more individuals. The term does not include an incidental benefit as defined in this section. S. 721.05(1), F.S.
[49] "Facility" means any permanent amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the timeshare plan, which is made available to the purchasers of a timeshare plan. The term does not include an incidental benefit as defined in this section. S. 721.05(17), F.S.
[50] S. 721.13(8), F.S.
[51] *Id.*
[52] Ss. 718.103(10) and 719.103(9), F.S., relating to condominium and cooperative associations, respectively.
[53] Ss. 718.103(1) and 719.103(1), F.S., relating to condominium and cooperative associations, respectively.
[54] Ss. 718.103(24) and 719.103(23), F.S., relating to condominium and cooperative associations, respectively.
[55] Ss. 718.116(5) and 719.108(4), F.S., relating to condominium and cooperative associations, respectively.
[56] Ss. 718.116(1)(a) and 719.108(1), F.S., relating to condominium and cooperative associations, respectively.
[57] *Id.* The term "without prejudice" means "without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." BLACK'S LAW DICTIONARY 770 (10th ed. 2014).
[58] Ss. 718.116(8) and 719.108(6), F.S., relating to condominium and cooperative associations, respectively.

Within 10 days after receiving a written request for an estoppel certificate, the association is required to provide an estoppel certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the owner with respect to the unit or parcel. In addition to specifying the amount of any debt owed to the association, an estoppel certificate must also include specific information about the association and the property to be purchased, including the amount of any regular periodic assessments or other fees.[59]

Timeshares

A purchaser of a timeshare estate or timeshare license is personally liable for all assessments for common expenses which come due while the purchaser is the owner of such interest.[60] A successor in interest of a timeshare estate or timeshare license is jointly and severally liable with her or his predecessor in interest for all unpaid assessments against such predecessor up to the time of transfer of the timeshare interest to such successor, without prejudice to any right a successor in interest may have to recover from her or his predecessor in interest any amounts assessed against such predecessor and paid by such successor.[61]

The managing entity of a timeshare plan must provide an assessment certificate within 30 days after receiving a written request from:

- A timeshare interest owner;
- An agent designated in writing by the timeshare interest owner; or
- A person providing resale transfer services for a consumer timeshare reseller.

The assessment certificate must, with respect to the designated consumer resale timeshare interest:

- Be signed by an officer or agent of the managing entity;
- Be provided to the person requesting the certificate;
- State the amount of any assessment, transfer fee, or other moneys:
  - Currently owed to the managing entity; and
  - Approved by the managing entity that will be due within the next 90 days; and
- Include any information contained in the books and records of the timeshare plan regarding the legal description and use plan related to the designated consumer resale timeshare interest.[62]

The managing entity may charge a fee not to exceed $150 for the preparation and delivery of the certificate, and the amount of the fee must be included on the certificate.[63]

Public Lodging Establishments and Public Food Service Establishments

The Division of Hotels and Restaurants (DHR) within DBPR is charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.[64]

Public lodging establishments are classified as a hotel, motel, non-transient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental.[65] A "timeshare project" is defined as "a timeshare property, as defined in ch. 721, F.S., that is located in this state and that is also a transient public lodging establishment."[66]

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[59] *Id.*

[60] S. 721.15(7), F.S.

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] S. 509.032(1), F.S.

[65] *See* s. 509.013(4)(b), F.S., which exempts the several types of establishments from the definition of "public lodging establishment." S. 509.242(1), F.S.

[66] S. 509.242(1)(g), F.S.

The term "public lodging establishments" includes transient and non-transient public lodging establishments.[67] The principal differences between transient and non-transient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

Specifically, a "transient public lodging establishment" is defined as:[68]

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. (emphasis added)

A "non-transient public lodging establishment" is defined as:[69]

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests for periods of at least 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month. (emphasis added)

Removal or Refusal to Accommodate

Operators of public lodging establishments or public food service establishments are authorized to remove persons from their establishments, and to have a law enforcement officer remove persons from their establishments, as follows:

- **Operators may remove or cause to be removed** a person, including any guest of the establishment who, while on the premises of the establishment:[70]
  - Illegally possesses or deals in controlled substances as defined in ch. 893, F.S.;
  - Is intoxicated, profane, lewd, or brawling;
  - Indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment;
  - Fails to check out by the time agreed upon in writing by the guest and public lodging establishment at check-in unless an extension of time is agreed to by the public lodging establishment and guest prior to checkout;
  - Fails to make payment for food, beverages, or services; or
  - In the opinion of the operator, is a person the continued entertainment of whom would be detrimental to the establishment.
- **Operators may refuse accommodations or service** to any person who:[71]
  - Displays intoxication, profanity, lewdness, or brawling;
  - Indulges in language or conduct such as to disturb the peace or comfort of other guests;
  - Engages in illegal or disorderly conduct;
  - Illegally possesses or deals in controlled substances as defined in ch. 893, F.S.; or
  - Constitutes a nuisance.
- **Operators may take into custody and detain** a person in a reasonable manner and for a reasonable time if:
  - The operator has probable cause to believe that the person was engaging in disorderly conduct in violation of s. 877.03, F.S.,[72] on the premises of the licensed establishment; and

[67] S. 509.013(4)(a), F.S.
[68] S. 509.013(4)(a)1., F.S.
[69] S. 509.013(4)(a)2., F.S.
[70] S. 509.141, F.S.
[71] S. 509.142, F.S.
[72] Section 877.03, F.S., provides that a person is guilty of a misdemeanor of the second degree if they commit "such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct."

  - Such conduct was creating a threat to the life or safety of the person or others.[73]
- **Law enforcement officers or operators may take a person into custody** on the premises and detain such person in a reasonable manner and for a reasonable period of time if:
  - They have probable cause to believe that theft of personal property belonging to such establishment has been committed by a person; and
  - The officer or operator can recover such property or the reasonable value thereof by taking the person into custody for the purpose of attempting to affect such recovery or for prosecution.[74]

<u>Effect of Proposed Changes</u>

Commissioner of Deeds

The bill requires the Secretary of State, rather than the Governor, to appoint commissioners of deeds who authenticate acknowledgements in certain real estate transactions outside of Florida but within the United States, and outside of the United States or within foreign countries.

Material Alterations, Additions, and Deletions to Accommodations or Facilities

The bill expands the scope of 721.13, F.S., from applying to the board of administration for a timeshare condominium or timeshare cooperative to the board of administration for any timeshare plan, thus allowing the board of any other form of timeshare to make material alterations or substantial additions to the timeshare's accommodations or facilities without the owners' association's approval.

The bill also authorizes the board of administration for any timeshare plan to "delete" accommodations or facilities without the approval of the owners' association's members.

Removal and Refusal to Accommodate

The bill gives the managing entity or manager of a timeshare project the same rights and remedies of an operator of any public lodging establishment or public food service establishment, as set forth in ss. 509.141, 509.142, 509.143, and 509.162, F.S., including the right to remove and the right to refuse to accommodate. The bill also entitles such persons to have a law enforcement officer take any action, including arrest or removal from the timeshare property, against any purchaser, including a deeded owner, or a guest or invitee thereof, who engages in conduct described in those sections or conduct that violates the timeshare instrument.[75]

Assessment Certificates

The bill requires the managing entity of a timeshare condominium or timeshare cooperative to provide the assessment certificate required under s. 721.15, F.S., in lieu of the estoppel certificate required by s. 718.116(8), F.S., or s. 719.108(6), F.S., relating to condominium and cooperative associations, respectively.

B. SECTION DIRECTORY:

Section 1: Amends s. 721.13, F.S., relating to management.

Section 2: Amends s. 721.15, F.S., relating to assessments for common expenses.

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

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[73] S. 509.143, F.S.
[74] S. 509.162, F.S.
[75] Section 721.05(35), F.S., defines the term "timeshare instrument" to mean one or more of the documents, by whatever name denominated, creating or governing the operation of a timeshare plan.

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:

Authorizing the board of administration for a timeshare plan to "delete" accommodations or facilities without the approval of the members of the owners' association may help alleviate costs to the association and its members, such as costs for labor and insurance associated with maintaining old or underutilized facilities. However, this may have a negative fiscal impact on the private sector to the extent that the deletion of any accommodations or facilities decreases the value of a timeshare interest.

Authorizing the managing entity of a timeshare project to have the same rights and remedies, regarding removal and refusal to accommodate, of an operator of a public lodging establishment or public food service establishment may have a positive economic impact on the private sector to the extent that the exercise of such authority reduces undesirable or illegal behavior or increases the public health and safety of the area, which in turn increases the value of a timeshare interest. However, the exercise of such authority may have a negative fiscal impact on the private sector to the extent it deprives the owner of a timeshare interest the right to fully utilize his or her interest and, therefore, receive a return on his or her investment.

FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Article I, section 10, of the Florida Constitution provides, in relevant part, that "[n]o . . . law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike down laws that retroactively burden or alter contractual relations.[76] Not all contractual impairments warrant overturning an otherwise valid law; thus, state statutes that impair contractual obligations are measured on a sliding scale of scrutiny, where the degree of contractual impairment permitted is

[76] *In re Advisory Op. to the Governor,* 509 So.2d 292 (Fla. 1987); *Daytona Beach Racing & Recreational Facilities Dist. v. Volusia Cnty.,* 372 So.2d 419 (Fla. 1979); *Dewberry v. Auto Owners Ins. Co.,* 363 So.2d 1077 (Fla. 1978).

delineated by the importance of the governmental interests advanced.[77] The court, in *Pomponio v. Claridge of Pompano Condo., Inc.*,[78] enumerated several factors it might weigh when making such determinations:

a. Whether the law was enacted to deal with a broad economic or social problem;
b. Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
c. Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.

The bill may modify the terms of or rights under existing contracts entered into by timeshare interest owners. To the extent that any such modifications impair the existing contracts, a court might find the offending provision inapplicable as to that contract.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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[77] *Yellow Cab Co. of Dade Cnty. v. Dade Cnty.*, 412 So.2d 395 (Fla. 3d DCA 1982).

[78] 378 So.2d 774 (Fla. 1980).

1 A bill to be entitled
2 An act relating to real property; amending s. 695.03,
3 F.S.; providing that the Secretary of State appoints
4 commissioners of deeds; amending s. 721.13, F.S.;
5 broadening the powers of certain boards of
6 administration with respect to timeshare plans;
7 providing that managers and managing entities of
8 certain timeshare projects have the same rights and
9 remedies as operators of certain establishments and
10 may have law enforcement take certain actions against
11 individuals who engage in certain conduct; amending s.
12 721.15, F.S.; requiring a managing entity of a
13 timeshare condominium or timeshare cooperative to
14 provide a specified certificate to certain interested
15 parties in lieu of an estoppel certificate; amending
16 s. 721.97, F.S.; providing that the Secretary of State
17 appoints commissioners of deeds; providing an
18 effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Subsections (2) and (3) of section 695.03,
23 Florida Statutes, are amended to read:
24 695.03 Acknowledgment and proof; validation of certain
25 acknowledgments; legalization or authentication before foreign
26 officials.—To entitle any instrument concerning real property to

27 be recorded, the execution must be acknowledged by the party
28 executing it, proved by a subscribing witness to it, or
29 legalized or authenticated in one of the following forms:
30 (2) OUTSIDE THIS STATE BUT WITHIN THE UNITED STATES.—An
31 acknowledgment or a proof taken, administered, or made outside
32 of this state but within the United States may be taken,
33 administered, or made by or before a civil-law notary of this
34 state or a commissioner of deeds appointed by the Secretary of
35 State ~~Governor of this state~~; by a judge or clerk of any court
36 of the United States or of any state, territory, or district; by
37 or before a United States commissioner or magistrate; or by or
38 before any notary public, justice of the peace, master in
39 chancery, or registrar or recorder of deeds of any state,
40 territory, or district having a seal, and the certificate of
41 acknowledgment or proof must be under the seal of the court or
42 officer, as the case may be. If the acknowledgment or proof is
43 taken, administered, or made by or before a notary public who
44 does not affix a seal, it is sufficient for the notary public to
45 type, print, or write by hand on the instrument, "I am a Notary
46 Public of the State of ...(state)..., and my commission expires
47 on ...(date)...."
48 (3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN
49 COUNTRIES.—An acknowledgment, an affidavit, an oath, a
50 legalization, an authentication, or a proof taken, administered,
51 or made outside the United States or in a foreign country may be
52 taken, administered, or made by or before a commissioner of

53 deeds appointed by the Secretary of State ~~Governor of this state~~
54 to act in such country; before a notary public of such foreign
55 country or a civil-law notary of this state or of such foreign
56 country who has an official seal; before an ambassador, envoy
57 extraordinary, minister plenipotentiary, minister, commissioner,
58 charge d'affaires, consul general, consul, vice consul, consular
59 agent, or other diplomatic or consular officer of the United
60 States appointed to reside in such country; or before a military
61 or naval officer authorized by 10 U.S.C. s. 1044a to perform the
62 duties of notary public, and the certificate of acknowledgment,
63 legalization, authentication, or proof must be under the seal of
64 the officer. A certificate legalizing or authenticating the
65 signature of a person executing an instrument concerning real
66 property and to which a civil-law notary or notary public of
67 that country has affixed her or his official seal is sufficient
68 as an acknowledgment. For the purposes of this section, the term
69 "civil-law notary" means a civil-law notary as defined in
70 chapter 118 or an official of a foreign country who has an
71 official seal and who is authorized to make legal or lawful the
72 execution of any document in that jurisdiction, in which
73 jurisdiction the affixing of her or his official seal is deemed
74 proof of the execution of the document or deed in full
75 compliance with the laws of that jurisdiction.
76 Section 2. Subsection (8) of section 721.13, Florida
77 Statutes, is amended, and subsection (14) is added to that
78 section, to read:

79 721.13 Management.—
80 (8) Notwithstanding anything to the contrary in s.
81 718.110, s. 718.113, s. 718.114, or s. 719.1055, the board of
82 administration of any owners' association that operates a
83 timeshare plan including a timeshare condominium pursuant to s.
84 718.111, or a timeshare cooperative pursuant to s. 719.104,
85 shall have the power to make material alterations or substantial
86 additions, or any deletion, to the accommodations or facilities
87 of such timeshare plan ~~condominium or timeshare cooperative~~
88 without the approval of the members of the owners' association.
89 However, if the timeshare condominium or timeshare cooperative
90 contains any residential units that are not subject to the
91 timeshare plan, such action by the board of administration must
92 be approved by a majority of the owners of such residential
93 units. Unless otherwise provided in the timeshare instrument as
94 originally recorded, no such amendment may change the
95 configuration or size of any accommodation in any material
96 fashion, or change the proportion or percentage by which a
97 member of the owners' association shares the common expenses,
98 unless the record owners of the affected units or timeshare
99 interests and all record owners of liens on the affected units
100 or timeshare interests join in the execution of the amendment.
101 (14) With regard to any timeshare project as defined in s.
102 509.242(1)(g), the managing entity or manager has all of the
103 rights and remedies of an operator of any public lodging
104 establishment or public food service establishment as set forth

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

105 in ss. 509.141, 509.142, 509.143, and 509.162 and is entitled to
106 have a law enforcement officer take any action, including arrest
107 or removal from the timeshare property, against any purchaser,
108 including a deeded owner, or guest or invitee of such purchaser
109 or owner who engages in conduct described in s. 509.141, s.
110 509.142, s. 509.143, or s. 509.162 or conduct in violation of
111 the timeshare instrument.
112 Section 3. Paragraph (b) of subsection (7) of section
113 721.15, Florida Statutes, is amended to read:
114 721.15 Assessments for common expenses.—
115 (7)
116 (b) Within 30 days after receiving a written request from
117 a timeshare interest owner, an agent designated in writing by
118 the timeshare interest owner, or a person providing resale
119 transfer services for a consumer timeshare reseller pursuant to
120 s. 721.17(3), a managing entity must provide a certificate,
121 signed by an officer or agent of the managing entity, to the
122 person requesting the certificate, that states the amount of any
123 assessment, transfer fee, or other moneys currently owed to the
124 managing entity, and of any assessment, transfer fee, or other
125 moneys approved by the managing entity that will be due within
126 the next 90 days, with respect to the designated consumer resale
127 timeshare interest, as well as any information contained in the
128 books and records of the timeshare plan regarding the legal
129 description and use plan related to the designated consumer
130 resale timeshare interest. The managing entity of a timeshare

131 condominium or timeshare cooperative must provide this
132 certificate in lieu of the estoppel certificate required by s.
133 718.116(8) or s. 719.108(6).
134 1. A person who relies upon such certificate shall be
135 protected thereby.
136 2. A summary proceeding pursuant to s. 51.011 may be
137 brought to compel compliance with this paragraph, and in such an
138 action the prevailing party may recover reasonable attorney fees
139 and court costs.
140 3. The managing entity may charge a fee not to exceed $150
141 for the preparation and delivery of the certificate. The amount
142 of the fee must be included on the certificate.
143 Section 4. Subsection (1) of section 721.97, Florida
144 Statutes, is amended to read:
145 721.97 Timeshare commissioner of deeds.—
146 (1) The Secretary of State ~~Governor~~ may appoint
147 commissioners of deeds to take acknowledgments, proofs of
148 execution, or oaths in any foreign country, in international
149 waters, or in any possession, territory, or commonwealth of the
150 United States outside the 50 states. The term of office is 4
151 years. Commissioners of deeds shall have authority to take
152 acknowledgments, proofs of execution, and oaths in connection
153 with the execution of any deed, mortgage, deed of trust,
154 contract, power of attorney, or any other writing to be used or
155 recorded in connection with a timeshare estate, personal
156 property timeshare interest, timeshare license, any property

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

157 subject to a timeshare plan, or the operation of a timeshare
158 plan located within this state; provided such instrument or
159 writing is executed outside the United States. Such
160 acknowledgments, proofs of execution, and oaths must be taken or
161 made in the manner directed by the laws of this state,
162 including, but not limited to, s. 117.05(4), (5)(a), and (6),
163 Florida Statutes 1997, and certified by a commissioner of deeds.
164 The certification must be endorsed on or annexed to the
165 instrument or writing aforesaid and has the same effect as if
166 made or taken by a notary public licensed in this state.
167 Section 5. This act shall take effect July 1, 2024.

COMMERCE COMMITTEE

PCS for HB 429 by Rep. Robinson, W.
Real Property

AMENDMENT SUMMARY
February 8, 2024

Amendment 1 by Rep. Robinson (line 86-88):

- Clarifies that deletions may only be to facilities, and not to accommodations.
- Requires deletions to facilities to be:
    - Approved by a two-thirds vote of the board of administration.
    - Consistent with the fiduciary duties for managing entities in current law.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative Robinson, W. offered the following:
3
4 **Amendment**
5 Remove lines 86-88 and insert:
6 additions to the accommodations or facilities of such timeshare
7 plan, and deletions to the facilities of such timeshare plan
8 ~~condominium or timeshare cooperative~~ without the approval of the
9 members of the owners' association provided that the deletion of
10 any facilities is approved by a two-thirds vote of the board of
11 administration and the deletion is consistent with the fiduciary
12 duties set forth in subsection (2).

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1305 Residential Tenancies
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

The Residential Landlord and Tenant Act (Act), codified in part II of ch. 93, F.S., governs the rental of a dwelling unit in Florida. The Act provides that whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord has the option of holding such money in a separate account in a "Florida banking institution" for the benefit of the tenant. The Act, however, does not define what constitutes a "Florida banking institution."

In a recent court filing alleging violations of the Act (the Palm Beach County Case), the plaintiff relied on a repealed definition of the term "Florida banking institution." The plaintiff was a limited liability company that had been assigned the rights to a security deposit by the defendant landlord's former tenants. The plaintiff cited to the repealed statutory definition and alleged that the defendant landlord had violated the Act by depositing the tenants' security deposit with JPMorgan Chase Bank, which is not a Florida chartered bank nor headquartered in Florida.

Although the definition of "Florida banking institution" relied upon by the plaintiff in the Palm Beach County Case has been repealed, a similar definition still exists in chapter 658, F.S. This fact, combined with the fact that the Act does not define "Florida banking institution," suggests that similar lawsuits may be filed again in the future.

The bill amends the Act to define "Florida financial institution" as any bank, credit union, trust company, savings bank, or savings or thrift association doing business under the authority of a charter issued by the United States, this state, or any other state which is authorized to transact business in this state and whose deposits or share accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. The effect of this change is to expressly permit landlords to comply with the Act by depositing their tenants' security deposits in any financial institution doing business in Florida, regardless of where the institution is chartered or headquartered.

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

The bill shall take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Residential Landlord and Tenant Act

The Residential Landlord and Tenant Act (Act), codified in part II of ch. 83, F.S., governs the rental of a dwelling unit in Florida. A "dwelling unit" is defined as:

- A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household;
- A mobile home rented by a tenant; or
- A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.

The Act provides that whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental period, the landlord has the option of holding such money in a separate account in a "Florida banking institution" for the benefit of the tenant.[1] The Act, however, does not define what constitutes a "Florida banking institution."

Litigation Over Violations of the Act

In a recent court filing in Palm Beach County alleging violations of the Act (the Palm Beach County Case), the plaintiff relied on a statutory definition of the term "Florida banking institution" that existed in ch. 658, F.S., relating to the regulation of banks and trust companies in Florida.[2] The statute relied upon, however, was repealed over a decade ago.[3]

The repealed statute defined "Florida banking institution" as "a bank whose home is this state,"[4] and defined "home state" as:

- With respect to a state bank, the state by which the bank is chartered;
- With respect to a national bank, the state in which the main office of the bank is located; and
- With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. s. 3103(c).[5]

The plaintiff in the Palm Beach case was a limited liability company that had been assigned the rights to a $500 deposit by the defendant landlord's former tenants.[6] The plaintiff cited to the repealed statutory definition of "Florida banking institution" and alleged that the defendant landlord had violated the Act by depositing the tenants' security deposit with JPMorgan Chase Bank, which is not a Florida chartered bank nor headquartered in Florida.[7] JPMorgan Chase, however, is the largest financial institution in the United States and has numerous branches in Florida.[8] Based upon the alleged violation, the plaintiff

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[1] Ss. 83.49(1)(a)-(b), F.S.

[2] *KAC 2021-1 LLC, as Assignee to Erole Emmanuel and Marie Joseph, v. Eatmira II LLC d/b/a Catalina at Miramar*, Uniform Case No. 50-2023-SC-005770-XXXX-WB (Small Claims Court for the Fifteenth Judicial Circuit, Palm Beach County, Apr. 13, 2023) (hereinafter referred to as the Palm Beach County Case).

[3] *See* ch. 2011-194, s. 24, Laws of Fla. (repealing s. 658.295, F.S. (2010)).

[4] S. 658.295(2)(m), F.S. (2010).

[5] S. 658.295(2)(o), F.S. (2010).

[6] Palm Beach County Case, *supra* note 2, Count II.

[7] *Id.*

[8] As of September 30, 2023, JPMorgan Chase had $3.38 trillion in assets, 80 million customer accounts, and 4,700 branches. *See* Christopher Murray, *The Biggest Banks in 2024*, Market Watch Guides (updated Jan. 16, 2024), https://www.marketwatch.com/guides/banking/largest-banks-in-the-us/ (last visited Jan. 27, 2024).

sought to recover its attorney fees and court costs from the defendant landlord as permitted under the Act.[9] As of January 29, 2024, the case is still pending resolution.[10]

Although the definition of "Florida banking institution" relied upon by the plaintiff in the Palm Beach County Case has been repealed, a similar definition still exists in chapter 658, F.S.[11] This fact, combined with the fact that the Act does not define "Florida banking institution," suggests that similar lawsuits may be filed again in the future.

Effect of the Bill

The bill amends the "Definitions" section of the Act to create a definition for "Florida financial institution." Under the bill, "Florida banking institution" is defined as any bank, credit union, trust company, savings bank, or savings or thrift association doing business under the authority of a charter issued by the United States, this state, or any other state which is authorized to transact business in this state and whose deposits or share accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.[12]

The effect of this change is to expressly permit landlords to comply with the Act by depositing their tenants' security deposits in any financial institution doing business in Florida, regardless of where the institution is chartered or headquartered.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 84.43, F.S., relating to definitions.

Section 2. Amends s. 84.49, F.S., relating to deposit money or advance rent; duty of landlord and tenant.

Section 3. Amends s. 83.491, F.S., relating to fee in lieu of security deposit.

Section 4. Amends s. 553.895, F.S., relating to firesafety.

Section 5. Provides the bill shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

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[9] Palm Beach County Case, *supra* note 2, Count II. *See also* s. 83.48, F.S., which entitles prevailing parties to recover attorney fees and court costs in civil actions to enforce the provisions of the Act.

[10] *See* Clerk of the Circuit Court & Comptroller for Palm Beach County, *Case Info: Uniform Case No. 50-2023-SC-005770-XXXX-WB*, https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx (last visited Jan. 29, 2024).

[11] S. 658.2953(3)(c), F.S., defines "Florida bank" as "a bank whose home state in this state."

[12] The addition of the proposed definition changes the numbering of other defined terms. As such, the bill updates certain cross-references to conform with such changes.

2. Expenditures:

The bill has an indeterminate positive impact on state courts' expenses to the extent the proposed definition of "Florida banking institution" decreases the amount of litigation over the rights to security deposits in Florida. As a result, the bill is likely to reduce the caseload burden on circuit courts.[13]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate positive impact on local courts' expenses to the extent the proposed definition of "Florida banking institution" decreases the amount of litigation over the rights to security deposits in Florida. As a result, the bill is likely to reduce the caseload burden on small claims and county courts.[14]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate positive impact on the private sector to the extent the proposed definition of "Florida banking institution" decreases the amount of litigation over the rights to security deposits in Florida. The decrease in litigation will reduce costs to both plaintiffs and defendants in landlord-tenant disputes. Further, banking institutions that are not chartered or headquartered in Florida may benefit from receiving additional security deposits.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable. The bill does not amend or create rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[13] Under Florida law, circuit courts have concurrent jurisdiction with county courts to consider cases involving landlord-tenant disputes. S. 34.011(1), F.S.

[14] Under Florida law, county courts have concurrent jurisdiction with circuit courts to consider cases involving landlord-tenant disputes. County courts have exclusive jurisdiction of proceedings relating to the right of possession of real property and to the forcible or unlawful detention of lands and tenements, except that the circuit court also has jurisdiction if the amount in controversy exceeds the jurisdictional limits of the county court or the circuit court otherwise has jurisdiction. S. 34.011(1), F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to residential tenancies; amending s.
3 83.43, F.S.; defining the term "Florida financial
4 institution" for purposes of Part II of ch. 83, F.S.;
5 amending s. 83.49, F.S.; conforming references to the
6 term to changes made by the act; specifying that
7 required deposits may be held in a Florida financial
8 institution; amending ss. 83.491 and 553.895, F.S.;
9 conforming cross-references to changes made by the
10 act; providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
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14 Section 1. Subsections (7) through (17) of section 83.43,
15 Florida Statutes, are renumbered as subsections (8) through
16 (18), respectively, and a new subsection (7) is added to that
17 section to read:
18 83.43 Definitions.—As used in this part, the following
19 words and terms shall have the following meanings unless some
20 other meaning is plainly indicated:
21 (7) "Florida financial institution" means a bank, credit
22 union, trust company, savings bank, or savings or thrift
23 association doing business under the authority of a charter
24 issued by the United States, this state, or any other state
25 which is authorized to transact business in this state and whose

26 deposits or share accounts are insured by the Federal Deposit
27 Insurance Corporation or the National Credit Union Share
28 Insurance Fund.
29 Section 2. Paragraphs (a) and (b) of subsection (1) of
30 section 83.49, Florida Statutes, are amended to read:
31 83.49 Deposit money or advance rent; duty of landlord and
32 tenant.—
33 (1) Whenever money is deposited or advanced by a tenant on
34 a rental agreement as security for performance of the rental
35 agreement or as advance rent for other than the next immediate
36 rental period, the landlord or the landlord's agent shall
37 either:
38 (a) Hold the total amount of such money in a separate non-
39 interest-bearing account in a Florida financial ~~banking~~
40 institution for the benefit of the tenant or tenants. The
41 landlord shall not commingle such moneys with any other funds of
42 the landlord or hypothecate, pledge, or in any other way make
43 use of such moneys until such moneys are actually due the
44 landlord;
45 (b) Hold the total amount of such money in a separate
46 interest-bearing account in a Florida financial ~~banking~~
47 institution for the benefit of the tenant or tenants, in which
48 case the tenant shall receive and collect interest in an amount
49 of at least 75 percent of the annualized average interest rate
50 payable on such account or interest at the rate of 5 percent per

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

51 year, simple interest, whichever the landlord elects. The
52 landlord shall not commingle such moneys with any other funds of
53 the landlord or hypothecate, pledge, or in any other way make
54 use of such moneys until such moneys are actually due the
55 landlord; or
56 Section 3. Subsection (6) of section 83.491, Florida
57 Statutes, is amended to read:
58 83.491 Fee in lieu of security deposit.—
59 (6) A fee collected under this section, or an insurance
60 product or a surety bond accepted, by a landlord in lieu of a
61 security deposit is not a security deposit as defined in s.
62 83.43(13) ~~s. 83.43(12)~~.
63 Section 4. Subsection (1) of section 553.895, Florida
64 Statutes, is amended to read:
65 553.895 Firesafety.—
66 (1) Any transient public lodging establishment, as defined
67 in chapter 509 and used primarily for transient occupancy as
68 defined in s. 83.43(18) ~~s. 83.43(17)~~, or any timeshare unit of a
69 timeshare plan as defined in chapters 718 and 721, which is of
70 three stories or more and for which the construction contract
71 has been let after September 30, 1983, with interior corridors
72 which do not have direct access from the guest area to exterior
73 means of egress and on buildings over 75 feet in height that
74 have direct access from the guest area to exterior means of
75 egress and for which the construction contract has been let

76 after September 30, 1983, shall be equipped with an automatic
77 sprinkler system installed in compliance with the provisions
78 prescribed in the National Fire Protection Association
79 publication NFPA No. 13 (1985), "Standards for the Installation
80 of Sprinkler Systems." Each guest room and each timeshare unit
81 shall be equipped with an approved listed single-station smoke
82 detector meeting the minimum requirements of NFPA 74 (1984)
83 "Standards for the Installation, Maintenance and Use of
84 Household Fire Warning Equipment," powered from the building
85 electrical service, notwithstanding the number of stories in the
86 structure, if the contract for construction is let after
87 September 30, 1983. Single-station smoke detectors shall not be
88 required when guest rooms or timeshare units contain smoke
89 detectors connected to a central alarm system which also alarms
90 locally.
91 Section 5. This act shall take effect upon becoming a law.